

STATE OF MICHIGAN  
COURT OF APPEALS

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PATTIE A. JONES and CONTI MORTGAGE,  
  
Plaintiffs / Counter-Defendants-  
Appellees,

UNPUBLISHED  
April 23, 2002

v

BURTON FREEDMAN and JUDY FREEDMAN,  
  
Defendants / Counter-Plaintiffs /  
Third-Party Plaintiffs-Appellants,

No. 229686  
Wayne Circuit Court  
LC No. 98-817595-CH

and

FIRST AMERICAN TITLE INSURANCE  
COMPANY and NORTH AMERICAN TITLE  
INSURANCE AGENCY,

Third-Party Defendants-Appellees.

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Before: Bandstra, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

In this quiet title action, defendants Burton and Judy Freedman appeal as of right from the circuit court's grant of summary disposition to plaintiffs, under MCR 2.116(C)(7) and (C)(10). We affirm.

As a threshold matter, we reject the jurisdictional challenge advanced by plaintiffs and third-party defendants. Defendants filed their claim of appeal on September 8, 2000, within twenty-one days of the circuit court's final order, which was entered on August 21, 2000. MCR 7.204(A)(1). "Where a party has claimed an appeal from a final order, the party is free to raise on appeal issues related to other orders in the case." *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992). Therefore, this Court is not deprived of jurisdiction to decide defendants' claim that the circuit court erroneously granted summary disposition to plaintiffs by orders dated December 10, 1999, and January 6, 2000.

This Court reviews an order granting or denying summary disposition de novo as a question of law. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When such a motion is brought under MCR 2.116(C)(7), this Court reviews all the affidavits,

pleadings, and other documentary evidence submitted by the parties and, where appropriate, construes the pleadings in favor of the nonmoving party. The motion should be granted only if no factual development could provide a basis for recovery. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 7; 614 NW2d 169 (2000). When such a motion is brought under MCR 2.116(C)(10), the following standard applies:

A motion under MCR 2.116(C)(10) must be supported by affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3)(b). The adverse party may not rest on mere allegations or denials of a pleading, but must, by affidavits or other appropriate means, set forth specific facts to show that there is a genuine issue for trial. MCR 2.116(G)(4). All this supporting and opposing material must be considered by the court. MCR 2.116(G)(5). [*Cole, supra* at 7.]

Defendants argue on appeal that the circuit court erroneously granted summary disposition to plaintiffs on their quiet title count. We disagree. Defendant Burton Freedman recorded a “Notice of Claim of Financial Interest” regarding the subject property, before plaintiff Pattie Jones recorded the warranty deed under which she claims title. Defendants argue that this claim of interest was properly recorded under § 103 of the Marketable Record Title Act (MRTA), MCL 565.103. We agree with the circuit court that the act did not authorize the recordation of defendant’s alleged interest in the property. Furthermore, even if the claim of interest was properly authorized under MCL 565.103, we would conclude that the claim is unenforceable under the statute of frauds.

The MRTA provides, in pertinent part:

Any person, having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for 20 years for mineral interests and 40 years for other interests, shall at the end of the applicable period be considered to have a marketable record title to that interest, subject only to claims to that interest and defects of title as are not extinguished or barred by application of this act . . . . However, a person shall not be considered to have a marketable record title by reason of this act, if the land in which the interests exists is in the hostile possession of another. [MCL 565.101.]

Defendants rely on § 103 of the act for authority to file a unilateral claim against real property. That statutory section provides, in pertinent part:

Marketable title shall be held by a person and shall be taken by his or her successors in interest free and clear of any and all interests, claims, and charges whatsoever the existence of which depends in whole or in part upon any act, transaction, event, or omission that occurred prior to the 20-year period for mineral interests and 40-year period for other interests, and all interests, claims, and charges are hereby declared to be null and void and of no effect at law or in equity. However, *an interest, claim, or charge may be preserved and kept effective by filing for record* within 3 years after the effective date of the amendatory act that added [MCL 565.101a] or during the 20-year period for

mineral interests and the 40-year period for other interests, *a notice in writing, verified by oath, setting forth the nature of the claim.* . . . [MCL 565.103.]

Specifically, defendants rely on the statutory language stating that “an interest, claim, or charge may be preserved and kept effective by filing for record . . . a notice in writing, verified by oath, setting forth the nature of the claim.” MCL 565.103.

