

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

HOME VENTURES ENTERPRISES, LLC,

Plaintiff,

vs.

Case No. 2015-3258-CB

RALPH ROBERTS and PROBATE
ASSET RECOVERY, LLC,

Defendants.

OPINION AND ORDER

Defendants have filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff has filed a response and requests that the motion be denied.

In addition, Plaintiff has filed a cross-motion for summary disposition pursuant to MCR 2.116(C)(10). Defendants have filed a response and request that the motion be denied.

I. Factual and Procedural History

On September 29, 2003, Helen Ann Adolph borrowed money and secured the loan with a mortgage against real property located at 23440 Rosewood, Oak Park, MI 48237 ("Subject Property"). Mrs. Adolph subsequently passed away, and the Subject Party was foreclosed upon. Prior to the foreclosure sale, an affidavit of abandonment was filed with respect to the Subject Property, which reduced the redemption period to 1 month.

On February 4, 2014, a sheriff's sale was held with respect to the Subject Property. Plaintiff's agent and Defendant Ralph Roberts ("Defendant Roberts") were

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both present at the sale. Defendant Roberts was allegedly present at the sale on behalf of non-party Ralph Roberts Realty, LLC, who was retained by non-party Robert Van Goethem to bid on the Subject Property on his behalf. Although both Plaintiff and Defendant Roberts made bids, Plaintiff ultimately purchased the Subject Property at the foreclosure sale for \$36,776.78. Plaintiff received a sheriff's deed, which was recorded with the Macomb County Register of Deeds.

On February 4, 2014, Defendant Roberts recorded an affidavit of non-abandonment. After the affidavit was filed, one or more of the Defendants allegedly retained Jon Munger as counsel to nominate himself as the personal representative of Mrs. Adolph's estate. On February 13, 2014, Mr. Munger filed a petition for probate and/or appointment of personal representative as to Mrs. Adolph's estate. On March 17, 2014, Mr. Munger filed an inventory listing the Subject Property as the estate's only asset. In March 2014, Mr. Munger also filed a petition for approval to sell the Subject Property to Adi A. Twinia. The sales agreement involving Mr. Twinia was executed in March 2014. The closing of the sale took place in May 2014. However, the sale was not approved by the probate court.

A quiet title action was subsequently commenced by Mr. Twinia in order to determine whether he, the estate, or Plaintiff was the owner of the Subject Property. That matter was ultimately settled, with Plaintiff receiving the title to the Subject Property.

On August 31, 2015, Plaintiff filed its amended complaint with the 41-B District Court. On September 4, 2015, the case was transferred to this Court. The amended complaint includes claims for tortious interference with an expectancy (Count I) and

contract (Count II), as well as common law and statutory slander of title actions (Counts III and IV respectively), and civil conspiracy (Count V).

On December 10, 2015, Defendants filed their first motion for summary disposition pursuant to MCR 2.116(C)(7) and (8). On January 11, 2016, Plaintiff filed its response to the motion. On April 22, 2016, the Court entered its Opinion and Order granting, in part, and denying, in part, Defendants' motion for summary disposition. Specifically, the Court held that the portion(s) of Plaintiff's claims against Defendant Ralph Roberts based on events taking place on or before April 14, 2014 are dismissed.

On April 5, 2016, Defendants filed their instant motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff has filed a response and requests that the motion be denied. On May 9, 2016, the Court held a hearing in connection with the motion and took the matter under advisement. On May 9, 2015, the parties stipulated to the dismissal of Count IV of the Complaint.

On May 17, 2016, Plaintiff filed its instant motion for summary disposition pursuant to MCR 2.116(C)(10). On June 14, 2016, Defendants filed their response and request that the motion be denied. On June 20, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Graves v Warner Bros*, 253 Mich App 486, 491; 656 NW2d 195 (2002). Under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Id.* However, the nonmoving party must produce

evidence showing a material dispute of fact left for trial in order to survive a motion for summary disposition under this rule. MCR 2.116(G)(4); *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000). Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Wayne County Bd of Com'rs v Wayne County Airport Authority*, 253 Mich App 144, 161; 658 NW2d 804 (2002).

III. Arguments and Analysis

A. Tortious Interference with a Business Relationship/Expectancy (Count I) and Tortious Interference with Contractual Relations (Count II)

In their motion, Defendants contend that Plaintiff's tortious interference claims fail. Tortious interference with a contract and tortious interference with a business relationship or expectancy are separate and distinct torts under Michigan law. *Health Call of Detroit v Atrium Home & Health Care Services, Inc.*, 268 Mich App 83, 89; 706 NW2d 843 (2005). The Court in *Health Call* summarized the elements needed to establish the torts as follows:

The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant. The elements of tortious interference with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted.

