

STATE OF MICHIGAN
COURT OF APPEALS

GWENDER LAURY,

Plaintiff-Appellant,

v

COLONIAL TITLE COMPANY

Defendant/Third-Party Defendant-
Appellee,

and

FRANZ IVEZAJ, MARILYN E. JOHNSON, and
RAYMOND DEBATES,

Defendants-Appellees,

and

DANELL BOUNDS, TENCY O'CONNOR,
SOFIA JUNCEVIC, JENNIFER J. KIZZAK,
KAREN WHITE, TIMOTHY SMITH, JOHN DOE
SURETY, CENTURY 21 REAL ESTATE, JOHN
DOE CENTURY 21, and ROBERT IVANZAJ,

Defendants,

and

WILLIE BROWNLEE, RICHARD ISSA, and
BERNARD ISSA,

Third-Party Plaintiffs.

UNPUBLISHED

May 10, 2007

No. 272727

Wayne Circuit Court

LC No. 04-413821-CH

Before: Talbot, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

In this dispute over certain residential property in Detroit, plaintiff appeals as of right from the circuit court's order granting summary disposition to defendants-appellees, two individuals in the subject property's recent chain of title, the title company involved in recent transactions concerning the property, and the latter's attorney. We affirm in part, reverse in part, and remand for further proceedings.

I. Facts

In 1999, plaintiff acquired a tax deed to the subject property, which she alleges has been unoccupied since the late 1980's. In April 2002, before the redemption period expired, defendant-appellee Colonial Title Company redeemed the property.

Not in dispute is that Constance Management, a partnership, obtained title to the property in 1986. A deed, dated June 12, 1999 (and recorded March 13, 2002), purportedly conveys the property from Constance Management to defendant Bounds for \$8,000. Then follows a deed, dated March 18, 2002, and recorded March 20, 2002, conveying the property from Bounds to defendant Robert Ivezaj, this one listing no consideration. The property was next conveyed by warranty deed, dated April 11, 2002, from Robert Ivezaj and his wife, defendant Sofia Juncevic, to defendant-appellee Franz Ivezaj, for \$10,000. Finally, a warranty deed, dated August 30, 2002, purportedly conveys the property from Franz Ivezaj to defendant-appellee Johnson, for \$69,900. Johnson in turn secured a mortgage with that property.

Plaintiff commenced this action in May 2004, seeking to quiet title in her favor, and alleging fraud, civil conspiracy, and slander of title.

The three individuals who composed the now-inoperative Constance Management partnership intervened as third-party plaintiffs against Colonial Title and unspecified other defendants. Their allegations included that "a number of fraudulent deeds were executed and recorded . . . in the purported satisfaction of various title commitments," and that Constance Management remained "the only party having a legitimate interest in the subject property . . . at all times relevant." The complaint specified that "Defendant Colonial Title . . . had actual knowledge of the forgery of various documents prior to the transactions giving rise to this lawsuit." The third-party action was dismissed by stipulation, following a settlement according to which Colonial Title paid an undisclosed sum to third-party plaintiffs in exchange for quitclaim deeds tendered to defendant Johnson.

On defendants-appellees' motion for summary disposition, the trial court dismissed plaintiff's fraud count on the ground that plaintiff failed to plead her fraud claim with the required particularity, having attributed no specific misrepresentations to defendants. The court dismissed the civil conspiracy claim on the ground that plaintiff alleged no underlying tort but for the failed fraud claim as the basis for any such conspiracy. The court dismissed the slander of title claim on the ground that plaintiff never acquired title to the property, having held instead a tax deed on property that had never been quieted in her favor.

The trial court dismissed the quiet-title claim on the grounds that plaintiff did not commence this action until more than two years after she learned that the subject property had

been redeemed, and that defendants had improved the property that had otherwise been slated for demolition to where defendant Johnson was able to use it to secure a mortgage, and that the doctrine of laches thus operated to bar plaintiff's claim.

