

STATE OF MICHIGAN
COURT OF APPEALS

NORTH LAKE INVESTMENTS, LLC,
Plaintiff-Appellant,

UNPUBLISHED
August 26, 2014

V

JAMES DROLETT, GAIL DROLETT, and
DOROTHY H. SPROUT, Personal Representative
for the Estate of John Sprout,

No. 316222
Washtenaw Circuit Court
LC No. 00-1323-CH

Defendants-Appellees.

Before: SAAD, P.J., and OWENS and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order that rejected its claim for slander of title under MCL 600.2907a. For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

This suit has a long and tortured procedural history, and involves two separate but related actions: (1) slander of title, brought by plaintiff North Lake Investments, LLC¹ (which is the only matter that concerns our Court on appeal); and (2) fraudulent conveyance, brought by defendants James and Gail Drolett, and Dorothy Sprout ("the Droletts"). We note at the outset that Droletts' fraudulent conveyance suit has already been resolved in favor of North Lake.² However, North Lake's present claim for slander of title is premised on the theory that the Droletts' fraudulent conveyance suit was baseless, and thus, we will review this history.

This slander of title action has its origins in a defamation suit brought by the Droletts against Joseph Boltach. In the mid-1990s, James Drolett served as Dexter Township Supervisor, and during his 1996 reelection campaign, Boltach produced a variety of exceptionally negative pamphlets and letters that disparaged Drolett and his wife. After he lost his bid for reelection,

¹ Throughout the opinion, we refer to plaintiff as "North Lake."

² See *Drolett v Boltach*, unpublished opinion per curiam of the Court of Appeals, issued May 10, 2007 (Docket No. 266607).

Droletts and his wife sued Boltach for defamation in late 1996. The trial court entered a default judgment against Boltach for \$102,484 on January 27, 1999.³

The Droletts sought to collect this judgment from Boltach, but had difficulty, as Boltach no longer held many assets in Michigan. In fact, Boltach had sold one such asset, a property near Dexter, to North Lake during the defamation proceeding. The land sale was done by a five-year land contract, for a price of \$325,000 with a \$90,000 down payment. North Lake signed the land contract on January 27, 1998, recorded it on February 20, 1998, and accelerated the five-year deal by completing payment in October of that same year.

The Droletts learned of this land transfer, and sued North Lake and Boltach in September 1999. They alleged that the sale was a fraudulent conveyance intended to prevent them from collecting on the defamation judgment. The Droletts also filed a lis pendens on the property at issue on November 29, 1999. The Washtenaw Circuit Court dismissed the suit on January 19, 2000 and granted summary disposition to North Lake. The Droletts appealed the case to our Court, which reversed the grant of summary disposition and remanded for trial.⁴

While the Droletts' fraudulent conveyance action played out at various levels of Michigan's judiciary, the lis pendens on North Lake's property also became a subject of dispute. In November 2000, North Lake sued the Droletts, and claimed that the lis pendens slandered their title to the property. The Washtenaw Circuit Court dismissed the action and granted summary judgment to the Droletts. It held that its grant of summary disposition in January 2000 discharged the lis pendens placed on North Lake's property in November 1999. North Lake appealed to our Court, which reversed the trial court's decision and held that the November 1999 lis pendens was still in effect.⁵ The Court explicitly held that the lis pendens would remain in effect "during the time allowed for appeal"—i.e., until the resolution of the fraudulent conveyance suit.⁶

Meanwhile, the fraudulent conveyance suit continued apace. After a trial on remand, the Washtenaw Circuit Court dismissed the Droletts' fraudulent conveyance suit on October 21, 2005. The Droletts again appealed the decision to our Court, which affirmed the trial court's dismissal on May 10, 2007.⁷ Because the Droletts chose not to appeal the case any further, the November 1999 lis pendens was discharged on that date.

³ The judgment has since increased to \$164,970.56 because of interest payments.

⁴ *Droletts v Boltach*, unpublished opinion per curiam of the Court of Appeals, issued September 3, 2002 (Docket No. 230680).

⁵ *North Lake Investments, LLC v James Droletts*, unpublished opinion per curiam of the Court of Appeals, issued June 17, 2003 (Docket No. 237915).

⁶ *Id.*

⁷ See *Droletts v Boltach*, unpublished opinion per curiam of the Court of Appeals, issued May 10, 2007 (Docket No. 266607).

North Lake's right to the property in question, then, appeared vindicated. But over the eight-year litigation process, North Lake struggled financially—perhaps because of the lis pendens on its property. In February 2011, it brought another slander of title suit against the Droletts. Specifically, North Lake pointed to an opportunity it had to sell the property in 2001 for \$442,000, which was thwarted by the encumbrance of the November 1999 lis pendens. North Lake alleged the Droletts' fraudulent conveyance suit, which gave rise to the lis pendens, lacked merit, and that the Droletts therefore placed the lis pendens on the property in violation of MCL 600.2907a. To substantiate its claim, North Lake noted the Droletts changed their argument throughout the fraudulent conveyance suit, first claiming that North Lake had knowledge of the defamation lawsuit and potential judgment at the time it signed the land contract (on January 27, 1998), then that it had knowledge of the defamation lawsuit and potential judgment when it completed payment of the land contract (in October 1998), and finally that it had known all along of the defamation lawsuit and that the sale was a sham transaction from the beginning.

