STATE OF MICHIGAN

COURT OF APPEALS

CRYSTAL CABINET WORKS, INC.,

Plaintiff,

v

RATTLE RUN DEVELOPMENT COMPANY,

Defendant/Third-Party Plaintiff,

and

RATTLE RUN INVESTMENT COMPANY
a/k/a RATTLE RUN GOLF CLUB,

Defendant/Third-Party Plaintiff-
Appellant,

and

AMOS KNOLL, FAY KNOLL, KANTZ
DEVELOPMENT COMPANY and
DON KNOLL,

Third-Party Defendants,
Appellees.

UNPUBLISHED
January 3, 1997

No. 177042
LC No. 92-001702

CRYSTAL CABINET WORKS, INC.,

Plaintiff-Appellant,

v

RATTLE RUN DEVELOPMENT COMPANY,
RATTLE RUN INVESTMENT COMPANY
and RATTLE RUN REAL ESTATE
COMPANY, LIMITED,

No. 181125
LC No. 92-001702

Defendants-Appellees,

and

AMOS KNOLL, FAY KNOLL, KANTZ DEVELOPMENT COMPANY and DON KNOLL,

Third-Party Defendants,

and

COMERICA BANK,

Garnishee Defendant-Appellee,

and

H. ROLLIN ALLEN,

Defendant.

Before: Doctoroff, C.J., and Corrigan and Danhof,* JJ.

PER CURIAM.

This case arose after plaintiff, Crystal Cabinet Works, Inc., supplied cabinets to defendant/third-party plaintiff Rattle Run Investment, which was involved in a condominium development. [Defendant/Third-Party Plaintiff, Rattle Run Development Company, was a joint venture comprised of Rattle Run Investment Company a/k/a Rattle Run Golf Club, Rattle Run Real Estate Company Ltd, H. Rollin Allen, Edward L. Powers and Fay Knoll. Allen was the president of Rattle Run Investment Company and a partner in Rattle Run Real Estate Company Ltd.] Rattle Run Investment Company then brought a third-party complaint against third-party defendants Amos Knoll, Dan Knoll, Fay Knoll, Kantz Development Company and First Security Savings, alleging that these parties had converted the cabinets to their own use. Crystal Cabinet subsequently brought its own claims against Amos Knoll, Dan Knoll, Kantz Development and First Security, on the basis of the claims made by Rattle Run Investment Company in its third-party complaint. First Security was eventually dismissed from the action by stipulation and order dated November 24, 1993.

On June 11, 1993, Rattle Run Investment Company petitioned for a Chapter 11 bankruptcy in the Federal Court for the Eastern District of Michigan. In October 1993, Rattle Run Investment

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

petitioned the bankruptcy court for authorization to sell two potential causes of action, one against First Security Savings Bank, and the other against "various former officers and directors of the Debtor for breach of statutory and common law fiduciary obligations." The remaining "Rattle Run" companies, including the joint-venture Rattle Run Development, remained solvent.

On December 14, 1993, Crystal Cabinet obtained a consent judgment against Rattle Run Investment, Rattle Run Real Estate and H. Rollin Allen in the amount of $15,000. Contemporaneously, Rattle Run Investment and Rattle Run Development obtained a $15,000 judgment against Amos Knoll, Fay Knoll, Dan Knoll and Kantz Development.[1]

The dispute in Docket No 177042 centers around Rattle Run Investment Company's [the party in bankruptcy] sale of its assets, in particular, its sale of potential causes of action it had against Dan A. Knoll, Amos Knoll, Fay Knoll, Kantz Development Corp, and Kathy Powers.

In March of 1994, the bankruptcy court approved Rattle Run Investment Company's petition to sell its potential causes of action against First Security Savings Bank, Amos Knoll, Dan Knoll, Kantz Building Co, and Kathy Powers. On May 4, 1994, the parties reached a settlement agreement and an agreement for sale. For $150.00, Dan Knoll purchased Rattle Run Investment Company's right to bring a cause of action against Dan A. Knoll, Amos Knoll, Fay Knoll, Kantz Development Corp, and Kathy Powers. On May 12, 1994, the bankruptcy court approved and adopted the settlement agreement.[2]

On May 18, 1994, Dan Knoll moved in the St. Clair Circuit Court for entry of an order dismissing and holding as satisfied any and all claims Rattle Run Investment Company had or may make against Amos Knoll, Fay Knoll, Dan Knoll and Kantz Development Corp. On the apparent assumption that the settlement of May 4, 1994, embodied an agreement to sell the judgment that was entered against third-party defendants, the trial court granted Dan Knoll's motion. On June 10, 1994, Rattle Run Investment Company moved for reconsideration of the order, arguing, as it did at the original hearing, that the parties' agreement pertained only to potential causes of action and not to the judgment for $15,000 which had previously been entered on December 14, 1993. The court denied this motion, and Rattle Run Investment Company now appeals.