"We review a trial court's decision with regard to a motion for summary disposition de novo as a question of law." *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "When reviewing an order of summary disposition under MCR 2.116(C)(10), we examine all relevant documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists on which reasonable minds could differ." *Id.* "A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone." *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998). This Court accepts as true all factual allegations "to determine whether the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery." *Id.*

II. Fraud, Civil Conspiracy, and Slander of Title

Plaintiff challenges the dismissal of her fraud, conspiracy, and slander of title claims, on the grounds that genuine questions of material fact exist concerning the chain of title, defendants' role in the transactions, and the parties respective efforts in maintaining or improving the property. We disagree.

Fraud occurs where a person knowingly or recklessly makes a false material assertion intending to induce, and actually inducing, reliance by another, to that other's detriment. See *Brownell v Garber*, 199 Mich App 519, 533; 503 NW2d 81 (1993). "In allegations of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity." MCR 2.112(B)(1).

The trial court dismissed the fraud claim on the grounds that plaintiff "claims that various deeds filed with the Wayne Counter Register of Deeds were false, but she does not specifically state that Defendants filed those false deeds. Plaintiff's complaint does not specifically describe any misrepresentations that were allegedly made by Defendants."

Plaintiff characterizes as fraudulent Colonial Title's redemption of the taxes on behalf of Constance Management, on the ground that the latter did not authorize the former to do so. However, plaintiff fails to show how that redemption reasonably induced some form of detrimental reliance on her part. Likewise her innuendoes concerning the conveyances that followed. Moreover, as the trial court noted, plaintiff specifies no defendant as the forger of any deed. If plaintiff has identified defects or irregularities in the subject property's chain of title, she has nonetheless failed to show that she was the victim of a fraud.

Plaintiff complains that the trial court failed to address "the question of the over-lapping deeds in this matter," but in fact brings to light no deeds whose dates of execution overlap in the sense of indicating that at any one moment two unrelated purchasers owned the property. Although certain of the recent deeds indicate unusually short periods of ownership, all the deeds nonetheless reflect discrete such periods. Plaintiff's implication that the deeds present inconsistencies on their face is inapt. The trial court correctly dismissed the fraud claim.

The same holds true for the civil conspiracy claim. “A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means.” *Advocacy Org for Patients & Providers v Auto Club Ins Ass’n*, 257 Mich App 365, 384; 670 NW2d 569 (2003) (internal quotation marks and citation omitted). Such a claim requires proof of a separate underlying tort. *Id.*

The trial court dismissed plaintiff’s civil conspiracy claim on the grounds that plaintiff “does not indicate the underlying tort on which it is based,” but that plaintiff presumably predicates the claim on “the allegedly fraudulent acts of some (unspecified) Defendants,” and thus that the failure of her fraud claim is fatal also to her civil conspiracy claim.

On appeal, plaintiff does not address this conclusion head on, but instead relies on her assertions of fraudulent or unauthorized activity. Because we concluded above that plaintiff’s fraud claim was properly dismissed, we conclude here that the civil conspiracy claim was properly dismissed along with it.

The trial court dismissed the slander of title claim on the grounds that plaintiff “never acquired title to the subject property,” because she held only a tax deed to property that was redeemed before she could quiet title in her favor. On appeal, plaintiff does not attempt to revive her slander of title claim apart from her general assertions that the chain of title is infected with fraudulent deeds plus an unauthorized redemption. We agree with the trial court. The holder of a tax deed who has not yet completed the process of acquiring the fee has only a priority or expectancy concerning the subject property. These are not insignificant interests, but they do not constitute title to the property. The slander of title claim was properly dismissed.

III. Quiet Title

Plaintiff argues that the trial court erred in invoking the doctrine of laches to defeat her quiet-title claim. We agree. Application of a legal doctrine presents a question of law, calling for review de novo. *James v Alberts*, 464 Mich 12, 14; 626 NW2d 158 (2001).

