

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD M. RUSINOWSKI, CAROL
RUSINOWSKI, MICHAEL DENNIS SEELY,
MARY THERESE SEELY, PATRICIA S.
THOMAS, THOMAS VOS, SHARON VOS,
DANTE C. ZUCCARO and NANCY J.
ZUCCARO,

UNPUBLISHED
August 28, 2003

Plaintiffs-Appellees,

v

ANDREW H. KRAUSE and JANET M.
KRAUSE,

No. 239629
Oakland Circuit Court
LC No. 00-027282-CZ

Defendants-Appellants.

Before: Markey, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Defendants appeal as of right a judgment entered on an order granting summary disposition in favor of plaintiffs. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1988 M. Stephen Khoury divided a tract of land into several parcels. He executed and recorded a private road agreement and a declaration of building use and restriction. These instruments were recorded in the Oakland County Register of Deeds, and were also entered in the grantor/grantee index and in a computerized retrieval system maintained by the Register of Deeds. When the instruments were entered into the computerized system, only the initial tax parcel identification numbers assigned to the property when it was divided were entered. The remaining numbers, including those assigned to defendants' parcels, were omitted. The omission was later corrected.

Defendant Andrew H. Krause purchased ten-acre parcels of vacant land. Defendants decided to split one parcel into two separate tracts. Plaintiffs, who are owners of property subject to the building and use restriction, filed a verified complaint¹ seeking an injunction

¹ Initially, plaintiffs named Andrew H. Krause as the sole party defendant based on the fact that
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precluding defendants from dividing the parcel in contravention of the building and use restriction.

Plaintiffs moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that because the building and use restriction was properly recorded in both the grantor/grantee index and the Book of Deeds maintained by the Register of Deeds, it was enforceable.

The trial court granted plaintiffs' motion for summary disposition. The court noted that a search to determine marketable title to the parcels purchased by defendants would have necessitated a search of records from the previous forty years. MCL 565.103. A search of the name M. Steven Khoury in the grantor/grantee index would have revealed the building and use restriction, along with its liber and page numbers. The trial court concluded that no genuine issue of fact existed as to whether the restriction was properly recorded and enforceable against defendants. Subsequently, the trial court entered a final judgment in favor of plaintiffs.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Defendants argue that the trial court erred by granting summary disposition and entering judgment in favor of plaintiffs. We disagree and affirm. Every recorded instrument must be entered in the Book of Deeds or the Book of Mortgages maintained by a county's Register of Deeds. MCL 565.24. The Register of Deeds must maintain a general index, known as the grantor/grantee index, for each Book. MCL 565.28. The index may be, but need not be, maintained in whole or in part in computerized form. MCL 565.28(2). In support of their motion for summary disposition plaintiffs submitted certified copies of the chains of title for their properties as well as the property owned by defendants, along with the building and use restriction. These documents demonstrated that the building and use restriction was properly entered in both the Book of Deeds and the grantor/grantee index to the Book of Deeds.

The undisputed evidence submitted to the trial court demonstrated that a search of the grantor/grantee index under the name M. Steven Khoury revealed the existence of the building and use restriction, along with its liber and page numbers. A search of the grantor/grantee index conducted solely under the tax identification number for defendants' parcel could fail to reveal the existence of the building and use restriction due to the initial failure to record all tax identification numbers. However, as the trial court correctly noted, a search to determine marketable title to defendants' property could not be conducted via the computerized system only because that system did not contain records for the requisite forty-year period. MCL 565.103. The undisputed evidence showed that the building and use restriction was properly entered in the Book of Deeds and the grantor/grantee index, and thus was in defendants' chain of title and was enforceable against defendants. The trial court correctly granted summary disposition and judgment in favor of plaintiffs.

(...continued)

his name only appeared on the deed to the subject property. Subsequently, plaintiffs learned that Andrew H. Krause was married to Janet M. Krause, and filed an amended complaint adding Janet M. Krause as a party defendant.

Affirmed.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Henry William Saad