

IN THE CIRCUIT COURT OF LACLEDE COUNTY, MISSOURI

KATHLEEN SIEWAK et al,

Plaintiffs,

V.

WILLIAM B. MAUBACH, et al,

Defendants.

Case #09LA-CC00032

FILED
WANDA TYRE CIRCUIT CLERK
LACLEDE COUNTY MO
Tuesday, June 17, 2014

JUDGMENT

WHEREUPON on the 23rd day of January, 2014, the above matter came before the Court for trial. Plaintiffs Kathleen Siewak and Fred A. Barlow did not appear in person but appeared by and through counsel, Chris Allen. Defendants William B. Maubach and Cindy S. Maubach appeared in person and with counsel, Stewart King. Intervenor Ozzie Mancinelli appeared in person and with counsel, Scott McMillan and Randy Sutter. The parties announced ready. The Intervenor dismissed his claim against Billie Joe Roberts d/b/a Roberts Mobile Home Sales and Service without prejudice. Evidence was presented and concluded. Intervenor made an oral Motion At The Close Of All The Evidence for Judgment on the affirmative defense of Maubachs that they are good faith transferees which was taken with the case. Defendants Cross claim against Plaintiff Barlow was dismissed without prejudice. Closing argument was held and the Court granted the parties 45 days to file trial briefs with the Court at which time the Court took the matter under advisement.

NOW ON THIS 17th day of June, 2014, the Court again takes up this matter and having considered the evidence presented at trial together with the pleadings and trial briefs filed herein, this Court does find as follows:

1. The transfer of \$150,000.00 by Plaintiffs Siewak and Barlow to Brent L. Chastain and Belinda J. Chastain, (hereinafter referred to as Chastains) on behalf of Defendants William B. Maubach and Cindy S. Maubach, (hereinafter referred to as Maubachs) was fraudulent and was made with the actual intent to hinder, delay or defraud Mancinelli as creditor. In making this finding, this Court has considered the factors set forth in subsection 2 of 428.024 RSMo. This Court has considered the argument

of the Maubachs that the source of the funds for the \$150,000.00 came from Mr. Barlow's mothers trust, (hereinafter referred to as the "Barlow Trust") which was not subject to execution. This Court however, is also mindful of the admissions against interest which were made by Kathleen M. Siewak and Fred H. Barlow in their original petition filed with this Court which was admitted into evidence at the trial of this matter. In that Petition, Siewak and Barlow admitted that they made payments totaling \$219,482.83 towards the purchase of the real estate which was the subject of the Contract for Deed between Maubachs and Chastains and which was entered into by Maubachs on behalf of Siewak and Barlow. The original petition filed herein was further verified by both Siewak and Barlow who acknowledge the facts set forth therein were true and correct. Neither Rustie's International, Inc. or Mr. Barlow in his capacity as trustee for the Barlow Trust were named as party plaintiff in said petition. These admissions against interest clearly indicate that both Siewak and Barlow believed the monies forwarded from the Barlow Trust and from Rustie's International, Inc. to Chastains were their individual funds and were treated as such without distinction by Siewak and Barlow. This Court as well will not distinguish those funds as having come from any other source other than Siewak and Barlow. See Attachment D to Exhibit 1029 admitted at trial.

This Court has also considered the argument of Maubachs that Siewak and Barlow received equivalent value for the \$150,000.00 transferred. The evidence at trial reveals that on January 5, 2007, Mr. Barlow transferred \$49,000.00 from the Barlow Trust to Rustie's, International, Inc. On January 8, 2007, Rustie's International, Inc. transferred \$49,000.00 to Chastains' attorney to complete the initial \$50,000.00 payment called for by the Contract for Deed. Mr. Barlow had previously provided the \$1,000.00 earnest money called for under the contract. Then on July 30, 2007, Plaintiff Barlow as trustee caused \$100,000.00 to be forwarded from the Barlow Trust to Hogan Land Title Company which was ultimately paid to Chastains to secure the release of 75 acres from the terms of the Contract for Deed. The reasonable inference to be drawn from the evidence is that the Chastains released this 75 acres from the provisions of the Contract for Deed in exchange for the \$150,000.00 which had been paid by Siewak and Barlow to Chastains. The evidence further reveals that a Deed was given for the 75 acres from Chastains to Maubachs contemporaneously with the \$100,000.00 payment on the 30th day of July, 2007. Thereafter, the Maubachs did

