

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM M. SHIREMAN,

Plaintiff-Appellant,

v

WIGHTMAN-JONES, INC.,

Defendant-Appellee.

UNPUBLISHED

May 19, 2005

No. 252581

Van Buren Circuit Court

LC No. 03-050802-CH

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court judgment dismissing his cause of action for damages alleging slander of title under MCL 565.108 of the Marketable Record Title Act (“MRTA”), MCL 565.101 *et seq.*, and violations of the Michigan Consumer Protection Act (“CPA”), MCL 445.901 *et seq.*, and specifically MCL 445.903(n),(q),(s), and (y). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a land owner, contracted with defendant, a surveying company, to survey his property. Plaintiff made an initial payment under the contract, which he claims was the full amount required by the contract. When defendant completed the survey, it sent bills to plaintiff for additional payment. After plaintiff did not pay any of these bills, defendant filed a lien on the property under the Construction Lien Act (“CLA”), MCL 570.1101 *et seq.* Plaintiff advised defendant that the lien was untimely and exceeded the scope of the survey. When defendant did not remove the lien, plaintiff sued defendant for slander of title under the MRTA. He later amended his complaint to allege violations of the CPA. After plaintiff presented his case, defendant moved to dismiss plaintiff’s cause of action under MCR 2.504(B)(2). The trial court granted the motion, finding that plaintiff failed to establish that defendant acted with malice in regard to the slander of title claim and that there were no violations of the CPA. The court concluded that defendant’s actions were inadvertent and the result of a miscalculation.

On appeal, plaintiff argues that the trial court abused its discretion and committed error by dismissing the complaint at the close of plaintiff’s proofs as he had presented a prima facie case for slander of title and shown multiple violations of the CPA. Plaintiff also argues that the trial court erred by failing to find that he had suffered damages.

A trial court’s findings of fact in a bench trial, within the context of a judgment granting a defendant’s motion for involuntary dismissal under MCR 2.504(B)(2), are reviewed for clear

error, while rulings on issues of law are reviewed de novo. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 235-236 n 2, 238; 615 NW2d 241 (2000). A motion for involuntary dismissal calls upon the court to assess the facts, weigh the evidence, judge the credibility of the witnesses, and select between conflicting inferences. *Marderosian v The Stroh Brewery Co*, 123 Mich App 719, 724; 333 NW2d 341 (1983). The plaintiff is not given the advantage of the most favorable interpretation of the evidence. *Id.*

MCL 565.108 has been interpreted as requiring proof of malice. *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998). Based on the evidence that plaintiff presented, the trial court found that, even though the lien was untimely and may have exceeded the scope of the survey, defendant did not file the lien with malice in an effort to slander plaintiff's title to the property but filed the lien to collect a debt for its surveying services as provided by the CLA. The trial court also found that defendant did not commit any unconscionable, unfair, or deceptive acts or trade practices in dealing with plaintiff. Based on our review of the record, we conclude that the trial court did not clearly err in making its findings of fact and in dismissing plaintiff's cause of action because the record supports the trial court's decision. Accordingly, it is unnecessary for us to reach plaintiff's argument regarding damages.

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Michael R. Smolenski