STATE OF MINNESOTA
IN COURT OF APPEALS
A10-784

Chamnic Enterprises, LLC,
Respondent,

Investors Capital Group, LLC,
Respondent,

vs.

Colonial Pacific Leasing Corporation,
Appellant,

and

Colonial Pacific Leasing Corporation,
Third Party Plaintiff,

vs.

Hershey Oil, LLC, et al.,
Third Party Defendants.

Filed April 12, 2011
Reversed
Halbrooks, Judge

Wabasha County District Court
File No. 79-CV-07-1629

Daniel J. Heuel, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for respondent Chamnic Enterprises, LLC)

Maret R. Olson, Morrison, Fenske & Sund, P.A., Minnetonka, Minnesota (for respondent Investors Capital Group, LLC)

Kevin J. Dunlevy, Michael E. Kreun, Beisel & Dunlevy, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Shumaker, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

In this challenge to an order denying posttrial motions, appellant argues that it is entitled to (1) judgment as a matter of law (JMOL) on the slander-of-title claim or (2) a new trial because the district court misstated the law in the jury instructions and used a special-verdict form that assumed that the Citicorp mortgage was invalid. Because we conclude that the district court erred as a matter of law by denying appellant's motion for JMOL on respondents' slander-of-title claim, we reverse.

FACTS

This case centers on a mortgage between appellant Colonial Pacific Leasing Corporation[1] and Hershey Oil, LLC. On July 31, 2005, Hershey Oil agreed to purchase property known as the "Wabasha property" from Odens Family Properties, LLC (OFP). In March 2006, Hershey Oil negotiated a $1.36 million loan from appellant in exchange for a security interest in four properties, including the Wabasha property and a property known as the "Brown property." On March 14, 2006, Hershey Oil and OFP signed a new purchase agreement for the Wabasha property with a different purchase price. On March

[1] Appellant is the successor in interest to Citicorp Leasing, Inc., the party to the mortgage at issue in this case. The mortgage is referred to herein as the "Citicorp mortgage."

24, 2006, Hershey Oil signed the mortgage on the Wabasha property, naming appellant as mortgagee.

On April 19, 2006, Hershey Oil and OFP closed on the Wabasha and Brown properties, in addition to a property in St. Paul. At the closing, OFP received the agreed-upon purchase price for the Brown and Wabasha properties, and OFP executed warranty deeds to Hershey Oil. Hershey Oil made the payment to OFP using some of the proceeds of the loan from appellant. The signed deeds from OFP to Hershey Oil were delivered to Dean Rietz, an attorney who acted as a title agent for the deal. Michael Odens, a principal of OFP, instructed Rietz to hold the deeds in escrow pending a signature on a mortgage on the St. Paul property.

On May 1, 2006, appellant attempted to record the mortgages that it had received from Hershey Oil on the Wabasha and Brown properties. The Wabasha County Recorder's Office rejected the Wabasha property mortgage for recording, claiming that it could not record the mortgage because Hershey Oil was not the record owner. The mortgage for the Brown property was recorded in Brown County, despite Hershey Oil not being the record owner.

After the April 19, 2006 closing but before May 16, 2006, Sulieman Hersh, owner of Hershey Oil, told Michael Odens that he had "changed his mind" and wanted the Wabasha property and the Brown property to be titled in his name rather than in the name of Hershey Oil. On May 16, 2006, OFP signed new warranty deeds—this time to Hersh individually; Hersh then signed a mortgage on the Wabasha and Brown properties to respondent Investors Capital Group, LLC (ICG), also owned by Odens, in exchange for a

$1.01 million loan. On May 18, 2006, Odens asked Rietz to destroy the Hershey Oil deeds that Rietz had been holding in escrow for the Wabasha and Brown properties; but Rietz did not do so. The deed conveying the Wabasha property to Hersh and the ICG mortgage were recorded in Wabasha County on May 22, 2006.

In 2007, Hersh/Hershey Oil defaulted on its loans from ICG and appellant. In lieu of foreclosure by ICG, Hersh agreed to transfer title of the Wabasha property to respondent Chamnic Enterprises LLC, another corporate entity owned by Michael Odens. Chamnic became the owner of the Wabasha property on April 30, 2007.

