STATE OF MICHIGAN

COURT OF APPEALS

RAYMOND PAUL MCCONNELL and RENEE S. MCCONNELL, Plaintiffs-Appellants, v MATTHEW J. MCCONNELL, JR. and JACOB P. MCCONNELL, Defendants-Appellees.	UNPUBLISHED October 30, 2012 No. 304959 Isabella Circuit Court LC No. 10-008223-CH

Before: GLEICHER, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

Plaintiffs appeal a trial court order that quieted title to a disputed parcel of property in favor of defendants. The trial court ruled that there was a valid quitclaim deed granting plaintiffs' interest in the property to defendants. The court also ruled that plaintiffs forfeited a $60,000 land contract to repurchase the land that they deeded to defendants. The court awarded defendants $84,739 in damages. For the reasons set forth below, we affirm.

Plaintiffs argue that, for various reasons, the trial court should have set aside the quitclaim deed. We review de novo equitable actions to quiet title, *Special Property VI v Woodruff*, 273 Mich App 586, 590; 730 NW2d 753 (2007), as well as a trial court's conclusions of law following a bench trial, *Ligon v City of Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007).

"A quitclaim deed conveys any and all right, title, and interest that a grantor has in the lands described in the deed." *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 630; 752 NW2d 479 (2008). "'A deed takes effect from the time of its delivery, and not from the time of its date, execution or record[ing].'" *Ligon*, 276 Mich App at 128, quoting *Power v Palmer*, 214 Mich 551, 559; 183 NW 199 (1921). As between the parties, an otherwise-conforming deed is valid even if it is not recorded. *Id.*

Plaintiffs deny that they signed the quitclaim deed. Plaintiffs argue that the trial court should have invalidated the deed because the signatures on the deed were not properly acknowledged or verified pursuant to the Notary Public Act (NPA), MCL 55.261 *et seq.* The notary public testified that she notarized the quitclaim deed without witnessing or verifying the

signers or signatures. She did not know who prepared the quitclaim deed or when it was originally signed.

The parties agree that the quitclaim deed was improperly notarized. The dispute is how this impacts the validity of the deed. Plaintiffs argue that the trial court should have invalidated the quitclaim deed pursuant to MCL 55.307(2), which provides:

> (1) Subject to subsection (2) and in the courts of this state, the certificate of a notary public of official acts performed in the capacity of a notary public, under the seal of office, is presumptive evidence of the facts contained in the certificate except that the certificate is not evidence of a notice of nonacceptance or nonpayment in any case in which a defendant attaches to his or her pleadings an affidavit denying the fact of having received that notice of nonacceptance or nonpayment.
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> (2) Notwithstanding subsection (1), the court may invalidate any notarial act not performed in compliance with this act.

Plaintiffs are mistaken about what can be invalidated under MCL 55.307(2). The statute provides for the invalidation of the "notarial act," which in turn undermines application of the presumption set forth in MCL 55.307(1).

> "'Notarial act' means any act that a notary public commissioned in this state is authorized to perform including, but not limited to, the taking of an acknowledgment, the administration of an oath or affirmation, the taking of a verification upon oath or affirmation, and the witnessing or attesting a signature performed in compliance with this act and the uniform recognition of acknowledgments act . . . ." [MCL 55.265(d).]

Thus, here, the notary public's failure to properly acknowledge and verify the deed signatures means that no presumption arises with regard to the accuracy of any facts set forth in the deed, but it does not mean the deed itself is invalid and, indeed, ample trial evidence supported its validity. Further, as set forth in MCL 565.604, the deed remains valid even with the notarial act invalidated:

> No conveyance of land or instrument intended to operate as such conveyance, made in good faith and upon a valuable consideration, whether heretofore made or hereafter to be made, shall be wholly void by reason of any defect in any statutory requisite in the sealing, signing, attestation, acknowledgment, or certificate of acknowledgment thereof; . . . but the same, when not otherwise effectual to the purposes intended, may be allowed to operate as an agreement for a proper and lawful conveyance of the premises in question, and may be enforced specifically by suit in equity in any court of competent jurisdiction, subject to the rights of subsequent purchasers in good faith and for a valuable consideration; and when any such defective instrument has been or shall hereafter be recorded in the office of the register of deeds of the county in which

> such lands are situate, such record shall hereafter operate as legal notice of all the rights secured by such instrument. [MCL 565.604.]

