

STATE OF MICHIGAN
COURT OF APPEALS

ARTHUR E. CHAMBERS,

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

v

GORDON B. HALL, JR., TRUSTEE OF THE
JERRY D. LUPTAK IRREVOCABLE TRUST,
JERRY D. LUPTAK, AND PAOLA M. LUPTAK,
TRUSTEE OF THE PAOLA M. LUPTAK
REVOCABLE TRUST,

Defendants/Counter-Plaintiffs-
Appellees/Cross-Appellants,

UNPUBLISHED

May 8, 1998

No. 196482

Wayne Circuit Court

LC No. 95-509975 CH;

95-512098

Before: Cavanagh, P.J., and Doctoroff and Saad, JJ.

PER CURIAM.

Plaintiff/counter-defendant Arthur Chambers appeals as of right from the trial court's March 13, 1996, order granting summary disposition in favor of defendants/counter-plaintiffs Hall¹ and Jerry D. Luptak with respect to defendants' quiet title action against Chambers. Chambers also appeals as of right from a bench trial verdict of \$15,620.16 in favor of defendant Jerry D. Luptak . We affirm both the March 13, 1996, order and the bench trial verdict.

Defendants/counter-plaintiffs Hall and Jerry D. Luptak (Luptak) appeal as of right from that portion of the trial court's June 10, 1996, order² granting summary disposition holding that Luptak's February 17, 1995, option contract was also entered in on behalf of Chambers as a tenant-in-common. We affirm the trial court's June 10, 1996, order, but remand this case to the trial court for further proceedings as explained *infra*.

I

Chambers argues that the trial court erred in concluding that he had no valid interest in the southernmost twenty-acre parcel and granting summary disposition for Luptak. We disagree. It was undisputed that Chambers failed to pay the property taxes on the parcel, received notice that the land was tax-deeded to the state, then failed to redeem the land from the state. The state received absolute

title to the land when the redemption period ran, extinguishing Chambers' interest as a tenant-in-common. See MCL 211.67; MSA 7.112; *Grand Rapids v Green*, 187 Mich App 131, 138; 466 NW2d 388 (1991). The state owned this parcel free and clear, and a new chain of title began. *Id.* When Luptak purchased the property from the state almost two years later, he received title free of any interest Chambers previously had as a tenant-in-common. See *Rolland v Rolland*, 314 Mich 619, 622-624; 23 NW2d 104 (1946). There was no issue of material fact, so defendants were entitled to judgment as a matter of law pursuant to MCR 2.116(C)(10).

II

The trial court's verdict in the accounting action was supported by the evidence presented at trial. The evidence did not clearly preponderate in favor of Chambers. See *Nogueras v Maisel & Associates*, 142 Mich App 71, 81; 369 NW2d 492 (1985).

The trial court did not err by finding Arthur Chambers liable for the \$30,000 missing from Thomas Chambers' client trust account. It is undisputed that Thomas Chambers was acting as Arthur Chambers' agent when he accepted the \$30,000 deposit from Danou. Arthur Chambers is liable for his agent's actions committed within the scope of his agency. See *Renda v Int'l Union, UAW*, 366 Mich 58, 95; 114 NW2d 343 (1962); *Parmet Homes, Inc v Republic Ins Co*, 111 Mich App 140, 148; 314 NW2d 453 (1981).

III

The trial court did not err by holding that Luptak's February 17, 1995, option contract was also entered into on behalf of Chambers as a tenant-in-common. Due to the special relationship between tenants-in-common, "any interest obtained by one tenant in common in or appertaining to the commonly owned property generally inures to the benefit of all." 1 Cameron, *Michigan Real Property Law* (2d ed), § 9.5, p 295. However, the remaining cotenants are not automatically entitled to assert a common right to this interest: they themselves must do equity by promptly paying their fair share of the purchase price for that interest. *Reed v Reed*, 122 Mich 77, 78-79; 80 NW 996 (1899); *Fick v Fick*, 38 Mich App 226, 228-229; 196 NW2d 18 (1972). Where a cotenant fails to pay his fair share within a reasonable time, he loses any right to that interest. *Id.* We therefore remand the case to the trial court to determine the entire amount Luptak paid to obtain and exercise his option, including the property taxes, legal fees, and costs paid to or on behalf of the Paulls. After determining this amount, the trial court shall set a reasonable, definite time within which Chambers must pay one-half that amount or lose any interest in the subject property.

Affirmed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Henry William Saad

¹ Defendants Gordon B. Hall, Trustee of the Jerry D. Luptak Irrevocable Trust, and Jerry D. Luptak are listed on the March 13, 1996, order and on the July 9, 1996, final judgment, which incorporates that order. Paola M. Luptak, Trustee of the Paola M. Luptak Revocable Trust, is successor-in-interest to the property at issue in Chambers' appeal.

² The June 10, 1996, order is also incorporated into the trial court's July 9, 1996, final judgment.