Estoppel by laches is a species of equitable estoppel, defined as a “failure to do something which should be done or to claim or enforce a right at a proper time.” Black’s Law Dictionary (6th ed, 1990), p 875. An element of the doctrine is that the party’s alleged change of position for the worse must have been induced by or resulted from the conduct, misrepresentation, or silence of the other party. *Id.*

Our Supreme Court has likened the doctrine of laches to statutes of limitations, and held that where action is commenced within the applicable limitations period, the timing of that filing is presumptively reasonable, and the doctrine of laches is inapplicable. *Michigan Ed Employees Mut Ins Co v Morris*, 460 Mich 180, 200; 596 NW2d 142 (1999). See also *Badon v Gen Motors Corp*, 188 Mich App 430, 435; 470 NW2d 436 (1991).

Not in dispute is that plaintiff filed suit well within the periods of limitation set forth in MCL 600.5801. Her timing, then, was presumptively reasonable. However, the Supreme Court has recognized that the doctrine of laches may come into play even where the claimant is acting within the applicable statute of limitations:

“The omission to do what one is by law required to do to protect his rights, and which justifies a fair presumption that he has abandoned the same, under circumstances which misled or prejudiced an adverse party, may in equity operate as laches which bar[s] the asserting of such right later under changed conditions, even though the statute of limitations has not run.” [*Rowry v Univ of Michigan*, 441 Mich 1, 11; 490 NW2d 305 (1992), quoting *Olson v Williams*, 185 Mich 294, 301; 151 NW 1043 (1915).]

The question, then, is whether there is any question of material fact concerning whether plaintiff failed to take some action to protect her rights under circumstances that reasonably signaled abandonment of them. The trial court stated as follows:

Plaintiff did not file the present action until more than 2 years after she learned that the subject property had been redeemed. Defendants have presented proof that as of April, 2000, the subject property was considered unsafe and was slated for demolition. Subsequent titleholders improved the property to the extent that Defendant Marilyn E. Johnson was able to use the property to secure a mortgage in 2002. Plaintiff’s lack of diligence in pursuing her claim has resulted in prejudice to Defendants. Therefore, Plaintiff’s claim is barred by laches[.]

The trial court thus regarded the redemption of the property as triggering plaintiff’s obligation to take action, and apparently regarded the two-year delay as unreasonable even though it was well within the statutory period of limitations.

Plaintiff argues that any delay in filing suit should be measured not from the date of the redemption, but from when she learned that at least some of the transactions bound up with that redemption were not made in good faith. We disagree. Plaintiff suffered her injury when the redemption of the subject property deprived her of the opportunity to see her tax deed through to perfected title. She does not allege any delays in receiving this much information. The redemption, then, put her on inquiry notice to investigate whether there was any basis for challenging the redemptioner’s eligibility to do so, and to respond accordingly.

Concerning the two-year delay, however, there is a circularity of logic in denying a plaintiff the full range of the applicable limitations period on the ground that, although she filed well within that period, she could have done so earlier. But plaintiff’s timing in commencing this action is the only failure to assert a legal right that the trial court cited. Because plaintiff in fact asserted a legal right consistent with her position very properly by commencing action within the statutory limitations period, the trial court erred in solely regarding her timing in the matter as constituting some abandonment of her claim through operation of the doctrine of laches.

Nor should the trial court have decided that question on the basis of improvements to the property. The parties disagree on the extent of the improvements, and who made them. In any event, MCR 3.411(F) provides an avenue through which a party who has in good faith improved property whose title is ultimately quieted in favor of another may obtain compensation for those improvements. In light of the remedies available through operation of that rule, improvements made to disputed property should not be deemed prejudicial for purposes of asserting the doctrine of laches against a quiet-title claimant.

For these reasons, the trial court erred in dismissing plaintiff's quiet-title claim through application of the doctrine of laches.

We realize this error would be harmless if defendant Colonial Title in fact effected a valid redemption of the property in the first instance, or if defendant Marilyn Johnson, the last party in the chain of title, is a good-faith purchaser for value. But we cannot decide these questions on the basis of the existing record. For these reasons, we reverse the dismissal of plaintiff's quiet-title claim, and remand this case to the trial court for development of these issues, and any others that may arise, as needed.

Affirmed in part, reversed in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ Pat M. Donofrio

/s/ Deborah A. Servitto