

STATE OF MICHIGAN
COURT OF APPEALS

BLYTHE SNEIDERAITIS and CHRISTOPHER
SNEIDERAITIS,

UNPUBLISHED
May 12, 2005

Plaintiffs-Counter-Defendants-
Appellees,

v

RONALD BURROWS and JOSEPH KOZIARA,

No. 252059
Oakland Circuit Court
LC No. 2003-047947-CK

Defendants-Counter-Plaintiffs-
Appellants.

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Defendants appeal as of right the order granting plaintiffs' motions for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Burrows owned a property in Waterford, in which he and defendant Koziara resided. Burrows was in financial difficulty, and agreed to sell the property to plaintiffs. The amount of the lien exceeded the purchase price, and the transaction was not completed. Plaintiffs subsequently purchased the property at a mortgage foreclosure sale.

Plaintiffs filed this ejectment action, seeking to remove defendants from the property. Defendants filed a counterclaim, asserting that plaintiffs engaged in fraud, self-dealing, and deceit in failing to complete the purchase of the property. The trial court granted summary disposition to plaintiffs on both the complaint and counter complaint.

On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). This Court must review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998).

Where plaintiffs had valid title to the property, defendants had no defense to the ejectment action. *Gilford v Watkins*, 342 Mich 632; 70 NW2d 695 (1955); MCL 600.2932(3). The defense that plaintiffs had fraudulently acquired title is not cognizable in an ejectment

action. *Olmstead v Johnson*, 313 Mich 57, 65; 20 NW2d 809 (1945). The trial court properly granted summary disposition on the complaint.

The counter complaint alleged that plaintiffs made misrepresentations that caused defendant to ignore the sheriff's sale, and to allow plaintiffs to purchase the property at a much lower price and to increase defendant's debt to his lender.

To show fraud or misrepresentation, a plaintiff must prove: (1) the defendant made a material misrepresentation; (2) it was false; (3) when the defendant made it, the defendant knew it was false; (4) the defendant made it with the intent that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage. *Arim v General Motors Corp*, 206 Mich App 178, 195; 520 NW2d 695 (1994).

There is no showing that Blythe Sneideraitis, as counter defendant, made a false material misrepresentation that defendant Burrows acted on, resulting in damage. With defendant's knowledge, plaintiff contacted the mortgage company and discovered that the amount of the lien exceeded the purchase price offered. Defendant was unable to provide marketable title to the property, and he could not complete the sale. Any misrepresentation by plaintiffs was not the cause of defendant's injury.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter