

Circuit Court of Michigan.
Oakland County
Linda Sucher LEVIN, Plaintiff,
v.
THE MICHIGAN LEGAL TEAM, P.C., Defendant.
No. 2007-088044 CH.
May 16, 2008.

Opinion and Order Granting Motion for Summary Disposition in Part

Hon. [Edward Sosnick](#), Circuit Court Judge.

This matter is before the Court on plaintiffs motion for summary disposition. The Court has heard oral argument and took the matter under advisement.

The plaintiff is suing to quiet title and for slander of title. The defendant is counter-suing for breach of a lien, fraud, negligence and other causes of action. It is undisputed that the plaintiff bought a home with her husband in 1993. In 2003 the plaintiffs husband quit claimed his interest to the plaintiff. In 2007 the plaintiff and her husband divorced. Her husband retained the defendant law firm. The law firm obtained his consent to a lien on any of his assets to secure their attorney fees. The divorce judgment awarded the home to the plaintiff free and clear of any liens. It also required her to pay her husband \$15,000 for his interest in the home. Apparently the plaintiffs husband did not pay his fee for legal services. On July 5, 2007, the defendant filed a notice of lis pendens and a lien against the plaintiffs home.

The plaintiff first seeks summary disposition as to her claim to quiet title. The defendant argues that this claim is moot because they have discharged their lien and withdrawn their notice of lis pendens. The order having been entered, the Court agrees that this claim is moot.

The plaintiff next argues that she is entitled to summary disposition on her claim for slander of title. "Slander of title claims have both a common-law and statutory basis." [B & B Investment Group v Gitler, 229 Mich App 1, 8; 581 NW2d 17 \(1998\)](#). "To establish slander of title at common law, a plaintiff must show falsity, malice, and special damages, *i.e.*, that the defendant maliciously published false statements that disparaged a plaintiffs right in property, causing special damages." *Id.* The same three elements are required in slander of title actions brought under [MCL 565.108](#). [B & B Investment Group, supra](#) at 8. However, the statute also requires a showing that a lien was filed for the sole purpose of slandering title to land.

In the context of a common-law slander of title claim, malice in fact or express malice "implies a desire or intention to injure." [Glieberman v Fine, 248 Mich 8, 12; 226 NW 669 \(1929\)](#). "Malice in law, or implied malice, means a wrongful act, done intentionally without just cause or excuse." *Id.* "Malice may not be inferred merely from the filing of an invalid lien; the plaintiff must show that the defendant knowingly filed an invalid lien with the intent to cause the plaintiff injury." [Stanton v Dachtelle, 186 Mich App 247, 262; 463 NW2d 479 \(1990\)](#). In [Harrison v Howe, 109 Mich 476, 479; 67 NW 527 \(1896\)](#), our Supreme Court stated that

a plaintiff:

... must also attempt to show that the defendant could not honestly have believed in the existence of the right he claimed, or at least that he had no reasonable or probable cause for so believing. If there appear no reasonable or probable cause for his claim of title, still the jury are not bound to find malice. The defendant may have acted stupidly, yet from an innocent motive.

The defendant has not identified any legal interest in the property held by its client which the client could unilaterally encumber with a lien. Even if the quitclaim deed was ineffective for some reason, the defendant's client would have had an entireties interest which he could not encumber without the plaintiffs consent. Rogers v Rogers, 136 Mich.App 125, 134; 356 NW2d 288 (1984). If the quitclaim deed was effective, and the defendant has provided nothing suggesting it was not, the defendant's client could not have acquired greater rights in the property by quitclaiming it to his wife.

The element of falsity is satisfied. The defendant has offered no law to suggest that its client had any interest in the property to which they could attach a lien. The Court cannot conclude that the element of malice is satisfied because the jury is not bound to find malice from the absence of a legal basis for the claim of a lien. As was observed in *Harrison*, the jury could conclude that the defendant was merely incompetent or stupid.

The plaintiff next argues that the fraud counts in the counter-claim should be dismissed because they are not pled with particularity. The Court agrees that the counter-complaint fails to plead the fraud with particularity, contrary to MCR 2.112. If this were the only defect in the pleading, the court would be inclined to allow the counter-plaintiff to amend.

However, if the plaintiff had made a promise to honor the lien, it would have been a promise to answer for the debt or obligation of her husband. This is a promise that is void unless made in a writing signed by the plaintiff. MCL 566.132. The defendant as counter-plaintiff has not supplied any written commitment from the plaintiff to honor the lien. Therefore, this claim is also barred by the statute of frauds. Therefore, the Court will grant the plaintiffs motion for summary disposition as to the fraud count.

The plaintiff, as counter-defendant, next argues that the negligence claim fails to state a claim against her. The counter-plaintiff alleged in the negligence count that the plaintiff negligently failed to honor its lien against her property. The plaintiff argues that she had no duty in tort to honor whatever fee agreement existed between her ex-husband and the defendant. The Court agrees. Although the plaintiff would have had a contractual obligation to honor a valid lien on her property, she did not have any obligation to honor a lien unilaterally imposed by her husband on her property. Even if the lien were valid, the duty is purely contractual. The failure to properly perform a contractual duty does not give rise to an action in negligence unless the plaintiff alleges a violation of a duty separate and distinct from the duty imposed under the contract. Fultz v Union-Commerce Assoc, 470 Mich. 460, 467; 683 NW2d 587 (2004). "If no independent duty exists, no tort action based on a contract will lie." *Id.* The negligence claim will be dismissed.

Having dismissed the tort claims, the Court will also dismiss the civil conspiracy claim. The Court also sees no merit to the claims for specific performance or unjust enrichment. There is no evidence that the plaintiff ever agreed in writing to be obligated to pay her husband's attorney fees. There is no legal authority allowing her husband to encumber her property with an attorney lien. Since the plaintiff paid her ex-husband what she owed him, she has not been unjustly enriched by defendant's failure to obtain a valid lien against the plaintiffs property.

The Court will defer the issue of sanctions until the entry of a final judgment.

WHEREFORE, IT IS HEREBY ORDERED that the motion for summary disposition is granted in part as to plaintiffs claim on the issue of the falsity of the lien, but denied without prejudice on the issue of malice.

IT IS FURTHER ORDERED that summary disposition is granted to the plaintiff on the counter-claim.

Dated: May 16, 2008

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Hon. Edward Sosnick

Circuit Court Judge