

STATE OF MICHIGAN
COURT OF APPEALS

LINDA M. SMITH,

Plaintiff-Appellee,

v

SUSAN F. VAINIK and LAW OFFICES OF
SUSAN WIDENBAUM-VAINIK, P.C.,

Defendants-Appellants.

UNPUBLISHED

July 26, 2012

No. 303140

Wayne Circuit Court

LC No. 10-000180-CH

Before: METER, P.J., and FITZGERALD and WILDER, JJ.

PER CURIAM.

Defendants appeal as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of plaintiff in this action to quiet title. We affirm.

On October 14, 1988, plaintiff and her then-husband, Richard Smith, purchased a house and received a warranty deed. There is no dispute that plaintiff and Richard held interest in the house as tenants by the entireties. On August 20, 2003, Richard unilaterally granted a lien to defendants on his purported “tenant in common interest” in the house for unpaid attorney fees incurred as a result of defendants’ representation of Richard in a divorce action that was later dismissed.

Richard retained different counsel when he subsequently filed the divorce action that resulted in the parties’ judgment of divorce. The judgment of divorce ordered Richard to execute a quit claim deed in favor of plaintiff assigning all of his interest in the home to her, and ordered Richard to remove defendants’ lien within six months of the entry of judgment, “whether paying on same or otherwise.”

Plaintiff subsequently filed this action to quiet title to the house, asserting that the charging lien is invalid and unenforceable under Michigan law and that she did not waive her right to dispute the validity of the lien when the consent judgment of divorce was entered. Defendants moved for summary disposition, arguing that plaintiff had received notice of lien through Richard’s interrogatory answers and, by signing the judgment of divorce, consented to the lien and took the house subject to the lien. In response, plaintiff contended that the lien never legally attached to the house, and that the judgment of divorce did not address the validity of the lien.

Following a hearing on plaintiff's motion, the trial court granted summary disposition in favor of plaintiff. The court ruled in part as follows:

There is no obligation. There is no duty. There is no relationship between the parties upon which the plaintiff must conform her conduct for the benefit of the defendant absent contract, absent a judgment provision, absent consideration, absent when implied in the law.

There is no legal basis upon which anybody can claim that this is a valid lien. And moreover, the judge said, [g]et it off.

* * *

No contract, no privity, no consideration.

* * *

The debt has been discharged in bankruptcy.

* * *

The Court has declared that to be an invalid lien. That's not indebtedness on the home. That's indebtedness of her husband for attorney fees [sic] for personal services rendered by the attorney.

* * *

That's a personal services lien, and it cannot be on this house because it is void ab initio by the virtue of the fact that it's an encumbrance, a cloud, slander of title of the tenancy by the entireties by a single individual that has no connection with the home.

[The judgment of divorce] doesn't say the lien is valid. It says get it off.

Accordingly, the court granted plaintiff's motion for summary disposition and declared the lien on the home discharged.

Defendants argue that the trial court erred by discharging defendants' purported lien on plaintiff's house by granting summary disposition in favor of plaintiff. We disagree.

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). This Court reviews de novo a trial court's decision whether to grant or deny summary disposition. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 196; 747 NW2d 811 (2008).

Under Michigan law, property held by husband and wife is presumed to create a tenancy by the entireties. *SNB Bank & Trust v Kensey*, 145 Mich App 765, 776; 378 NW2d 594 (1985).

The classic basis for the tenancy by the entireties was the concept that the husband and wife are but one person in the law. In a true tenancy by the

entireties, each spouse is considered to own the whole and, therefore, is entitled to the enjoyment of the entirety and to survivorship. When real property is so held as tenants by the entireties, neither spouse acting alone can alienate or encumber to a third person an interest in the fee of lands so held. Neither the husband nor the wife has an individual, separate interest in entireties property, and neither has an interest in such property which may be conveyed, encumbered or alienated without the consent of the other. [*Canjar v Cole*, 283 Mich App 723, 730; 770 NW2d 449 (2009) (quotation marks and citations omitted).]

Richard, as a tenant by the entireties, did not have the legal capacity to unilaterally convey a lien on the home to defendants. *Canjar*, 283 Mich App at 730. Consequently, the trial court properly concluded that defendants' purported lien against the home was invalid.

Defendants contend, nonetheless, that plaintiff ratified the validity of this lien by agreeing to and executing a judgment of divorce, and that plaintiff waived her right to dispute the lien by not raising it at the time the judgment of divorce was entered. This argument is without merit. "A consent judgment is in the nature of a contract, and is to be construed and applied as such." *Laffin v Laffin (On Remand)*, 280 Mich App 513, 517; 760 NW2d 738 (2008). "Ratification may be express or implied, so long as there is knowledge of the material facts relating to the initial contract." *Apfelblat v Natl Bank Wyandotte-Taylor*, 158 Mich App 258, 262; 404 NW2d 725 (1987). However, a contract that is void ab initio may not be ratified. *Utica State Sav Bank v Vill of Oak Park*, 279 Mich 568, 579; 273 NW 271 (1937). Because the lien Richard attempted to convey to defendants was void ab initio, plaintiff could not ratify the lien through her acts. Additionally, plaintiff did not act in a way that would constitute ratification of this lien. Plaintiff and Richard divorced and an amended and restated consent judgment of divorce was entered on August 10, 2004. This judgment ordered that Richard execute a quit claim deed in favor of plaintiff assigning her all of his interest in the home, and that plaintiff assume all indebtedness. The judgment further ordered that Richard was to remove defendants' lien within six months of the entry of judgment, "whether paying on same or otherwise." The judgment of divorce did not address the validity of defendants' lien.

Defendants also argue that the charging lien is valid because plaintiff executed the judgment of divorce with knowledge of the lien on the house. Defendants' argument is without merit. A "charging lien creates a lien on a judgment, settlement, or other money recovered as a result of the attorney's services." *George v Sandor M Gelman, PC*, 201 Mich App 474, 476; 506 NW2d 583 (1993). Defendants' representation of Richard ended before Richard filed the complaint for divorce that ultimately ended in the dissolution of plaintiff and Richard's marriage and the consent judgment of divorce. Even still, the judgment of divorce ordered Richard to remove defendants' lien within six months of the entry of the judgment, "whether paying on same or otherwise." Defendants have failed to establish that a charging lien for debts Richard incurred and had responsibility for under the terms of the judgment of divorce created a charging lien against property awarded to plaintiff.

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder