

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JULIE FIELEK,

Plaintiff,

and

SANDRA K. PACH

Plaintiff-Appellant,

v

BRIGHTON/23 L.L.C., S. R. JACOBSON LAND  
DEVELOPMENT, L.L.C., JACOBSON-ORE  
CREEK LAND DEVELOPMENT, L.L.C., and M  
& L HUNTMORE, INC.,

Defendants,

and

RONALD W. LECH II,

Defendant-Appellee.

UNPUBLISHED

July 22, 2008

No. 275516

Livingston Circuit Court

LC No. 06-022057-CK

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Before: Markey, P.J., and White and Wilder, JJ.

PER CURIAM.

Plaintiff Sandra K. Pach<sup>1</sup> appeals as of right from the trial court's order granting in part defendant Ronald W. Lech's<sup>2</sup> motion for summary disposition under MCR 2.116 (C)(10), and awarding him title to a developed parcel of real property, known as lot 78 of Huntmore Estates, in Brighton Township. We affirm.

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<sup>1</sup> As used in this opinion, the term "plaintiff" refers only to Pach.

<sup>2</sup> As used in this opinion, the term "defendant" refers only to Lech.

## I. Standard of Review

We review summary dispositions de novo. *Willett v Waterford Charter Twp*, 271 Mich App 38; 718 NW2d 386 (2006). A motion for summary disposition under subrule (C)(10) tests the factual sufficiency of a claim. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The moving party must specifically identify the matters that have no disputed factual issues, and has the initial burden of supporting his position by affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3)(b); MCR 2.116(G)(4); *Coblentz v City of Novi*, 475 Mich 558, 569; 719 NW2d 73 (2006). The party opposing the motion then has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists. MCR 2.116(G)(4); *Coblentz, supra* at 569. Summary disposition of all or part of a claim or defense may be granted under this subrule when, “[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” MCR 2.116(C)(10).

## II. Plaintiff’s Claim

Plaintiff argues that the undisputed evidence showed that she is entitled to the lot. Plaintiff asserts that Lans Development Corporation (“Lans”) agreed to convey lot 78 to Andrew Soley, in consideration of his efforts with the company. Plaintiff presented evidence that Soley assigned his interest in the lot to plaintiff, in satisfaction of approximately \$30,000 in loans that plaintiff made to Soley.

However, plaintiff did not present evidence that Lans had agreed, orally or in writing, to convey the lot to Soley. An assignee stands in the position of the assignor, possessing the same rights, and being subject to the same defenses. *Burkhardt v Bailey*, 260 Mich App 636, 653; 680 NW2d 453 (2004). An assignor can only assign those rights that he has, and no more. *Id.* at 652-653.

Plaintiff argues that Soley was entitled to the lot as a third-party beneficiary of Lans’s contract with Brighton/23, L.L.C. (Brighton). To establish that Soley was a third-party beneficiary of the contract, she was required to prove that Lans or Brighton promised to convey the lot to Soley. *Brunsell v City of Zeeland*, 467 Mich 293, 296; 651 NW2d 388 (2002). Plaintiff failed to satisfy her burden of proof because there was no evidence, in Lans’s contract with Brighton, or elsewhere, that Lans or Brighton intended Soley to be the recipient of lot 78. Thus, plaintiff’s third-party beneficiary argument fails. Because plaintiff did not present documentary evidence showing that Soley had a valid interest in lot 78, she cannot establish that she had an undisputed, valid assignment of the lot.<sup>3</sup> *Coblentz, supra* at 569.

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<sup>3</sup> Accordingly, defendant’s alternative arguments for finding plaintiff’s claim invalid, are moot. *The Healing Place at North Oakland Med Ctr v Allstate Ins Co*, 277 Mich App 51, 61; 744 NW2d 174 (2007).

### III. Defendant's Claim

Plaintiff also asserts that defendant cannot establish that he has an undisputed, valid claim to the lot, because, although he was a creditor of Lans, it was undisputed that the lot was not an asset of Lans but instead belonged to a third party. Thus, according to plaintiff, lot 78 could not be used to satisfy the judgment that defendant held against Lans, and the trial court erred in awarding him title to the lot. We disagree.

