

STATE OF MICHIGAN
COURT OF APPEALS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff/Cross Defendant-Appellee,

v

STEVEN WRIGHT,

Defendant/Cross Plaintiff-
Appellant,

and

TCF NATIONAL BANK and MIAMI VALLEY
BANK,

Defendants.

UNPUBLISHED

June 20, 2006

No. 266937

Wayne Circuit Court

LC No. 04-413948-CH

Before: Cooper, P.J., and Neff and Borrello, JJ.

PER CURIAM.

Defendant Steven Wright appeals as of right the trial court's order granting summary disposition in this declaratory judgment action filed by Countywide Home Loans, Inc., to determine interests in real property, MCL 600.2932. We affirm.

I

This case arises from competing interests in real property located in Detroit. The property, which consists of a home on Ohio Street, was deeded from the estate of Alice McCants to Neighborhood Homes, LLC, on February 4, 2002, for a purchase price of \$68,000. It is undisputed that Neighborhood Homes was comprised of two members, defendant Steven Wright and James Burke. The LLC was formed specifically to purchase the Ohio Street home, with plans to renovate the home and resell it. At issue are competing interests that arise from alleged separate and independent transfers of interest in the home by Wright and Burke during overlapping time periods in 2002. Plaintiff Countrywide Home Loans and defendant Miami Valley Bank claim an interest in a chain of title derived from a transfer by Burke. TCF National Bank claims an interest from a chain of title derived from Wright.

According to documentary evidence, on April 22, 2002, Burke, on behalf of Neighborhood Homes, conveyed the property to AM Properties Management, LLC; the warranty deed was recorded June 26, 2002.¹ Also on April 22, 2002, Burke conveyed the property to AM Properties Management by a quitclaim deed, which Burke signed as president of Neighborhood Homes. The quitclaim deed was recorded on August 6, 2002. On July 29, 2002, AM Properties Management conveyed the property by warranty deed to Michelle Durant for \$160,000, and the deed was recorded on September 3, 2002. Durant mortgaged the property to Quicken Loans for a loan of \$152,000; the mortgage was recorded on August 6, 2002. Plaintiff Countrywide Home Loans purchased the loan from Quicken Loans in August 2002. A formal assignment of the Quicken Loan mortgage was executed on January 28, 2004, by Mortgage Electronic Registration Systems, Inc., as nominee for Quicken Loans.

In the meantime, on June 4, 2002, Wright conveyed the property by a quitclaim deed as “member/manager” of Neighborhood Homes to himself for purported consideration of \$1.00. The deed was recorded on June 10, 2002. On June 12, 2002, Wright gave a mortgage to defendant TCF National Bank in the amount of \$100,000. The mortgage was recorded on June 20, 2002.

Although Countrywide Home Loans seeks to validate its interest, derived from Burke, Burke apparently supports Wright’s chain of title. Wright presented an affidavit from Burke, in which Burke affirmed the circumstances of Wright’s transfer of the property from Neighborhood Homes to Wright in exchange for Wright assuming sole obligation for repayment of the private financing obtained to initially purchase the home from the McCants estate. Burke further averred that he never signed the documents transferring the property to AM Properties Management and that the signatures on the deeds were not his. However, Countrywide Home Loans submitted deposition testimony from Alex Marinello, a member of AM Properties Management, in which Marinello detailed the AM Properties Management transaction with Burke, including issuing a loan to Burke on the Ohio Street home, preparing the warranty deed, and then subsequently preparing the quitclaim deed because a title search disclosed the legal interest of Neighborhood Homes and Burke represented to Marinello that he was the sole owner of Neighborhood Homes.

Wright and TCF National Bank filed motions for summary disposition under MCR 2.116(C)(8) and (10). Countrywide Home Loans filed responses to the motions and requested summary disposition be granted in its favor pursuant to MCR 2.116(I)(2). The trial court held that the deeds executed by Wright or Burke on behalf of Neighborhood Homes were void. Accordingly, title to the property remained with Neighborhood Homes. However, the court further ordered that the mortgage held by TCF National Bank was a valid first priority mortgage

¹ TCF asserts that the warranty deed, and the date it was recorded, are irrelevant because it is undisputed that Burke never had an individual interest in the property, and thus the warranty deed transfer from him individually was without legal effect. The record indicates that AM Properties Management similarly realized that Burke had no individual interest in the property and therefore prepared a second conveyance by the quitclaim deed from Burke as president of the LLC, which was executed on the same day.

on the Ohio Street property and that the mortgage held by Countrywide Home Loans was a valid second priority mortgage on the property, second to only the TCF National Bank mortgage.