Plaintiffs also argue that the quitclaim deed is invalid because it did not satisfy statutory recording requirements. Plaintiffs cite MCL 565.47, which requires a properly notarized deed.[1] Plaintiffs also argue that the name of the person who prepared the deed did not appear on the instrument. MCL 565.201a.[2] Defendant Matthew McConnell testified that he spoke with Jeffrey Bean about how to properly document the transfers. Bean testified that he had his wife prepare the deed from plaintiffs to defendants, as dictated by Bean, a memorandum for land contract, and a land contract. Bean stated that his wife wrote on the deed that it was prepared by Ray because "[i]t was a common practice at that point." Plaintiffs' claim fails because, as discussed, as between the parties, an otherwise-conforming deed is valid even if it is not recorded. *Ligon*, 276 Mich App at 128.

Plaintiffs also argue that the deed violated the Land Division Act (LDA), MCL 560.101 *et seq.*, by not setting forth land divisions for the undivided half interest the 80-acre parcel. MCL 560.109(3) provides as follows:

> A person shall not sell a parcel of unplatted land unless the deed contains a statement as to whether the right to make further divisions exempt from the platting requirements of this act under this section and section 108 is proposed to be conveyed. The statement shall be in substantially the following form: "The grantor grants to the grantee the right to make [insert number] division(s) under section 108 of the land division act, Act No. 288 of the Public Acts of 1967." In the absence of a statement conforming to the requirements of this subsection, the right to make divisions under section 108(2), (3), and (4) stays with the remainder of the parent tract or parent parcel retained by the grantor.

There was no such language on the quitclaim deed. However, the record does not evidence that this was a sale of a parcel. A recital of valuable consideration in a deed is not conclusive proof that the property was actually sold for value. *In re Rudell Estate*, 286 Mich App 391, 406; 780 NW2d 884 (2009). The trial court ruled that the entire transaction was a transfer of plaintiffs' interest in the land in order for plaintiffs to repurchase the property through a land contract.

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[1] MCL 565.47. provides:

> A deed, mortgage, or other instrument in writing that by law is required to be acknowledged affecting the title to lands, or any interest therein, shall not be recorded by the register of deeds of any county unless the deed, mortgage, or other instrument is acknowledged or proved as provided by this chapter.

[2] "Each instrument described in section 1 executed after January 1, 1964 shall contain the name of the person who drafted the instrument and the business address of such person." MCL 565.201a.

MCL 560.109(3) applies to the sale of unplatted lands, as a result, MCL 560.109(3) was not applicable to the quitclaim deed.

Plaintiffs argue that the quitclaim deed did not contain statutory language warning that the property may be in the vicinity of a farm operation as required by MCL 560.109(4).[3] Plaintiffs urge that the deed should be set aside according to MCL 560.267, which provides that a sale of land in violation of the LDA is voidable by the purchaser.[4] However, as discussed, the transaction was not considered a sale of property, rather a transfer and repurchase to secure a debt. Moreover, had the quitclaim deed been found to represent a sale of property, *defendants* would have been the purchasers of the property conveyed by the deed with the statutory right to void the sale.

Plaintiffs argue that the quitclaim deed also violated the real estate transfer tax. MCL 207.502(b) provides that a tax is imposed on a deed conveying property for consideration when the deed is recorded. The recorded quitclaim deed stated that the transaction was exempt from tax. MCL 207.512(e) provides that it is unlawful to "[k]nowingly or willfully issue a false or fraudulent affidavit" pertaining to the tax exemption, and MCL 207.512(2) provides that violating the real estate transfer tax is a misdemeanor.

However, the consideration stated on the deed was one dollar. As stated on the quitclaim deed, MCL 207.505(a) and MCL 207.526(a) provide that transfers of property for less than $100 consideration are exempt from taxation under the real estate transfer tax. Therefore, the quitclaim deed properly stated that it was exempt from the transfer tax. Plaintiffs assert that the consideration for the deed was the $60,000 that defendants were securing by selling the property back to plaintiffs. However, the $60,000 was the price of the land contract, and land contracts where title does not pass until completion of the payments are exempt from the real estate transfer tax. MCL 207.505(m); MCL 207.526(o). The deed transferred the property for one dollar consideration and was exempt from real estate transfer taxation.

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[3] MCL 560.109(4) provides as follows:

> All deeds for parcels of unplatted land within the state of Michigan after the effective date of this act shall contain the following statement: "This property may be located within the vicinity of farm land or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan right to farm act."