The Lans-Brighton purchase agreement specifically states that four lots were to be conveyed to Lans upon development. There is no evidence that Lans conveyed its interest in one of the lots to Soley. The subsequent purchase agreement between Brighton and S. R. Jacobson Land Development, L.L.C. ("SRJ"), does indicate that SRJ had assumed Brighton's unperformed obligation to convey four developed lots to identified third parties. But there is no evidence that Soley was one of these third parties. Lans was a third party to this contract.

As late as July 14, 2003, Lans claimed an interest to the four lots, contradicting plaintiff's assertion that Lans no longer had a legal interest in the lots. Although plaintiff asserts that Lans filed the claim to protect the third parties' rights to the lots, she failed to produce support for this contention. Even if true, this suggests that Lans had not relinquished its legal rights to the lots. Thus, the undisputed evidence indicated that Lans retained the right to receive lot 78, once it was developed.

Defendant argues that because he was the only remaining creditor of Lans, he was entitled to the lot as partial satisfaction of the judgment he held against Lans. Plaintiff acknowledges that defendant is a judgment creditor of Lans, but argues that a prior court order, entered in defendant's suit against Brighton, extinguished any claim defendant had to one of the lots. We disagree. The Brighton order was entered before defendant received the Lans judgment, and only affected defendant's claim against Brighton, not his claim against Lans. There is nothing in the Brighton order that prevents defendant from seeking to satisfy the Lans judgment with Lans's property.

Plaintiff also argues that defendant's judgment did not create an automatic lien against Lans's real property. She asserts that defendant failed to follow the proper procedures, and therefore, the trial court erred in awarding him title to lot 78. Again, we disagree with plaintiff's argument.

In *George v Sandor M Gelman, PC*, 201 Mich App 474, 477; 506 NW2d 583 (1993), this Court stated:

A judgment, by itself, does not create a lien against a debtor's property. Under the scheme provided in chapter 60, the creditor must first obtain a judgment for the amount owed, then execute that judgment against the debtor's property. A creditor may execute against real property owned by a debtor only after attempting to execute against the debtor's personalty and determining that the personal property is insufficient to meet the judgment amount. MCL 600.6004; MSA § 27A.6004. To place a lien against a debtor's real property, the creditor must deliver the writ of execution and a notice of levy against the

property to the sheriff, who then records the notice of levy with the register of deeds to perfect the lien.

It appears undisputed that defendant did not follow these steps. However, we will not require him to take futile actions. See *Radtke v Miller, Canfield, Paddock & Stone*, 209 Mich App 606, 620; 532 NW2d 547, 554 (1995) (“Counsel was not required to undertake an exercise in futility”), reversed on other grounds 453 Mich 413; 551 NW2d 698 (1996). Plaintiff concedes that Lans has been dissolved, and asserts that it has no other assets. At the commencement of this litigation, the four lots were Lans’s only remaining assets. Title to the other three lots has been determined. Plaintiff and defendant are the only parties claiming an interest in Lot 78. Plaintiff failed to establish her claim, whereas defendant established his. He holds a valid judgment against Lans, which is undisputed. A corporation continues to exist after dissolution, for the purpose of winding up its affairs, which includes paying its debts and liabilities. MCL 450.1833(c). Because Lans has one remaining asset, and defendant is the only remaining creditor in this suit with a valid claim to it, defendant was entitled to the lot to satisfy his judgment.<sup>4</sup> Therefore, the trial court did not err in granting defendant’s motion for summary disposition, and awarding him title to lot 78.

Affirmed.

/s/ Jane E. Markey  
/s/ Helene N. White  
/s/ Kurtis T. Wilder

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<sup>4</sup> Defendant argues that he is also entitled to the lot to satisfy a judgment obtained by another company, Textron Financial Corporation (Textron), as assignee of the judgment. Assuming that this judgment is enforceable against Lans, defendant presented no evidence to substantiate his contention that Textron’s assignee, M & L Huntmore, assigned its interest in the Textron judgment to him. Thus, we decline to find that the Textron judgment is also a basis for awarding defendant title to Lot 78.