

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

THE ADELL BROTHER'S CHILDREN'S
TRUST, et al,

Plaintiffs,

v

Case No. 14-139712-NZ
Hon. Wendy Potts

HYMAN LIPPITT, P.C., et al,

Defendants.

OPINION AND ORDER RE: DEFENDANTS' MOTION FOR SANCTIONS

At a session of Court
Held in Pontiac, Michigan

On
AUG 20 2015

Defendants move the Court to sanction Plaintiffs under MCR 2.114 and MCL 600.2591 on the ground that Plaintiffs' claims were frivolous. Plaintiffs alleged claims for slander of title and unlawful recording based on Defendant Hyman Lippitt, P.C.'s recording of judgment liens and a claim of interest against the Adell Trusts and property owned by the Trusts. Hyman Lippitt recorded the liens and claim of interest after this Court confirmed an arbitration award Hyman Lippitt obtained against the Adell Trusts. Defendants moved for summary disposition of Plaintiffs' slander of title and recording violation claims, which the Court granted and dismissed the claims with prejudice. Defendants then brought this motion asserting that Plaintiffs' claims lacked legal or factual merit and were brought to retaliate against Defendants.

MCR 2.114 mandates sanctions against a party or attorney signing documents filed with the Court that are not "well grounded in fact [or] warranted by existing law or a good-faith

argument for the extension, modification, or reversal of existing law.” MCR 2.114(D)(2). If the Court concludes that a document was signed in violation of the rule, the Court “shall impose upon the person who signed it, a represented party, or both, an appropriate sanction” which can include an order to pay the other parties reasonable expenses and attorney fees incurred because of the filing of the document. MCR 2.114(E). In determining whether a complaint is signed in violation of MCR 2.114, the Court focuses on the reasonableness of the inquiry into the factual and legal basis for the claims at the time the complaint was filed. *Attorney General v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003).

Under MCL 600.2591, if the Court determines that an action is frivolous, it “shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.” MCL 600.2591(1). The statute provides three alternative definitions of “frivolous”: (1) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party; (2) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true; or (3) The party's legal position was devoid of arguable legal merit. Whether a claim is frivolous depends on the facts of the case. *Kitchen v Kitchen*, 465 Mich 654, 662; 641 NW2d 245 (2002).

Regarding Defendant Lippitt O’Keefe Gornbein, PLLC, Plaintiffs’ claims were not well grounded in fact or law and Plaintiffs had no reasonable basis to believe their claims against Lippitt O’Keefe had merit. MCR 2.114(D)(2); MCL 600.2591(3)(a). Lippitt O’Keefe did not record the judgment liens or claim of interest, and was not a party to the underlying dispute between Hyman Lippitt and the Adell entities. Lippitt O’Keefe’s only connection to this case was Norman Lippitt’s use of his new firm’s address on the documents he recorded. Lippitt

O’Keefe was forced to bring a motion for security for costs, which Plaintiffs initially contested, and Plaintiffs did not agree to dismiss Lippitt O’Keefe until the hearing on the motion. Had Plaintiffs made a reasonable factual and legal inquiry into their claims against Lippitt O’Keefe, they would have known that the claims were meritless. Because Plaintiffs’ claims against Lippitt O’Keefe were frivolous under both the standards for MCR 2.114 and MCL 600.2591, the Court orders Plaintiffs and their counsel to pay Lippitt O’Keefe’s reasonable attorney fees and taxable costs incurred in defending against Plaintiffs’ claims.

Plaintiffs’ claims against Hyman Lippitt’s attorneys G&B II, P.C. were also frivolous. G&B did not record the liens or claim of interest – Norman Lippitt recorded them on behalf of Hyman Lippitt. G&B merely acted as an agent, presenting the documents to the Clerk or Register of Deeds to be recorded on behalf of Mr. Lippitt and Hyman Lippitt. An agent is generally not liable for the torts of its principal unless the agent “personally commits” the tort. *Warren Tool Co v Stephenson*, 11 Mich App 274, 300; 161 NW2d 133 (1968). Because G&B did not personally, on its own behalf, record any lien or claim against Plaintiffs or their property, Plaintiffs had no arguable claim that G&B slandered their title or violated the recording statute. Had Plaintiffs made a reasonable inquiry into the facts of this case and the law of agency before filing its claims against G&B, it would have known that the claims lacked merit. Because Plaintiffs’ claims against G&B were frivolous, the Court orders Plaintiffs to pay G&B taxable costs and reasonable attorney fees incurred in defending against the claims.

Determining the frivolousness of Plaintiffs’ claims against Hyman Lippitt or Norman Lippitt poses a more difficult analysis. There was arguable legal and factual merit to Plaintiffs’ assertion that the automatic stay of MCR 2.614(A)(1) barred Defendants from filing its judgment liens or claim of interest until this Court ruled on the motion for reconsideration. However,

Plaintiffs did not file a motion in the 2013 case asking the Court to vacate the liens or claim of interest or otherwise seek a ruling that the liens and claim of interest were premature. Instead, Plaintiffs filed a new case asserting slander of title and violation of the recording statute. Thus, the claims in this case went far beyond the mere assertion that the recordings were premature.

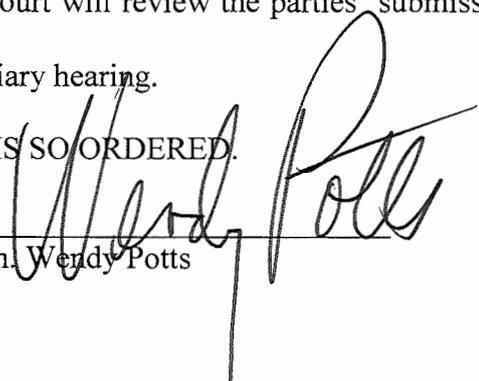
As the Court noted in its summary disposition opinion, Plaintiffs' slander of title claims failed as a matter of fact and law because Plaintiffs presented no evidence that the statements in the recorded documents were false or that Hyman Lippitt recorded the documents maliciously. *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998); MCL 565.108. Similarly, the claim for violation of the recording statute lacked legal or factual merit because Plaintiffs presented no evidence that Hyman Lippitt recorded the liens or claim of interest to harass or intimidate Plaintiffs. MCL 565.25(3). However, these analyses were made in hindsight, months after the complaint was filed and after the parties had an opportunity to engage in discovery. The fact that the Court disagreed with Plaintiffs' assertion that the liens and claim of interest contained false statements did not mean that Plaintiffs' allegations of falsity lacked merit ab initio. Further, Plaintiffs' inability to procure admissible evidence of Hyman Lippitt or Norman Lippitt's malice did not render their allegations of malice frivolous. A claim is not frivolous merely because the party asserting the claim is unable to prove it. *Kitchen, supra* at 662. Moreover, Defendants presented no evidence that Plaintiffs brought this action for an improper purpose or without a reasonable belief that the liens and claim of interest were slanderous. Thus, the Court concludes that Plaintiffs' claims against Norman Lippitt and Hyman Lippitt were not frivolous within the meaning of MCR 2.114 or MCL 600.2591.

For all of these reasons, the Court concludes that Plaintiffs' claims against Lippitt O'Keefe and G&B were frivolous and orders Plaintiffs and their counsel to pay these parties'

taxable costs and reasonable attorney fees incurred in defending against the claims. Lippitt O'Keefe and G&B may file and serve their bills of costs and evidence of reasonable attorney fees within 14 days. Within 14 days of service of the bills of costs, Plaintiffs may file any objections to the costs or attorney fees claimed. The Court will review the parties' submissions and either issue an order or set the matter for an evidentiary hearing.

IT IS SO ORDERED.

Dated: **AUG 20 2015**



Hon. Wendy Potts