[4] MCL 560.267 provides as follows:

> Any sale of lands subdivided or otherwise partitioned or split in violation of this act is voidable at the option of the purchaser, and shall subject the seller to the forfeiture of all consideration received or pledged therefor, together with any damages sustained by the purchaser, recoverable in an action at law.

Plaintiffs maintain that the quit claim deed should fail for failure of consideration. In general, a complete or substantial failure of consideration may justify the rescission of a written instrument. *In re Rudell Estate*, 286 Mich App at 403. To have consideration there must be a bargained-for exchange. *Amerisure Ins Co v Graff Chevrolet, Inc*, 257 Mich App 585, 596; 669 NW2d 304 (2003), rev'd in part on other grounds 469 Mich 1003 (2004).

In order to ascertain the intent of the parties to a contract, a court must look at the contract as a whole and give meaning to its terms. *Id*. at 594. Here, the quitclaim deed provided that valuable consideration for transfer of the property was one dollar. Generally, courts do not inquire into the sufficiency of consideration, and, it has been said, "[a] cent or a pepper corn, in legal estimation, would constitute a valuable consideration." *Id*. at 596, quoting *Whitney v Sterns*, 16 Me 394 (1839). Here, as intended by the parties, the acknowledged one dollar consideration was adequate for the transfer of the property.

Plaintiffs argue that defendants should not have access to equitable relief because they did not have "clean hands" in drafting the quitclaim deed. The clean hands doctrine applies to quiet-title actions and a party who comes into equity must come with clean hands. *Richards v Tibaldi*, 272 Mich App 522, 537; 726 NW2d 770 (2006). The clean hands doctrine precludes equitable relief to those tainted with inequitableness or bad faith relative to the matter in which relief is sought. *McFerren v B & B Investment Group*, 253 Mich App 517, 522-523; 655 NW2d 779 (2002).

The clean hands doctrine is inapplicable here. Plaintiffs were seeking to invoke equity to set aside the deed and, therefore, *plaintiffs* would have to enter into equity with "clean hands." Plaintiffs seem to suggest that the deed should be set aside because defendants engaged in fraud. Plaintiffs allege that defendants intentionally violated the NPA and the other statutory recording provisions previously cited, that the deed was a forgery, and that defendants and Bean lacked "candor" in their testimony. Actual forgery of a signature or fraud in obtaining a signature may invalidate a deed. *Felcher v Dutton*, 265 Mich 231, 233-234; 251 NW 332 (1933). However, plaintiffs do not elaborate on their general allegations of fraud and forgery, and no evidence was presented that defendants' actions constituted fraud. Plaintiffs testified at trial that they did not sign the quitclaim deed. However, the trial court also heard evidence regarding plaintiffs' debts to defendants, the testimony of defendants about their agreement with plaintiffs regarding the plan to secure the debt through the deed and land contract, testimony of the individual (Bean) who suggested the transaction and met with the parties to present the plan and documents, and the testimony of a handwriting expert. In essence, plaintiff's argument is predicated on an attack on the credibility of plaintiffs' evidence. As trier of fact, the trial judge was in a better position than this Court to assess witness credibility and weigh the impact of all the evidence. *People v Jackson*, 178 Mich App 62, 65; 443 NW2d 423 (1989). We defer to the trial court's assessments.

Finally, plaintiffs argue that the trial court erred in considering the handwriting expert's testimony as dispositive. The handwriting expert concluded that the signatures on the quitclaim deed and land contract were the signatures of the persons whose names were signed. Plaintiffs assert that the trial court should have considered whether the deed was valid after considering their arguments that the signatures were obtained by trick or fraud, that the deed was improperly notarized, that consideration was inadequate, and that defendants did not have clean hands.

The trial court clearly stated that the expert's opinion alone was not dispositive. The trial court stated that the expert's opinion considered with the facts and circumstances of the case provided evidence that plaintiffs signed the deed and land contract. The trial court discussed plaintiffs' theory that they signed the land contract thinking that they were purchasing an adjacent parcel from defendants, and dismissed this theory because the signatures on the quitclaim deed were authentic and defendants did not own the adjacent parcel to sell to plaintiffs at the time both the deed and land contract were signed. The trial court discussed the notary issue and determined that the deed was valid despite any error in acknowledging the deed. The trial court addressed plaintiffs' argument regarding a lack of consideration. The trial court heard the evidence and the arguments presented by the parties and explained its determination that defendants' theory was meritorious. The trial court did not err and plaintiff's claims are without merit.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Henry William Saad
/s/ Jane M. Beckering