As explained in Cameron, *Michigan Real Property Law*, § 12.10, p 414, the MRTA bars “certain ancient claims” that might otherwise interfere with a property owner’s ability to convey marketable title. In order to reach this result, the act “established a method by which certain title matters possessing little or no validity in themselves may be safely ignored even though they may appear in the chain of record title to a parcel of Michigan real estate.” *Id.* Defendant Burton Freedman did not record an “ancient claim” to the subject real property. Rather, he attempted to use the statute to record a current claim of lien for monies lent to the titleholder and for repairs done to the property. We agree with the circuit court’s conclusion that this was an improper use of the act.

Defendants rely on a federal district court decision to support their contention that defendant Burton Freedman was entitled to unilaterally record a claim of interest in real property under § 103 of the MRTA. *Cipriano v Tocco*, 757 FSupp 1484 (ED Mich, 1991). “Although this Court is not bound by a federal court decision construing Michigan law, it may follow the decision if the reasoning is persuasive.” *Allen v Owens-Corning Fiberglass Corp*, 225 Mich App 397, 402; 571 NW2d 530 (1997). We conclude that *Cipriano* is distinguishable from the instant case because the affidavit recorded by the plaintiffs in *Cipriano* reflected a written assignment of vendees’ interest in a land contract. *Id.* at 1485-1486. The underlying assignment had been signed by the vendees and could have been separately recorded by the plaintiffs. *Id.* In the present case, defendant Burton Freedman’s “Notice of Claim of Financial Interest” did not memorialize another written document in which the titleholder granted an interest in the property.

Defendants also note that the *Cipriano* Court relied on a Michigan Attorney General opinion interpreting the MRTA. 1985-1986 OAG No. 6319, p 164 (November 1, 1985). In that matter, the Attorney General was asked whether a memorandum of land contract may be recorded without certification under MCL 211.135 that there are no tax liens against the property and that all property taxes have been paid for the last five years. *Id.* at 164-165.

The opinion noted that a memorandum of land contract “is an instrument executed for the purpose of reflecting the existence of a land contract and the vendee’s interest in the real property subject to the underlying land contract.” *Id.* at 165. In essence, a memorandum of land contract contains only the names of the parties to the contract, the date of its execution, and the description of the real property involved. It does not disclose the consideration involved, the terms of payment, the time of performance, or the covenants of warranty. *Id.* Because the memorandum of land contract does not contain all of the essential elements of a land contract, the Attorney General concluded that the tax lien and five-year certificate requirements contained in MCL 211.135 did not apply to the memorandum. *Id.* at 166.

The opinion then discussed the authority under which a memorandum of land contract could be recorded, noting an earlier Attorney General Opinion’s conclusion that “the register of

deeds has a duty to record only those instruments authorized by law to be recorded.” *Id.*, citing 1955 OAG No. 1944, p 462 (September 8, 1955). The opinion proceeded to discuss § 103 of the MRTA, and concluded that a memorandum of land contract “may be considered” a claim against land which can be recorded under that statutory section. *Id.* In reaching that conclusion, the opinion noted that a land contract vendee is vested with equitable title in real property, and that a recorded memorandum of land contract would also have the legal effect of transferring equitable title. *Id.*

Attorney General opinions are not binding on this Court, but can be considered persuasive authority. *Williams v City of Rochester Hills*, 243 Mich App 539, 556; 625 NW2d 64 (2000). As with the federal court opinion in *Cipriano*, we conclude that the Attorney General opinion is distinguishable from the present case. The document being recorded in that matter was meant to memorialize a written instrument, signed by the titleholder, which could itself have been recorded. In the present case, the affidavit recorded by defendant Burton Freedman did not memorialize any written grant of interest in the property, signed by the 40/40 Institute.

We conclude that the circuit court properly granted summary disposition to plaintiffs on their quiet title claim under MCR 2.116(C)(10) because MCL 565.103 does not authorize the filing of defendant Burton Freedman’s unilateral claim of interest in the property. However, even if Burton Freedman’s claim of interest were properly authorized under MCL 565.103, we would nevertheless conclude that the claim is unenforceable under the statute of frauds. MCL 566.106 provides:

No estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

Further, MCL 566.108 provides:

Every contract for the leasing for a longer period than 1 year, or for the sale of any lands or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized in writing . . .

In the present case, defendant Burton Freedman never produced a written instrument, signed by 40/40, granting him an interest in the real property. Instead, his claim of interest is premised on a document that he unilaterally signed and recorded. In essence, defendant Burton Freedman attempted to grant himself a mortgage against 40/40’s property, without obtaining anything in writing from 40/40. All claims for an interest in real property must be in writing and signed by the person granting the interest. MCL 566.106; MCL 566.108. Therefore, even if defendant Burton Freedman’s “Notice of Claim of Financial Interest” were properly filed under the MRTA, it would nevertheless fail under the statute of frauds. Therefore, we conclude that the circuit court properly granted summary disposition to plaintiffs on their quiet title claim under MCR 2.116(C)(7).

Defendants next argue that the circuit court erred in ruling that the “Notice of Claim of Financial Interest” was unenforceable under the Construction Lien Act (CLA), MCL 570.1117(1). After it determined that defendant Burton Freedman’s claim of interest was not validly filed under the MRTA, the circuit court concluded that only compliance with the provisions of the CLA could salvage that claim of interest. The circuit court made a factual finding that defendant Burton Freedman’s claim of interest was intended to put the world on notice that he had invested money and labor into repairing the real property. Therefore, the court analogized defendant Burton Freedman to a contractor, supplier, or laborer, and ruled that he was required to comply with the provisions of the CLA in order to claim a valid lien against the property.

The CLA provides that each “contractor, subcontractor, supplier, or laborer who provides an improvement to real property shall have a construction lien upon the interest of the owner or lessee who contracted for the improvement to the real property.” MCL 570.1107. The act also provides that the right of a contractor, subcontractor, supplier or laborer to a construction lien “shall cease to exist” if a claim of lien is not recorded in the register of deeds office “within 90 days after the lien claimant’s last furnishing of labor or material for the improvement.” MCL 570.1111. Finally, the act provides that proceedings for the enforcement of a construction lien and the foreclosure of any interests subject to the construction lien “shall not be brought later than 1 year after the date the claim of lien was recorded.” MCL 570.1117.

Defendants argue on appeal that they loaned \$24,065.81 to the 40/40 Institute in order to facilitate its *purchase* of the property, and that those funds were not used for *improvement* of the property. We agree that the documents contained in the lower court record do not support a conclusion that the \$24,065.81 loan was intended or used for “an improvement to real property.” MCL 570.1107. Therefore, this loan does not fall within the provisions of the CLA. However, to the extent that defendant Burton Freedman allegedly performed \$6,910.00 worth of repairs to the subject property, we conclude that those funds do fall within the scope of the CLA. It was undisputed below that defendants never recorded a claim of lien under MCL 570.1111 and never filed a foreclosure action under MCL 570.1117. Therefore, the circuit court correctly ruled that defendants cannot claim a lien against the property through the CLA, either for monies advanced to the 40/40 Institute, or for repairs that defendant Burton Freedman performed on the premises.

Defendants next argue that the circuit court erroneously granted summary disposition to plaintiffs because a genuine issue of material fact existed regarding the authenticity of Antonio Pollard’s signature on the quitclaim deed from the 40/40 Institute to Deborah Saunders. Because the forgery issue was never addressed by the circuit court, it is not properly preserved for appeal. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Further, even if this claim were preserved, we would conclude that defendants are not entitled to relief on this issue. The circuit court was not asked to decide whether plaintiff Jones had valid title to the property, as against 40/40. Rather, the issue before the circuit court was whether defendants had a valid claim of interest in the property, as against Jones. Even if we concluded that the quitclaim deed from the 40/40 Institute to Saunders was a forgery, such a conclusion would not alter the fact that defendant Burton Freedman did not have a legal and enforceable interest in the property. Because the resolution of the forgery issue is not material to defendants’ claim of interest in the subject real property, the circuit court did not commit error requiring reversal when it failed to

resolve the issue. *Crown Technology Park v D&N Bank, FSB*, 242 Mich App 538, 547; 619 NW2d 66 (2000).

Finally, defendants argue that the circuit court erroneously granted summary disposition to plaintiffs because they raised a genuine issue of material fact regarding plaintiffs' actual knowledge of the mortgage purportedly granted to defendant Judy Freedman by the 40/40 Institute. Defendants' argument blurs the important distinction between the "Notice of Claim of Financial Interest" recorded by defendant Burton Freedman and the purported mortgage subsequently recorded by defendant Judy Freedman. Although defendants did present evidence that plaintiff Jones knew about defendant Burton Freedman's claim of interest before closing on the sale from Saunders, they presented no evidence that plaintiffs or third-party defendants had any knowledge of defendant Judy Freedman's purported mortgage interest, which was not recorded until one year *after* plaintiff Jones recorded her deed. On appeal, defendants do not point to any evidence indicating that plaintiffs had reason to know about Judy Freedman's purported mortgage when title passed to Jones. Accordingly, we conclude that defendants did not raise a genuine issue of material fact regarding plaintiffs' knowledge of Judy Freedman's claimed mortgage interest.

Affirmed.

/s/ Richard A. Bandstra  
/s/ Michael R. Smolenski  
/s/ Patrick M. Meter