The Droletts argued that none of North Lake's proffered evidence demonstrated malicious intent on their part in the placement of the lis pendens, or that they lacked probable cause to bring the fraudulent conveyance suit. Accordingly, they could not be liable for slander of title under MCL 600.2907a.

After a bench trial, the trial court issued a thorough 12-page opinion, in which it held for the Droletts. It ruled that North Lake failed to produce any evidence to show the Droletts possessed the requisite malicious intent, or that the Droletts lacked probable cause to bring their fraudulent conveyance action, and that North Lake had accordingly failed to sustain a claim for slander of title under MCL 600.2907a. North Lake now appeals the case to our Court, and makes the same arguments here as it did at trial.

II. STANDARD OF REVIEW

A trial court's findings of fact are reviewed for clear error. *CD Barnes Associates, Inc v Star Heaven, LLC*, 300 Mich App 389, 425; 834 NW2d 878 (2013). A finding is "clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Gaudreau v Kelly*, 298 Mich App 148, 152; 826 NW2d 164 (2012). The appellate court gives "regard . . . to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id.* at 151–152; MCR 2.613(C). Statutory construction is a question of law that is reviewed de novo. *City of Taylor v Detroit Edison Co*, 475 Mich 109, 115; 715 NW2d 28 (2006).

III. ANALYSIS

A claim for slander of title can be brought at common law, or under statute, specifically via MCL 565.108. *Federal Nat'l Mortgage Ass'n v Lagoons Forest Condominium Ass'n*, 305 Mich App 258; ___ NW2d ___, slip op at 6 (2014). A plaintiff can also bring a slander of title action under MCL 600.2907a, which mandates penalties for individuals who record a document without lawful cause, with intent to harass or intimidate a property owner. *Id.*; MCL 600.2907a. In relevant part, MCL 600.2907a states:

(1) A person who violates section 25 of chapter 65 of the Revised Statutes of 1846, being section 565.25 of the Michigan Compiled Laws, by encumbering property through the recording of a document without lawful cause with the intent to harass or intimidate any person is liable to the owner of the property encumbered for all of the following:

(a) All of the costs incurred in bringing an action under section 25 of chapter 65 of the Revised Statutes of 1846, including actual attorney fees.

(b) All damages the owner of the property may have sustained as a result of the filing of the encumbrance.

(c) Exemplary damages. [MCL 600.2907a(1).]

Regardless of whether the slander-of-title plaintiff chooses to pursue his claim under common law, MCL 565.108, or 600.2907a, he must show: “falsity, malice, and special damages, i.e., that the defendant maliciously published false statements that disparaged a plaintiff’s right in property, causing special damages.” *Federal Nat’l Mortgage* at 6, quoting *B&B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998).

The most important, and here dispositive, of these three elements is malice. *Gehrke v Janowitz*, 55 Mich App 643, 648; 223 NW2d 107 (1974). Specifically, the slander of title claimant must show “some act of express malice by the defendant, which ‘implies a desire or intention to injure.’” *Federal Nat’l Mortgage* at 6, quoting *Glieberman v Fine*, 248 Mich 8, 12; 226 NW 669 (1929). “Malice may not be inferred merely from the filing of an invalid lien; the plaintiff must show that the defendant knowingly filed an invalid lien with the intent to cause the plaintiff injury.” *Stanton v Dachille*, 186 Mich App 247, 262; 463 NW2d 479 (1990). In other words, “a plaintiff may not prevail on a slander of title claim if the defendant’s ‘claim under the mortgage [or lien] was asserted in good faith, upon probable cause, or was prompted by a reasonable belief that [the defendant] had rights in the real-estate in question.’” *Federal Nat’l Mortgage* at 6, quoting *Glieberman*, 248 Mich at 12.

Here, North Lake says that the Droletts violated MCL 600.2907a when they placed a lis pendens on the subject property on November 29, 1999. Specifically, North Lake alleges that the Droletts’ fraudulent conveyance suit had no legal cause, and therefore, any lis pendens placed on the land because of that suit must be malicious and violate MCL 600.2907a.

Neither the trial court nor we find these claims convincing. As the trial court noted, North Lake failed to produce any evidence that the Droletts recorded the lis pendens knowing the encumbrance was invalid and “with the intent to cause [North Lake] injury.” *Stanton*, 186 Mich App at 262. Though North Lake observes the Droletts changed their allegations about precisely when North Lake had knowledge of the potentially fraudulent nature of the transfer from Boltach, these modifications do not show the ill-intent required for liability under MCL 600.2907a(1). Rather, they demonstrate the Droletts had one overarching legal theory—North Lake had knowledge of the defamation lawsuit and participated in Boltach’s supposed scheme to divest himself of assets—that they continued to assert throughout the trial and appellate process. The fact that the Droletts’ claim may have been weak, and ultimately proved unsuccessful, does

not demonstrate that it was filed out of malice. And, as the trial court noted, the Droletts did have “probable cause” to support their claim: the accelerated payment of the five-year land contract, and deposition testimony that one of North Lake’s members had knowledge of the defamation suit before the final payout. *Glieberman*, 248 Mich at 12.

Moreover, North Lake essentially asks us to re-find facts the trial court already correctly analyzed, which we cannot and will not do unless the trial court clearly erred. *CD Barnes Associates*, 300 Mich App at 425. It did not do so here—in fact, it handled the case with diligence and caution. Accordingly, we reject North Lake’s claims on appeal and affirm the ruling of the trial court.

Affirmed.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Kirsten Frank Kelly