Id., at 89-90 [internal citations omitted]

With regards to Plaintiff's tortious interference with a contract claim, Plaintiff alleges that the sheriff's deed constitutes a contract. The parties to the sheriff's deed

were Oakland County, MI and Plaintiff. (See Defendants' Exhibit 3.) Assuming without deciding that a sheriff's deed constitutes a contract, Plaintiff must still establish that Defendant Robert's actions after April 14, 2014 caused Oakland County to breach the terms of the sheriff's deed. See *Health Call*, 268 Mich App at 89-90.

Plaintiff, as the purchaser at the sheriff's sale, acquired equitable title to the Subject Property. *Dunitz v Woodford Apartments, Co.*, 236 Mich 45, 49-50; 209 NW 809 (1926). Further, had the right to redemption not been exercised Plaintiff's equitable title would have become full legal title when the redemption period expired. *Wells Fargo Bank v Country Place Condominium Assn*, 304 Mich App 582; 848 NW2d 425 (2014). Plaintiff does not dispute that it received equitable title to the Subject Property; rather, Plaintiff contends that Defendant Roberts' actions caused its equitable title from becoming full legal title. However, even if the sheriff's deed were to be considered a contract, Oakland County was under no obligation to assure that the right of redemption was limited to 30 days. Indeed, the sheriff's deed includes a provision stating that the redemption period would be 6 months unless the Subject Property were deemed abandoned. Consequently, Oakland County's obligation was merely to transform Plaintiff's equitable title to full legal title at the end of the redemption period if no redemption had been made, not to guarantee that the redemption period was limited to 30 days. As a result, even if Plaintiff were to establish that Defendant Robert's actions caused the redemption period to be extended and ultimately prevented it from obtaining full legal title, Plaintiff has failed to allege that Defendant Robert's activities caused Oakland County to breach the sheriff's deed. Consequently, Plaintiff's tortious interference with a contract claim fails and Defendants are entitled to summary

disposition of that claim.

With respect to Plaintiff's tortious interference with an expectancy claim, Plaintiff alleges that it had a valid expectancy that it would own the Subject Property in fee if no redemption was made within 30 days of the date of February 4, 2014 Sheriff's sale. Further, Plaintiff alleges that its expectancy was interfered with by Defendant Roberts, either individually or on behalf of Defendant Probate Asset Recovery, LLC ("Defendant Probate"), when he filed the affidavit of non-abandonment on February 4, 2014. While Plaintiff also asserts that Defendant subsequently engaged in other culpable behavior, it was the filing of the affidavit of non-abandonment that affected Plaintiff's alleged expectancy as that was the only action that altered the redemption period.

To the extent that Plaintiff's claim is against Defendant Roberts, the Court has already held, in its April 22, 2016 Opinion and Order, that Plaintiff's claims against Defendant Roberts are barred to extent based on activities taking place before April 14, 2014. As the affidavit of non-abandonment was filed in February 2014, Plaintiff's tortious interference with an expectancy claim is barred to the extent it is made against Defendant Roberts.

As to Plaintiff's tortious interference with an expectancy claim against Defendant Probate, Defendant Probate did not have any involvement with parties' dispute or the Subject Property until May 9, 2014. (See Plaintiff's Exhibit 18.) Consequently, Defendant Probate did not have any involvement with Defendant Robert's actions that caused Plaintiff's alleged expectancy not to come to fruition. As a result, Plaintiff's tortious interference with a business expectancy claim against Defendant Probate fails and Defendants' motion for summary disposition must be granted.

B. Statutory Slander of Title (Count III)

In this case it appears undisputed that Plaintiff's slander of title claim is based on Defendant Robert's filing of the affidavit of non-abandonment. However, for the reasons discussed in the April 22, 2016 Opinion and Order, Plaintiff's claims against Defendant Roberts are barred to extent based on the filing of the affidavit as the affidavit was filed before April 14, 2014. Moreover, Defendant Probate played no role in the filing of the affidavit as it was not retained until May 2014. Consequently, Plaintiff's claim for statutory slander of title must be dismissed.

C. Civil Conspiracy (Count V)

A claim for civil conspiracy requires an underlying tort and if all of a plaintiff's underlying tort claims fail its conspiracy claim also fails. *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass'n*, 257 Mich App 365, 384-385; 670 NW2d 569 (2003). In this case, Defendants are entitled to summary disposition of all of Plaintiff's underlying tort claims. Consequently, Plaintiff's civil conspiracy claim also fails and must be dismissed.

IV. Conclusion

For the reasons set forth above, Defendants' motion for summary disposition is GRANTED and Plaintiff's motion for summary disposition is DENIED. In addition, Plaintiff's civil conspiracy claim is also dismissed based on the absence of any remaining underlying tort claims. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last claim and CLOSES the case.

IT IS SO ORDERED.

Date: JUL 07 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge