

STATE OF MICHIGAN
COURT OF APPEALS

SAYO, INC., d/b/a RAMADA INN OF
SOUTHFIELD,

Plaintiff-Appellant,

v

YORK INTERNATIONAL CORPORATION and
CTM GROUP, INC.,

Defendants-Appellees.

UNPUBLISHED
April 1, 2008

No. 274489
Oakland Circuit Court
LC No. 1998-004091-CK

Before: Gleicher, P.J., and O'Connell and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's postjudgment order voiding plaintiff's conveyance of real property to Rutland-Nine, L.L.C. (Rutland), and imposing a "constructive mortgage" on the property in favor of defendant York International Corporation.¹ We affirm.

In a prior appeal, this Court reversed a judgment in favor of plaintiff and remanded for entry of judgment in favor of defendant. *Sayo, Inc v CTM Group, Inc*, unpublished opinion per curiam of the Court of Appeals, issued May 29, 2003 (Docket No. 232868). In September 2004, the trial court awarded defendant case evaluation sanctions of approximately \$256,000, plus interest, pursuant to MCR 2.403(O). On November 8, 2004, the trial court issued a subpoena compelling the attendance of Sam Yono, plaintiff's primary owner, at a creditor's examination. With the subpoena, the trial court also entered an order prohibiting plaintiff from "transferring or disposing of property" pursuant to MCL 600.6104(2), MCL 600.6116, and MCL 600.6119. Yono received notice of the creditor's exam and the order prohibiting transfers on November 10, 2004. On December 27, 2004, Yono executed a quitclaim deed transferring a parcel of vacant property owned by plaintiff to Rutland, another corporation owned solely by Yono. Yono recorded this deed on January 18, 2005.

¹ Because plaintiff settled with CTM Group, Inc. before trial, the singular term "defendant" in this opinion refers only to York International Corporation.

Defendant subsequently moved to set aside the transfer to Rutland, arguing that it violated the trial court's order prohibiting plaintiff from transferring or disposing of its assets. Defendant contended that this transfer also constituted a fraudulent conveyance under the uniform fraudulent transfer act (UFTA), MCL 566.31 *et seq.*, because plaintiff was insolvent when the transfer was made and did not receive reasonably equivalent value in exchange for the property. After an evidentiary hearing, the trial court ruled that the conveyance constituted a fraudulent transfer under MCL 566.35, and also found plaintiff in contempt for violating the November 8, 2004 court order forbidding plaintiff's transfer of assets. The court voided plaintiff's conveyance of the vacant property to Rutland, imposed a constructive mortgage on the property in favor of defendant, and ordered a sale of the property to generate "proceeds . . . to satisfy [defendant's] constructive mortgage."

Plaintiff first contends that the trial court erred by finding it in contempt. This Court reviews for an abuse of discretion a trial court's decision regarding a contempt motion. *DeGeorge v Warheit*, 276 Mich App 587, 591; 741 NW2d 384 (2007). We review the trial court's findings of fact for clear error, which exists when the reviewing court "is left with a definite and firm conviction that a mistake has been made." *Id.* (internal quotation omitted).

We initially observe that the trial court properly enjoined plaintiff from transferring property when it ordered the creditor's examination. The trial court's authority derived from MCL 600.6116, which provides in relevant part as follows:

(1) An order for examination of a judgment debtor may contain a provision restraining the judgment debtor from making or suffering any transfer or other disposition of, or interference with any of his property then held or thereafter acquired by or becoming due to him not exempt by law from application to the satisfaction of the judgment, until further direction in the premises, and such other provisions as the court may deem proper.

(2) Unless previously vacated by order of the court or by stipulation of the parties in writing, a restraining provision as herein provided shall remain in full force and effect for a period of 2 years from the date thereof, at which time it shall be deemed vacated for all purposes unless extended by order of the court for good cause shown.

Plaintiff does not dispute that Yono executed a quitclaim deed on December 27, 2004, conveying the vacant land from Sayo to Rutland, despite having received notice of the trial court's order enjoining asset transfers. In defense of the transfer of the vacant land, plaintiff contends that Sayo did not actually own this parcel at the time the trial court entered its order. According to plaintiff, in 2001 it transferred the vacant land to Southfield Land, Inc., another entity owned by Yono. Plaintiff claimed that the 2001 transfer represented repayment of a prior loan that Yono made to Sayo, enabling Sayo to purchase the hotel and vacant lot.

Yono further claimed that in 2003, he discovered that the quitclaim deed reflecting the 2001 transfer had never been recorded and could not be found. Yono or his counsel prepared a new quitclaim deed in 2003, still intending to transfer the vacant land to Rutland. The new quitclaim deed, however, mistakenly contained the legal description of the hotel property, and not the vacant lot. This deed, therefore, actually transferred the hotel from Sayo to Rutland.

Plaintiff claimed to have discovered this error in 2004, when a bank holding a mortgage interest in the hotel pointed out a discrepancy in the legal description of the property identified in the 2003 deed. Approximately six weeks after receiving notice of the creditor's exam and the trial court order prohibiting asset transfers, Yono prepared new deeds "correcting the legal descriptions" of the hotel and vacant lot properties, and conveyed the vacant land to Rutland. Plaintiff reasoned that it did not actually own the vacant land in 2004 because it had previously transferred it to Southfield Land, and that the new deed merely corrected the previous error.

The trial court disbelieved plaintiff's explanation, finding it incredible and unsupported by the evidence. We conclude that the trial court did not clearly err in rejecting plaintiff's claim that the 2004 deed was intended only to correct errors associated with previous transfers of the property.

Plaintiff failed to produce a promissory note or other documentary evidence of Yono's purported loan to plaintiff, or of the alleged 2001 transfer of the vacant lot to Southfield Land. The only corroborative evidence offered by plaintiff consisted of tax returns showing a reduction in plaintiff's land value from \$300,000 to \$150,000 after 2001, and a reduction in plaintiff's shareholder debt. The trial court found that this evidence failed to establish that plaintiff previously transferred the vacant lot to Southfield Land in 2001.

We agree that plaintiff's tax returns did not corroborate its assertion that it applied \$150,000 toward its alleged debt to Yono in consideration for the transfer of the vacant land to Southfield Land. Plaintiff's 2001 tax return shows a debt reduction from \$1,950,109 to \$1,883,997, or \$66,112. The 2002 return shows a loan debt reduction from \$1,883,997 to \$1,057,732, or \$826,265. According to plaintiff, this amount included \$600,000 for "a loan reduction to purchase 18/24 West Adams," leaving \$226,265 as the remaining reduction. Plaintiff neither explained these discrepancies nor offered other documentary evidence, such as corporate loan records or a real estate appraisal, to support its claim that an alleged 2001 transaction involved the vacant land. Given plaintiff's inconsistent explanations and failure to produce relevant real estate or other records in support of its position, the trial court did not clearly err in rejecting plaintiff's unsupported, self-serving allegation that it conveyed the disputed property to Southfield Land in 2001. Nor did the trial court clearly err in rejecting plaintiff's argument that Yono and his counsel accomplished the 2004 conveyance only to correct an erroneous property description in the 2003 deed, and in finding instead that plaintiff attempted to shield the vacant land from defendant, a judgment creditor.

In summary, because plaintiff transferred the vacant lot despite its awareness of the trial court's order of November 8, 2004, the court did not abuse its discretion by holding plaintiff in contempt.

Plaintiff next argues that the trial court erred in finding that the 2004 conveyance of the vacant land to Rutland also constituted a fraudulent conveyance under the UFTA, the relevant portion of which provides as follows:

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred *if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value* in exchange for the transfer or obligation

and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation. [MCL 566.35(1) (emphasis added).]

According to MCL 566.32, “[a] debtor is insolvent if the sum of the debtor’s debts is greater than all of the debtor’s assets at a fair valuation,” MCL 566.32(1). “A debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.” MCL 566.32(2).

Yono’s testimony established that plaintiff was insolvent when it executed the deed conveying the vacant land to Rutland in December 2004, and plaintiff does not claim that it received anything of value at the time of this transfer in 2004. Instead, plaintiff repeats its argument that it transferred the vacant lot to Southfield Land in 2001, in reduction of plaintiff’s loan obligation to Yono, and that the subsequent deeds in 2003 and 2004 merely intended to remedy defects associated with the 2001 conveyance. As previously discussed, however, the trial court did not clearly err in rejecting this argument as unfounded and incredible. Because the evidence showed that plaintiff was insolvent when it conveyed the vacant land to Rutland in December 2004, and did not receive reasonably equivalent value in exchange for the transfer, the trial court properly found the conveyance fraudulent under the UFTA.

Plaintiff next argues that the trial court improperly voided its conveyance of the vacant land to divest Rutland of its property interest because Rutland was not joined as a party to the proceedings. We reject this assertion because plaintiff lacks standing to raise it.

Whether a party has standing involves a legal question that we review de novo. *Homer Twp v Billboards By Johnson, Inc*, 268 Mich App 500, 504; 708 NW2d 737 (2005). It is “a general rule [that] one may not claim standing to vindicate the . . . rights of some third party.” *People v Rocha*, 110 Mich App 1, 16; 312 NW2d 657 (1981); see also *Dep’t of Treasury v Comerica Bank*, 201 Mich App 318, 329-330; 506 NW2d 283 (1993).

Plaintiff acknowledges that Rutland is a distinct corporate entity. As such, plaintiff has no legally protected interest in Rutland’s property rights. Plaintiff therefore lacks standing to argue on behalf of Rutland that the trial court’s order is invalid because Rutland was not joined as a party. Plaintiff may not stand in Rutland’s shoes, asserting its rights. Because plaintiff lacks standing to raise this issue, we decline to consider it.

Plaintiff lastly argues that the trial court erred in imposing a “constructive mortgage” on the vacant land. “A constructive trust² may be imposed where . . . necessary to do equity or to prevent unjust enrichment.” *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 188; 504 NW2d 635 (1993) (internal quotation omitted). For example, a trust “may be imposed when property has been obtained through fraud, misrepresentation, concealment, undue influence, duress, . . . or any other similar circumstances which render it unconscionable for the holder of the legal title to retain and enjoy the property.” *Id.* (internal quotation omitted).

² Although the trial court used the term “constructive mortgage,” we find it apparent that the court imposed a constructive trust in the form of a mortgage.

The trial court's imposition of a constructive mortgage is consistent with its determination that plaintiff fraudulently conveyed the property to Rutland. The remedy appropriately protected defendant's interest as a judgment creditor. To the extent that plaintiff also argues that the imposition of a constructive trust should be considered ineffective against Rutland, we decline to consider the issue because plaintiff lacks standing to raise it. *Dep't of Treasury, supra* at 329-330; *Rocha, supra* at 16.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Peter D. O'Connell

/s/ Kirsten Frank Kelly