

STATE OF MICHIGAN
COURT OF APPEALS

DALE SPENCER,

Plaintiff-Appellant,

v

GOTTLIEB and GOREN, P.C., and AARON W.
GOREN,

Defendant-Appellants.

UNPUBLISHED

May 16, 1997

No. 190355

Oakland Circuit Court

LC No. 94-482834 NM

Before: Corrigan, C.J., and Young and M.J. Talbot*, JJ.

MEMORANDUM.

Plaintiff sued defendants for legal malpractice, contending that defendants' failure to timely record a mortgage -- as to which plaintiff was mortgagee and Wade Waterman mortgagor -- resulted in plaintiff becoming an unsecured creditor of Waterman, who was adjudicated bankrupt. The Oakland Circuit Court granted defendant's motion for summary disposition under MCR 2.116(C)(10), engendering the present appeal of right. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff cannot establish, as a matter of law, that, but for defendants' failure to record the mortgage more than ninety days before the filing of Waterman's bankruptcy petition, the bankruptcy court would have recognized the mortgage as a valid perfected security interest. *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413; 551 NW2d 698 (1996); *Charles Reinhart Co v Winiemko*, 444 Mich 579; 513 NW2d 773 (1994). Waterman's admission that he sought to protect his good friend of many years at the expense of an existing secured creditor constitutes conclusive evidence of an actual intent to hinder or defraud the secured creditor. 11 USC 548(a)(1); *Max Sugarman Funeral Home, Inc v A B D Investors*, 926 F2d 1248 (CA 1, 1991). Plaintiff failed to provide documentary evidence that would create a factual question with regard to the existence of a legitimate supervening purpose. *Id.*, at 1255.

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

On the record provided the trial court, *Quinto v Cross & Peters*, 451 Mich 358, 362-363; 547 NW2d 314, the mortgage constituted a fraudulent transfer under 11 USC 548(a)(1) and was voidable in bankruptcy as a matter of law. Consequently, plaintiff could not have established that, but for any negligence on defendants' part in recording the mortgage, plaintiff would have had a perfected security interest recognized in bankruptcy.

Affirmed.

/s/ Maura D. Corrigan

/s/ Robert P. Young, Jr.

/s/ Michael J. Talbot