

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

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

Plaintiffs,

Case No. 14-139712-NZ

v

Hon. Wendy Potts

HYMAN LIPPITT, P.C., et al,

Defendants.

OPINION AND ORDER RE:
DEFENDANTS' MOTION FOR SUMMARY DISPOSITION
AND
PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

At a session of Court
Held in Pontiac, Michigan
On

SEP 12 2014

This action arises from a 2013 case assigned to this Court in which Defendant Hyman Lippitt, P.C. asked this Court to confirm an arbitration award in its favor and against the Plaintiffs, which the Court will refer to as the Adell Trusts. On March 12, 2014, the Court granted Hyman Lippitt's motion to confirm the arbitration award, denied the Adell Trusts' motion to vacate or modify the award, and entered a judgment in Hyman Lippitt's favor. On March 14, 2014, Hyman Lippitt, recorded a judgment lien against each of the four Adell Trusts with the Oakland County Register of Deeds. That same day, Defendant Norman Lippitt, as agent for Hyman Lippitt, also recorded a claim of interest on vacant land in Novi owned by the Adell Trusts. The Adell Trusts did not file any motion in the 2013 case seeking relief from the

judgment liens or claim of interest. Instead, they filed this new action against Hyman Lippitt, Mr. Lippett, and their attorneys Garratt & Bachand, P.C. They also sued Mr. Lippitt's new firm Lippitt O'Keefe Gornbein, PLLC, but later stipulated to dismiss those claims. The Adell Trusts allege that the claim of interest and judgment liens slandered their title under both common law and statutory theories and violated the recording statute, MCL 565.25.

Defendants move for summary disposition under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint, and (C)(10), which tests the factual support for the Adell Trusts' claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

Defendants argue that the Adell Trusts cannot prevail on their slander of title claims because the statements in the judgment liens and claim of interest were not false and the instruments were not recorded with malice. To establish slander of title under either a common law or statutory theory, the Adell Trusts must show, among other things, that Defendants maliciously published false statements that disparaged the Adell Trusts' right in the property. *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998); MCL 565.108. The Adell Trusts assert that the claim of interest and judgment liens were false because Defendants did not have the right to collect on the judgment as of March 14, 2014 because the automatic stay of MCR 2.614(A)(1) was still in place. There is no dispute that as of March 14, 2014, Hyman Lippitt could not execute on its judgment or initiate proceedings to enforce it. However, the Adell Trusts fail to explain how this fact rendered false the statements in the claim of interest or judgment liens. The judgment liens simply state that Hyman Lippitt has a judgment against the Adell Trusts. The claim of interest states that Hyman Lippitt claims an interest in the property based on the judgment liens. At no point in the liens or claim of interest does Hyman Lippitt state that it has a present ability to execute on or enforce the judgment. The Adell Trusts cite no

authority holding that a lien or claim is false if it is recorded against a judgment debtor's property before the expiration of the automatic stay of MCR 2.614(A)(1).

Even if the automatic stay somehow rendered false the statements in the liens or claim of interest, the Adell Trusts produce no evidence of malice. They claim that malice is demonstrated by the fact that the Defendants are attorneys, were aware of the automatic stay of MCR 2.614(A)(1), and ignored it. However, malice in a slander of title claim may not be inferred from Defendants' allegedly improper recordings. *Stanton v Dacheille*, 186 Mich App 247, 262; 463 NW2d 479 (1990). Instead, the Adell Trusts must show that Defendant knowingly filed invalid liens with the intent to cause the Adell Trusts injury. *Stanton, supra*. Defendants claim that they filed the liens solely to protect their interest in collecting on their judgment because they had reason to believe that the Adell Trusts or Kevin Adell would fraudulently transfer the asset. The Adell Trusts present no evidence to contradict this claim and no evidence that Defendants intended to injure them. Because the Adell Trusts have not demonstrated a question of fact regarding the falsity of statements in the recordings or whether Defendants made the recordings with malice, the slander of title claims fail as a matter of law.

Similarly, the Adell Trusts' claim for unlawful recording under MCL 565.25 fails because they present no evidence that Defendants encumbered the property "without lawful cause with the intent to harass or intimidate." MCL 565.25(3). The Adell Trusts present no evidence that Defendants recorded the judgment liens and claim of interest with the intent to harass or intimidate them. As noted above, Defendants claim they recorded the instruments to preserve their ability to collect on their presumptively valid judgment and the Adell Trusts present no evidence to the contrary. Because the Adell Trusts fail to show a question of fact

whether Defendants made the recordings to harass or intimidate them, their claim for unlawful recording also fails as a matter of law.

In a separate motion, the Adell Trusts ask the Court for leave to file an amended complaint to “bring claims arising out of an April 24, 2014, recording by Defendants.” Leave to amend pleadings shall be freely given when justice so requires. MCR 2.118(A)(2). However, amendment can be denied for compelling reasons, such as undue delay, actual prejudice, or futility. *Weymers v Khera*, 454 Mich 639, 658-659; 563 NW2d 647 (1997).

Defendants assert, and the Court agrees, that the proposed amendment is futile because it is legally insufficient on its face and it merely restates claims the Adell Trusts already made. *PT Today, Inc v Comm'r of the Office of Fin & Ins Servs*, 270 Mich App 110, 143; 715 NW2d 398 (2006). The April 2014 recording at issue is titled “Notice of Oakland County Circuit Court Order Requiring Notice Before Encumbering Real Property” and is based on this Court’s April 9, 2014 order from the 2013 case. The order states that the Adell Trusts “will not further encumber the subject property without 14 days written notice to Plaintiff [Hyman Lippitt].” Although the Adell Trusts imply that the amended complaint will raise new claims regarding the April 2014 recording, their proposed amended complaint shows the same three claims: common-law slander of title, statutory slander of title, and unlawful recording in violation of MCL 565.25. The only apparent change is that the amended complaint now contains factual allegations regarding the April 2014 recording. Thus, the amendment is futile because it merely restates their claims with additional factual allegations. *PT Today, supra*.

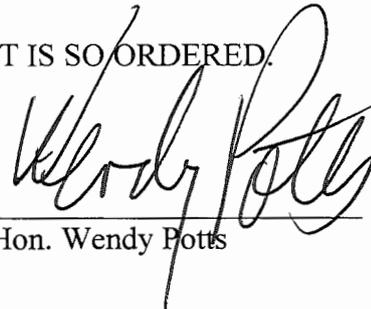
The amendment is also futile because the new factual allegations regarding the April 2014 recording are insufficient to avoid the shortcomings noted above. There are no allegations in their proposed amended complaint or in the motion to amend showing how their claims

regarding the April 2014 notice recording differ from their claims regarding the March 2014 claim of interest and judgment lien recordings. Further, the Adell Trusts fail to explain or cite evidence of how the April 2014 recording contains false statements or was filed out of malice, *Stanton, supra*, or evidence of how the April 2014 recording lacked lawful cause or was filed to harass or intimidate them. MCL 565.25(3). Because the proposed amended complaint merely restates existing claims and is legally insufficient, the amendment is futile.

For all of these reasons, the Court denies the Adell Trusts' motion to amend their complaint and grants Defendants' motion for summary disposition and dismisses the Adell Trusts' claims with prejudice.

This order resolves the last pending claim and closes the case.

IT IS SO ORDERED.



Hon. Wendy Potts

Dated: **SEP 12 2014**