After Hershey Oil defaulted on its $1.36 million loan from appellant, appellant retained counsel to investigate its status as mortgagee on the properties secured by the loan. In doing so, appellant discovered that the Citicorp mortgage had not been recorded in Wabasha County. On May 18, 2007, an attorney for appellant, Jonathan L. R. Drewes, recorded an affidavit with a copy of the Wabasha property mortgage attached. It states, in part:

> 2. This Affidavit relates to real property located in Wabasha County . . . .
>
> 3. Hershey Oil, LLC, by its Member Sulieman Hersh, executed a mortgage of the Subject Property in favor of Citicorp Leasing, Inc. dated March 9, 2006 (the "Citicorp Mortgage"). . . .
>
> 4. Guarantee Title, Inc. by letter dated May 1, 2006 requested that the Citicorp Mortgage be recorded against the Subject Property. . . .
>
> 5. The Citicorp Mortgage was rejected for record by the Wabasha County Recorder on May 3, 2006 because the "Deed is not recorded, so we are returning the Mortgage, until the Deed is recorded." . . .
>
> 6. This affidavit is for informational purposes and is not an attempt to avoid paying mortgage registration tax.

Meanwhile, Chamnic was in the process of trying to sell the Wabasha property to an unrelated third party, River Crossings Enterprises, Inc., for $400,000. During a title search, River Crossings discovered the Drewes affidavit, and the closing process slowed due to this cloud on the title. Ultimately, River Crossings agreed to purchase the property with a $50,000 reduction in purchase price. In order for the sale to River Crossings to proceed, ICG and appellant agreed to release their mortgages against the Wabasha property, and Chamnic agreed that the purchase-price funds would be placed in escrow until the dispute was resolved.

Respondents ICG and Chamnic sued appellant in August 2007 for slander of title and for a declaratory judgment that Chamnic was the owner of the Wabasha property and that ICG's security interest had priority over any other interests. Appellant answered, counterclaimed, and asserted third-party complaints against Hersh, Hershey Oil, OFP, and others. Appellant asserted that its mortgage had priority over the ICG mortgage because ICG had actual or constructive knowledge of the Citicorp mortgage or, alternatively, that it was entitled to recover its losses under theories of equitable subordination, subrogation, or conversion. The third-party complaint asserted that the conveyance from OFP to Hersh was fraudulent and sought to foreclose the mortgage that appellant believed that it held on the Wabasha property. The third-party complaint also requested reformation of the warranty deeds for the Wabasha and Brown properties to name Hershey Oil as the grantee, rather than Hersh, or reformation of the Citicorp mortgage to list Hersh as the mortgagor.

The case went to trial in September 2009. The district court submitted the slander-of-title claim to the jury and reserved the equitable issues for its determination. In its posttrial order, the district court found that "[t]here was a valid agreement between Sulieman Hersh, as president of Hershey Oil, that Hershey Oil would grant a valid mortgage on the Brown and Wabasha properties to Citicorp." The district court ultimately concluded that "[t]he [Citicorp] mortgage and deeds conveying title to these properties failed to express the parties' agreement in that the grantee named on the deeds was not the same as the grantor named on the mortgage. That failure is due to a mistake by Citicorp and fraud by Sulieman Hersh." The district court therefore reformed the Brown County mortgage to name Hersh and his wife as the mortgagors, rather than Hershey Oil. But the district court refused to reform the mortgage for the Wabasha property because "[t]o reform the documents affecting the Wabasha property . . . would injuriously affect the rights of an innocent third party, [ICG]. As to the Brown property, ICG was on notice of Citicorp's claim by virtue of the Citicorp mortgage recorded twenty days before ICG's." The funds held in escrow for the sale of the Wabasha property to River Crossings were released to ICG and Chamnic.

On the slander-of-title issue, the jury was given a special-verdict form with four questions:

> 1. Did Citicorp know its mortgage was invalid when it recorded the Drewes Affidavit against the Wabasha Property?
>
> 2. [If yes, d]id Citicorp act with malice or reckless disregard when it recorded the Drewes Affidavit against the Wabasha Property?

3. [If yes, d]id Citicorp's actions cause Chamnic and ICG damages?

4. [If yes, w]hat amount of money will fairly compensate Chamnic and ICG for the harm they suffered?

The jury answered the first three questions in the affirmative and found that Chamnic and ICG suffered $100,230 in damages. Appellant moved for a JMOL or a new trial. The district court denied these motions. This appeal follows.