The appeal in Docket No 181125 arises out of the following facts: On January 19, 1994, Crystal Cabinet requested a writ of execution against Rattle Run Development, Rattle Run Investment, Rattle Run Real Estate and H. Rollin Allen that was issued on that date. The trial court denied Crystal Cabinet's motion to garnishee the law firm with which Allen was associated because the law firm owed no money to Allen. Crystal Cabinet then sought a writ of non-periodic garnishment on the Comerica Bank accounts of Rattle Run Development, Rattle Run Real Estate, Rattle Run Investment and H. Rollin Allen, relying on the $15,000 judgment that was entered against those entities on December 14, 1993. Although none of the "Rattle Run" corporations had any accounts at Comerica, an account existed with the bank under the name of H. Rollin Allen. However, Allen filed a motion to quash the garnishment of the Comerica account, contending that the funds in the garnished account were not his personal funds, but were being held for his clients. Citing Allen's status "as an officer of this court," the trial court

accepted his unsworn statement that the funds belonged to his clients. The trial court thus granted Allen's motion to quash garnishment. Crystal Cabinet now appeals that decision.

The claims in Docket Nos 177042 and 181125 were consolidated for purposes of appeal.

I

In Docket No. 177042, plaintiff argues that the trial court erroneously found that its claims against third-party defendants Amos Knoll, Fay Knoll, Dan Knoll and Kantz Development had been purchased by Dan Knoll in a settlement agreement arising out of plaintiff's bankruptcy proceedings. In particular, plaintiff argues that the December 14, 1993, judgment is a separate asset from any potential cause of action and that the bankruptcy documents demonstrate that only potential causes of action were sold to Dan Knoll. We agree.

Upon review of the motion for authorization to sell causes of action, the order authorizing the sale and the settlement agreement between the parties, we conclude that the December 14, 1993, judgment was not included in the sale. In the motion for authorization submitted on October 15, 1993, the parties referred to transaction as a sale of a "potential action," and in the settlement agreement entered on May 4, 1994, the parties described it as a "right to bring a cause of action." Both characterizations suggest that what was being sold was the right to bring suit *in the future*. These documents thus support the conclusion that the parties did not sell the right to the judgment from any action *then pending*. Consequently, the trial court erred in apparently deeming the December 14, 1994, judgment against third-party defendants to be included in the sale of any potential actions to Dan Knoll. Accordingly, we find that the trial court abused its discretion when it denied plaintiff's motion for reconsideration. *Cason v Auto-Owners Ins Co*, 181 Mich App 600, 609; 450 NW2d 6 (1989). The $15,000 judgment, obtained by Rattle Run Investment Company against Amos Knoll, Fay Knoll, Dan Knoll and Kantz Development remains valid and enforceable.

II

In Docket No. 181125, Crystal Cabinet argues that the trial court erroneously determined that the funds in defendant H. Rollin Allen's checking account at Comerica Bank were not his personal funds, but rather a trust account containing money belonging to Allen's clients. Crystal Cabinet thus argues that the trial court erred in ordering that its garnishment on the account be quashed. We find that the trial court's decision regarding the nature of Allen's account was not based on proper evidence. Accordingly, we remand as to this issue.

The trial court conducted two hearings regarding whether it was proper to garnish the account. At the first hearing, Crystal Cabinet stated that the account was not a trust account for Allen's clients because Allen had used the account for his personal use. In support of this, Crystal Cabinet submitted a copy of a $200.00 check from the account which went to pay Allen's appellate fee for Docket No 177042. The check designated the account as "H. Rollin Allen Trustee, H. Rollin Allen Trust." Further, Crystal Cabinet presented evidence that Allen drew $5,966.00 out of the account, payable to cash, and wrote a $41,606.81 check from the account, payable to himself. Allen asserted that the

funds in the account were held in trust for his clients and that the checks for $5,966.00 and $41,606.81 were invested on behalf of clients. Allen claimed that the $200.00 he used from the account was owed to him by one of his clients. Allen failed to present documentary evidence that the funds in the account belonged to his clients, and he admitted that the account was not an IOLTA as required by the Michigan Rules of Professional Conduct (MRCP) 1.15(d)(1).[3] Accordingly, the trial court adjourned the motion for two weeks, allowing Allen to provide documentation showing that the funds did not belong to him.

