

STATE OF MICHIGAN  
COURT OF APPEALS

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LORENZO CARUSO,

Plaintiff/Counter-Defendant-  
Appellant,

v

CAMBRIDGE INVESTMENT GROUP, INC.,  
and NICHOLAS HOMES WEST, L.L.C.,

Defendants/Counter-Plaintiffs-  
Appellees.

UNPUBLISHED  
September 27, 2007

No. 269279  
Wayne Circuit Court  
LC No. 03-336626-CH

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Before: Owens, P.J., and White and Murray, JJ.

MURRAY, J., (*concurring*).

I concur in the majority's reasoning and conclusions with respect to both the attorney fee and foreclosure issues. I write separately to only briefly extrapolate on the reasons why I believe the trial court correctly precluded foreclosure in this case.

As the majority recognizes, MCL 570.1203(4) requires that a party seeking foreclosure name the fund as a defendant. Plaintiff did not do so in this case, and argues that he did not need to do so because (among other reasons), under *Glanz and Killian Co v Garland Mfg Co*, 53 Mich App 210; 218 NW 2d 791 (1974), he did not have notice of these homeowners' interests at the time he filed the complaint. This argument, however, does not hold up to scrutiny. Specifically, in *Advanta Nat'l Bank v McClarty*, 257 Mich App 113, 119-120; 667 NW2d 880 (2003), we noted that *Glanz* was "of limited precedential value" because the statute *Glanz* relied upon, MCL 570.10, had been repealed. And, that repealed statutory provision specifically required that persons with a recorded interest be made a party to the action. *Id.* Furthermore, the *Advanta* Court held that "a lien claimant can only be required to notify every party who has a known or recorded interest", *Advanta Nat'l Bank, supra* at 121, and plaintiff failed to do so in this case. In particular, by the time plaintiff filed the first amended complaint on June 29, 2004, these seven homeowners (who were never parties to this lawsuit) had filed their deeds with the Wayne County Registrar of Deeds. Consequently, at the time that plaintiff filed his first amended complaint, he knew or should have known of the recorded interests filed by these homeowners, but still failed to name them as parties.

Finally, plaintiff has offered no other case law or statutory provision that would allow a subcontractor to seek and obtain foreclosure against a homeowner without adhering to the

construction lien act, i.e., by making the homeowner a party to the action, or, at the least, naming the fund as a defendant.<sup>1</sup> As our Court noted in *Erb Lumber v Gidley*, 234 Mich App 387, 394-395; 594 NW2d 81 (1999), if the fund had been made a party to this action it would, at a minimum, have been able to assert any defense available to a homeowner who had filed an affidavit of payment. However, plaintiff did not name the fund as a defendant, and did not follow the statutory provisions provided for this type of case. Consequently, for these reasons and those stated in the majority opinion, plaintiff is not entitled to foreclose on homes owned by unnamed parties.

/s/ Christopher M. Murray

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<sup>1</sup> Being barred from recovery from the fund is not the exclusive remedy for not naming the fund as a party. MCL 570.1203(4). Plaintiff was not seeking a “recovery” from the fund. Instead, he was seeking foreclosure, and as the majority notes, to seek foreclosure plaintiff still had to “join the fund as a defendant in the foreclosure action . . . .” *Id.*