not deed the 75 acres to Siewak and Barlow. Accordingly, Siewak and Barlow transferred \$150,000.00 to Chastains to secure the release of the 75 acres from the terms of the Contract for Deed but yet did not receive title to the 75 acres. Neither did Maubachs give any consideration for this 75 acres which was titled in their name at this time. The transfer of the \$150,000.00 to Chastains by Siewak and Barlow and the resulting transfer of the 75 acres to the Maubachs and the retention thereof by the Maubachs was fraudulent as to creditor Mancinelli. Maubachs argue that Siewak and Barlow abandoned their interest in the real estate when they left and stopped making payments after February, 2009. However Siewak and Barlow had made all payments as required by the Contract for Deed at the time the 75 acres was released from the terms of the Contract for Deed and were not in default as of July 30, 2007. This Court finds that the value of the 75 acres exclusive of the manufactured home to have been \$150,000.00 at the time of its transfer on July 30, 2007.

2. The interest payments made by Siewak and Barlow to Maubachs at the approximate interest rate of 7% were transfers which were made with the actual interest to hinder, delay or defraud Mancinelli as creditor. In making this finding this Court has considered the factors set forth in subsection 2 of Section 428.024 RSMo. There is no evidence that Maubachs gave any value for said payments. Further this Court notes as Intervenor points out in his trial brief that once the principal balance on the Contract for Deed had been reduced by \$150,000.00, the interest due and owing on the remaining balance of \$153,750.00 was approximately \$908.00 a month. Siewak and Barlow paid \$1,350.00 a month in interest from and after this time. The evidence reveals that Maubachs kept the difference between the interest due and owing on the Contract for Deed of approximately \$908.00 a month and the \$1,350.00 a month paid by Siewak and Barlow. Siewak and Barlow did not receive reasonably equivalent value for their interest payments made. Neither did Maubachs give any consideration for these interest payments. These interest payments total \$34,650.00. The Maubachs are not good faith transferees as defined by Section 428.044(1) RSMo. as to these payments.
3. As to the monies paid by Siewak and Barlow to Maubachs identified by the checks attached to Int. Exh. 1110 and 1112 and admitted at trial, this Court finds that Intervenor has failed to establish by clear and convincing evidence that said transfers were fraudulent with the exception of the interest payments identified in said exhibits

which this Court has already determined to be fraudulent. Specifically this Court finds that Intervenor has failed to demonstrate that Siewak and Barlow did not receive reasonably equivalent value for said payments. The trial court does not accept as credible the notations on many of the checks apparently added after the fact. Ms. Maubach testified that Siewak and Barlow were making many payments to Maubachs for various services associated with cattle owned by Mr. Barlow during this time. Intervenor has failed to carry his burden as to these payments. While this Court acknowledges that Ms. Maubach identified several payments she received that she could not account for the Intervenor presented no evidence that Siewak and Barlow did not receive reasonably equivalent value therefore. The Court also notes that the payment of \$27,000.00 for Lucy the horse was a transaction whereby Siewak and Barlow received reasonable equivalent value. Although the horse has subsequently been transferred by Siewak and Barlow to third parties who are not a party to this lawsuit, that matter is not before this Court.

4. Fred Barlow paid \$72,474.34 to Oakwood Springfield for a Clayton manufactured home which he caused to be titled to Kathleen Siewak on or about October 3, 2007. The manufactured home is located on the acreage currently owned by Maubachs which was acquired from Chastains after the payment of \$150,000.00 from Siewak and Barlow to Chastains. The Court concludes that this transfer by Barlow was made with the actual intent to hinder, delay or defraud creditor Mancinelli. Barlow received no value from Siewak for this transfer. Siewak is not a good faith transferee as to this transfer. In making this finding the Court has considered the factors set forth in Section 429.024.2 RSMo. As to the interest if any that Maubachs may have in the manufactured home currently located on the 75 acres this Court finds that Maubachs paid no consideration for said manufactured home and they are not good faith transferees of said manufactured home. The Court finds the value of the manufactured home was \$72,474.34 at the time of its transfer on October 3, 2007, exclusive of the 75 acres upon which it is located.
5. The transfer of the two tracts of land sold at auction by Maubachs to Feeney's and Laclede 70 LLC were not fraudulent as to creditor Mancinelli. Maubachs paid off the balance remaining after the \$150,000.00 paid by Siewak and Barlow due and owing to Chastains by borrowing funds from Central Bank to secure the release of the balance of the real estate from the provisions of the Contract for Deed. Siewak and Barlow

contributed no monies or value toward the payment of the note to Central Bank other than interest and \$1,390.44 in principal reduction. The Maubachs' Central Bank note was subsequently paid in full by Maubachs from the sale proceeds of the two tracts and by a payment of the balance remaining thereafter by Maubachs. This Court has already accounted for this \$1,390.44 in ruling that the interest payments of \$1,350.00 were fraudulent and that Siewak and Barlow received no value therefore. The Court also notes that Feeney's and Laclede 70 LLC are not named as parties and appear to be good faith transferees.