D E C I S I O N

Appellant argues that the district court erred by denying its motion for JMOL on respondents' slander-of-title claim. JMOL is appropriate under Minn. R. Civ. P. 50.02 if, when the evidence is viewed in the light most favorable to the nonmoving party, the verdict is "manifestly against the entire evidence" or if the moving party is entitled to judgment as a matter of law. *Langeslag v. KYMN Inc.*, 664 N.W.2d 860, 864 (Minn. 2003) (quotation omitted) (discussing the standard for a judgment notwithstanding the verdict (JNOV)); *see also Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009) (applying the standard articulated in *Langeslag* to denial of JMOL). A district court's denial of a motion for JMOL after a verdict must be affirmed if, "in considering the evidence in the record in the light most favorable to the prevailing party, there is any competent evidence reasonably tending to sustain the verdict." *Langeslag*, 664 N.W.2d at 864 (quotation omitted). Whether to grant or deny a motion for JMOL is a question of law, which we review de novo. *Id*.

The four elements of a slander-of-title claim are: (1) a false statement concerning real property that another owns or claims an interest in; (2) the false statement was

published; (3) with malice; and (4) the false statement resulted in special damages. *Paidar v. Hughes*, 615 N.W.2d 276, 279-80 (Minn. 2000). The parties agree for purposes of the first element that "[f]iling for record an instrument known to be inoperative is a false statement within the [slander-of-title] rule . . . if done maliciously." *Kelly v. First State Bank of Rothsay*, 145 Minn. 331, 332, 177 N.W. 347, 347 (1920). Appellant contends that the mortgage between it and Hershey Oil is not "inoperative" because Hershey Oil obtained equitable title to the property pursuant to the purchase agreement with OFP and because unrecordability is not the same as inoperability.

Appellant is correct that there is nothing "inoperative" about the mortgage based solely on the fact that Hershey Oil signed it without having legal title to the Wabasha property. Hershey Oil was the vendee to a valid purchase agreement when it signed the Citicorp mortgage. According to the record, this purchase agreement was never cancelled. Hershey Oil's status as vendee to this purchase agreement therefore gave it equitable title to the Wabasha property. Equitable title is defined as a "title that indicates a beneficial interest in property and that gives the holder the right to acquire formal legal title." *Black's Law Dictionary* 1622 (9th ed. 2009). This equitable title entitled Hershey Oil to mortgage its interest. *See Karalis v. Agnew*, 111 Minn. 522, 525-26, 127 N.W. 440, 441 (1910) (holding that a vendee on a contract for property may mortgage his equitable interest). The district court found that Hershey Oil and appellant intended a valid, enforceable mortgage against the Wabasha property. Despite the fact that Hershey Oil never obtained legal title because of Hersh's fraud, the mortgage is operative based on Hershey Oil's vendee interest.

But respondents contend that even if the mortgage was operative when Hershey Oil signed it, by the time that Drewes recorded the affidavit, appellant knew that the mortgage was inoperative because the Wabasha County Recorder's Office had rejected it for recording. We disagree. The statutory recording standards for documents are contained in Minn. Stat. §§ 507.093, .24 (2010). The Citicorp mortgage met the requirements for recording, and it was not within the authority of the Wabasha County Recorder's Office to reject the mortgage simply because Hershey Oil was not yet the record owner of the property. This rejection caused appellant to lose its priority dispute with ICG because the district court found that ICG did not have notice of the Citicorp mortgage in Wabasha County. Because of this lack of notice, the district court refused to reform the mortgage to reflect the parties' intent in Wabasha County—contrary to what the district court did with respect to the mortgage on the Brown property. But the fact that appellant lost its priority dispute with ICG does not mean that appellant slandered respondents' title when it attempted to record its mortgage. *See Kelly*, 145 Minn. at 332-33, 177 N.W. at 347-48 (stating that a legitimate attempt to protect an interest in the property by recording a mortgage that was signed by a previous owner of the property was not a false statement for slander-of-title purposes).

The district court seemed to adopt respondents' argument that the rejection for recording by the Wabasha County Recorder's Office was sufficient proof that the mortgage was inoperative. The first question on the special-verdict form asked the jury whether "[appellant] kn[e]w its mortgage was invalid when it recorded the Drewes Affidavit against the Wabasha Property." This question assumes the invalidity of the

mortgage—an assumption that we conclude is not legally supportable. Because the mortgage was valid as to Hershey Oil's vendee interest in the Wabasha property, recording the mortgage could not constitute a false statement. Because there was no false statement, we need not reach the other elements of slander of title, and we conclude that the district court erred when it submitted respondents' slander-of-title claim to the jury.

We therefore reverse the district court's decision to deny appellant's motion for JMOL. Because we are reversing the district court's decision to deny appellant's motion for JMOL, we decline to address appellant's argument that the district court erred by denying its motion for a new trial.

Reversed.