Following the first hearing, Allen filed a supplemental brief, again stating that "[t]he $5,966.00 and the $41,606.81 were not withdrawn for the benefit of the undersigned but were for the benefit of the contributors of the money." Similarly, he maintained that the $200.00 filing fee was owed to him by a client. However, in support of his brief and at the second hearing, Allen again failed to support his claims with documentation. At the second hearing, Allen again indicated that "this money comes in from various sources, from clients and trusts for pass through." Allen stated that the money currently in the account was ready to be disbursed, but, because of the garnishment, the funds could not be removed. After Allen admitted that the account was not an IOLTA, the trial court stated to Allen, "You're representing as an officer of this Court that the money in that account is not your money?" Allen replied, "Absolutely not." Following this, the trial court promptly granted Allen's motion to quash.

The trial court's order granting Allen's motion to quash garnishment was apparently based solely on Allen's representation, as an officer of the court, that the funds were not his. Pursuant to MCR 9.103(A), an attorney is to be entrusted with professional and judicial matters and to aid in the administration of justice. *In re McWhorter*, 449 Mich 130, 137; 534 NW2d 480 (1995) (opinion by Brickley, C.J.). An attorney has a duty of candor toward the courts pursuant to MCR 9.103, 9.104; MRPC 1.2, 3.3 and 8.4. *In re Contempt of Calcutt*, 184 Mich App 749, 762; 458 NW2d 919 (1990). Although we believe that an attorney, as an officer of the court, would not be inclined to lie, the essence of the adversary process is not to discover perjury, but rather to reveal the truth. *People v Reed*, 393 Mich 342, 352-354; 224 NW2d 867 (1975).

In *Reed*, the trial court had accepted the attorney's statement as factual based solely on the attorney's status as an officer of the court. *Id*. at 352. The trial court stated, "if [the attorney] simply tells me – and I wouldn't even have him sworn – if he tells me he had no such communication, the Court will accept that without any more." *Id.* at 352 n 3. The Michigan Supreme Court found that the trial court erred in failing to allow the defendant to cross-examine the attorney regarding his statement. *Id.* at 354. The Court found that the prevention of cross-examination deprived the opposing party of a valuable tool for discovering the truth.. *Id.* Although *Reed* is a criminal case, "full discovery is a benefit to the truth-seeking function of any tribunal." *Chrysler v Department of Civil Rights*, 117 Mich App 95, 104; 323 NW2d 608 (1982).

We find that the truth-seeking function of the trial court would have been better served had the trial court relied on admissible evidence other than the unsworn statement of Allen. Though Allen was an officer of the court, and thus had a duty of candor, we believe that he failed to present sufficient evidence to support his motion. In compliance with the adversary system, Crystal Cabinet had a right to cross-examine Allen as to the nature of the account and to conduct full discovery into the matter. *Reed*,

supra; *Chrysler, supra*. Accordingly, we find that the trial court erred in basing its order quashing garnishment solely on Allen's unsworn statements. We thus remand for a full hearing and for a determination of whether the funds in the Comerica account in question belong to Allen. If the funds are found to belong not to Allen but to his clients, the motion to quash garnishment should be granted. Upon remand, the trial court should base its determination on properly sworn testimony, documentation, and any other admissible evidence.

Reversed in part and remanded in part.

/s/ Martin M. Doctoroff
/s/ Maura D. Corrigan
/s/ Robert J. Danhoff

[1] Although this Court was not provided with a transcript of the December 14, 1993, proceedings, Rattle Run Investment alleges that H. Rollin Allen consented to a judgment against himself, Rattle Run Development, Rattle Run Investment and Rattle Run Real Estate, and simultaneously to a judgment on behalf of Rattle Run Investment [the party in bankruptcy] against Amos Knoll, Fay Knoll, Dan Knoll and Kantz Development.

[2] At the same time, H. Rollin Allen agreed to purchase from Rattle Run Investment Company, for $1,000.00, the right to bring a cause of action against First Security Savings Bank. The bankruptcy court also approved this transaction.

[3] Pursuant to the MRPC, a lawyer must keep his client's funds in an IOLTA (Interest On Lawyer's Trust Account). MRCP 1.15(d)(1) provides in part:

> Except as set forth in paragraph (d)(2), a lawyer who or a law firm which receives client funds shall maintain a pooled interest-bearing trust account for deposit of client funds, other than advances for costs and expenses, which at the time of receipt and deposit the lawyer or law firm reasonably anticipates will generate $50 or less in interest during the period for which it is anticipated such funds are to be held.