II

This Court reviews de novo a trial court's denial of summary disposition to determine whether the moving party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition under MCR 2.116(C)(10)² is properly granted when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The court considers the pleadings, affidavits, depositions, admissions and other documentary evidence in the light most favorable to the nonmoving party. *Id.* The moving party must specifically identify the undisputed factual issues and has the initial burden of supporting its position with documentary evidence. *Id.* at 455; *Maiden, supra* at 120. The responding party must then present legally admissible evidence to demonstrate that a genuine issue of material fact remains for trial. *Id.*; *Smith, supra* at 455 n 2.

III

Wright argues that the trial court erred in granting summary disposition in favor of Countrywide Home Loans in light of Michigan's Real Property Recording Act,³ MCL 565.29, which provides that the first party to record an interest has priority against any later recorded competing interest. Wright contends that he was entitled to an order quieting title given the undisputed dates the transfers at issue were recorded, i.e., Wright's transfer from Neighborhood Homes to himself and his mortgage to TCF were recorded before any transfers from Burke, under which Countrywide Home Loans claims a mortgage interest. However, this argument presumes that Wright's transfer of title to the property from Neighborhood Homes to himself was valid, contrary to the trial court's conclusion. The trial court concluded that neither Wright nor Burke had individual authority to act on behalf of Neighborhood Homes. We find no error in the trial court's conclusion.

It is undisputed that Wright and Burke formed Neighborhood Homes as a limited liability company (LLC) for the purpose of purchasing, renovating, and reselling the Ohio Street home. The record indicates that Wright, who is an attorney, drafted the Articles of Organization and the Operating Agreement for the LLC. Under the Operating Agreement for Neighborhood Homes, the Managing Members have the power, on behalf of the company to sell or convey real property. The Operating Agreement states that James Burke and Steven Wright are the "Managing Members." This language supports a conclusion that neither Burke or Wright had the authority to convey the Ohio Street property as individual members of the LLC.

² Our review is properly considered under the standard for a C(10) motion because the trial court considered documentary evidence outside the pleadings. *Steward v Panek*, 251 Mich App 546, 554-555; 652 NW2d 232 (2002).

³ MCL 565.1 *et seq.*

Wright argues that the Operating Agreement should not be given effect because the document, which contains signature lines for Wright and Burke, is unsigned. However, as Countrywide Home Loans notes, Wright has produced no other document purporting to be the operating agreement for Neighborhood Homes, and Burke indicated in his deposition that the operating agreement at issue was that drawn up for the Neighborhood Homes LLC. Moreover, Burke stated that Wright himself drafted the Articles of Organization and the Operating Agreement, which Wright does not dispute. It begs our indulgence for Wright to now argue that the document should have no effect simply because it lacks the signatures of himself and Burke since he was apparently responsible for the legal documents and organization of the LLC.

Even if Burke and Wright had the authority to act individually as agents of the LLC under MCL 450.4406, we find no logical result that is contrary to the trial court's conclusion given the circumstances of this case. The warranty deed transfer of the Ohio Street property by Burke occurred on April 22, 2002, well before the transfer by Wright on June 4, 2002. Wright certainly would not knowingly transfer property to which he had no legal title. And although Burke claims that the alleged transfers by him were fraudulent, and that his signatures were forged, the record does not substantiate these allegations. Accordingly we reject Wright's arguments that the trial court erred in concluding that the individual transfers by Burke and Wright were void.

IV

Wright also argues that because of the trial court's decision in a related quiet title action filed by plaintiff, the trial court erred in granting Countrywide Home Loans an interest in the Ohio Street property. Wright contends that under principles of res judicata and collateral estoppel, Countrywide Home Loans had no interest in the property, as an assignee of a quieted party, Quicken Loans, even though the trial court exempted Countrywide Home Loans from its order in the quiet title action. We are unpersuaded by this argument.

It is undisputed that in the earlier quiet title action the trial court expressly stated in its order that "[t]his Default Judgment as to Defendant Quicken in no way affects Countrywide Home Loans or its assignee(s)." As Countrywide Home Loans notes, Wright's challenge to the exception in the earlier order should have been undertaken by an appeal in the earlier action and is not properly considered in this case. Accordingly, we find no error in the court's conclusion that TCF National Bank was entitled to a first priority mortgage, and Countrywide Home Loans was entitled to a second priority mortgage, second only to TCF National Bank.

Affirmed.

/s/ Jessica R. Cooper
/s/ Janet T. Neff
/s/ Stephen L. Borrello