

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

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ABN AMRO MORTGAGE GROUP, INC.,

Plaintiff/Counter-Defendant-  
Appellant/Cross-Appellee,

v

HOUSEHOLD BANK, F.S.B.,

Defendant-Appellee,

and

COMERICA BANK,

Defendant/Counter-Plaintiff-  
Appellee-Cross-Appellant,

and

VLADIMIR ABRAMOVICH and GALINA  
ABRAMOVICH,

Defendants.

UNPUBLISHED

August 8, 2006

No. 265518

Macomb Circuit Court

LC No. 2004-002450-CH

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ABN AMRO MORTGAGE GROUP, INC.,

Plaintiff/Counter-Defendant-  
Appellee,

v

HOUSEHOLD BANK, F.S.B.,

Defendant-Appellee,

and

COMERICA BANK,

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No. 266274

Macomb Circuit Court

LC No. 2004-002450-CH

Defendant/Counter-Plaintiff-  
Appellant,

and

VLADIMIR ABRAMOVICH and GALINA  
ABRAMOVICH,

Defendants.

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Before: Cavanagh, P.J., and Fort Hood and Servitto, JJ.

PER CURIAM.

Plaintiff ABN AMRO Mortgage Group, Inc (“ABN AMRO”) appeals as of right from the circuit court’s order granting defendants Comerica Bank’s and Household Bank’s motions for summary disposition pursuant to MCR 2.116(C)(10) on its claim for equitable subrogation. Defendant Comerica Bank appeals as of right from the circuit court’s order granting ABN AMRO’s motion for summary disposition on its counterclaim for slander of title. We affirm.

First National Financial, a non party, loaned the Abramoviches money to pay off a senior mortgage on their property, and then assigned its interest to plaintiff ABN AMRO. However, the mortgages of defendants Comerica Bank and Household Bank were senior interests because they were recorded earlier in time. After the homeowners defaulted on all mortgages, Comerica Bank purchased the property at the foreclosure sale, and plaintiff did not redeem the property during the redemption period. Rather, plaintiff filed this litigation seeking to acquire title based on equitable subrogation and filed a notice of lis pendens. Comerica Bank filed a counterclaim, alleging that the notice of lis pendens constituted slander of title. The circuit court granted Comerica Bank’s and Household Bank’s motions for summary judgment on plaintiff’s claim for equitable subrogation, holding that plaintiff was a mere volunteer. On reconsideration, the circuit court granted plaintiff’s motion for summary disposition for Comerica Bank’s claim of slander of title, holding that Comerica Bank had not presented any documentary evidence to support its claim.

Plaintiff alleges that the trial court erred in concluding that it was a mere volunteer when it was unaware of the other mortgage interests. We disagree. Appellate review of a summary disposition decision is *de novo*. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). The application of the doctrine of equitable subrogation as a remedy also presents a question of law that is reviewed *de novo*. *Auto-Owners Insurance Co v Amoco Production Co*, 468 Mich 53, 57; 658 NW2d 460 (2003). Equitable subrogation is a legal fiction that arises when a person pays a debt for which another is primarily responsible. *Id.* at 59. The person who pays the debt is substituted or subrogated to all the rights and remedies of the party originally responsible for payment of the debt. *Id.* The doctrine provides that the subrogee acquires no greater rights than those held by the subrogor, and the subrogee may not be a mere volunteer. *Id.* That is, the person paying the debt stands in the position of surety where he has been compelled

to pay the debt of another to protect his own rights. *Michigan Hospital Service v Sharpe*, 339 Mich 357, 374; 63 NW2d 638 (1954). “[S]ubrogation is allowed only in favor of one who under some duty or compulsion, legal or moral, pays the debt of another; and not in favor of him who pays a debt in performance of his own covenants, for the right of subrogation never follows an actual primary liability.” *Id.* quoting *Machined Parts Corp v Schneider*, 289 Mich 567, 575; 286 NW 831 (1939). The discharge of a primary liability has no right of subrogation against another because payment is an extinguishment of the liability. *Id.*

Plaintiff is not entitled to the legal remedy of equitable subrogation because it was a mere volunteer; it voluntarily accepted the assignment of the rights and obligations of First National Financial. Nonetheless, plaintiff asserts that equitable subrogation is appropriate because it was unaware of the true state of facts because the homeowners did not disclose the other mortgage interests.<sup>1</sup> This argument was rejected in *Washington Mutual Bank, FA v Shorebank Corp*, 267 Mich App 111, 123-124; 703 NW2d 486 (2005), and plaintiff’s attempt to distinguish the case law is without merit. See also *Deutsche Bank Trust Co Americas v Spot Realty, Inc*, 269 Mich App 607, 616-617; 714 NW2d 409 (2006).

On cross appeal, defendant Comerica Bank alleges that the circuit court erred in holding that it did not present sufficient evidence of malice to support its claim for slander of title. We disagree. The elements of a common law or statutory claim for slander of title are falsity, malice, and special damages, *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998), with malice being the crucial element, *Gehrke v Janowitz*, 55 Mich App 643, 648; 223 NW2d 107 (1974). Malice may be either express, “a desire or intention to injure,” or implied, “a wrongful act, done intentionally, without just cause or excuse.” *Glieberman v Fine*, 248 Mich 8, 12; 226 NW 669 (1929). Malice cannot be presumed merely because a party asserts an unfounded claim. *Harrison v Howe*, 109 Mich 476, 479; 67 NW 527 (1896). Because the burden of proof for establishing the elements was not satisfied by this defendant, see *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362; 547 NW2d 314 (1996), the circuit court properly granted plaintiff’s motion for summary disposition of the slander of title claim.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Karen M. Fort Hood  
/s/ Deborah A. Servitto

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<sup>1</sup> Plaintiff makes the blanket assertion that it could not have known of the prior interests because the homeowners did not disclose the other mortgages and the mortgages could not have been discovered because they were recently recorded. However, plaintiff did not deal directly with the homeowners, but received an assignment of interest from First National Financial. The loan of money to another involves risk, and plaintiff could have refused the assignment if First National Financial did not sufficiently investigate the risks involved in a loan with the homeowners at issue.