6. The Maubachs are not good faith transferees as defined by Section 428.044(1) RSMo as to the 75 acres deeded to them. The evidence is clear that Maubachs did not give any consideration for the 75 acres to which they currently hold title. There was no evidence offered at the trial as to why Maubachs did not cause the 75 acres to be deeded to Siewak and Barlow in July, 2007, when the \$150,000.00 had been paid by Siewak and Barlow for the release of that acreage. This Court also finds that Maubachs did not act in good faith in carrying out the transaction with Chastains. The evidence before the Court indicates that prior to entering into the Contract for Deed transaction, the Maubachs were suspicious of Siewak and Barlow and their motives. They were both aware of the pending bankruptcy by Siewak. The Maubachs are not good faith transferees. Therefore this Court concludes that the Maubachs are not entitled to reimbursement or lien for any of the improvements they claim they made to the subject real estate. This Court further notes that no evidence was offered by the Maubachs as to the value of the improvements made to the subject real estate. Although Mr. Maubach testified as to grading and clearing and other work performed which he believed improved the real estate, he could not testify as to a dollar amount by which the fair market value of the real estate was increased. Neither did the Maubachs segregate the value of the work done on properties which have subsequently been sold to third parties who were not a party to this litigation, from the work done on the remaining 75 acres. Even if the Court were to have found that the Maubachs were good faith transferees the Court could not speculate as to what work was done on the acreage which remains and whether or not that work increased the fair market value of the real estate in question. However, this Court finds that issue moot as the Court has determined that the Maubachs are not good faith transferees. Accordingly the Court grants Intervenor's Motion At The Close Of All The Evidence

For Judgment as to the affirmative defense of Maubachs that they are good faith transferees.

7. This Court has determined that the transfer of \$150,000.00 to the Chastains on behalf of the Maubachs pursuant to the terms of the Contract for Deed, and the resulting transfer of the real estate of the 75 acres to the Maubachs are fraudulent. However, the Chastains are not a party to this lawsuit and no relief is sought against the Chastains. Accordingly, this Court cannot order the Chastains to return the \$150,000.00 paid. Neither did Maubachs receive said payments. However, pursuant to the provisions of Section 428.039 RSMo., this Court may grant any relief which the circumstances require. It would be inequitable in this case to allow the Maubachs to retain title to the 75 acres when they gave no value therefore.
8. Although this Court has determined that Maubachs are not good faith transferees, the Court does not believe the evidence has established that the Maubachs, Siewak and Barlow entered into a conspiracy to defraud creditor Mancinelli. Accordingly, this Court finds the issues in favor of Maubachs, Siewak and Barlow and against Intervenor Mancinelli on Count II of Intervenor's Third Amended Complaint.
9. This Court finds the issues in favor of Intervenor and against Siewak, Barlow and Maubachs on Count I, Count V and Count VI of his Third Amended Complaint. Having found the issues in favor of Intervenor and against Plaintiffs and Defendants on Count V and VI of Intervenor's Third Amended Complaint, this Court finds the relief sought in Count III of the Third Amended Complaint to be in the alternative to Count V and VI and therefore no ruling is necessary as to this Count. As to Count IV of Intervenor's Third Amended Complaint, this Court does find that the 75 acres is currently free and clear and is not encumbered and therefore the Court finds those issues in favor of Defendants Maubachs and against Intervenor on Count IV.
10. As to Count I this Court awards Judgment in favor of Intervenor Ozzie Mancinelli as follows:
 - (a) In the amount of \$34,650.00 against Defendants William B. Maubach and Cindy S. Maubach, jointly and severally. Any sums collected thereon to be credited against that portion of the California Judgment in favor of Intervenor Mancinelli against Siewak and Barlow jointly and severally;
 - (b) That title to the 2007 Clayton Manufactured home, VIN# 24EXP3256BAH07 valued at \$72,474.34 (exclusive of the 75 acres) be vested in Ozzie Mancinelli and that Kathleen Siewak, Fred Barlow, William B. Maubach and Cindy S. Maubach are hereby

divested of any interest they may have thereto and to be a credit in the amount of \$72,474.34 against the California Judgment as to Barlow individually.

- (c) That title to the 75 acres valued at \$150,000.00 (exclusive of the manufactured home) hereinafter described in this Judgment be vested in Ozzie Mancinelli and that William B. Maubach, Cindy S. Maubach, Kathleen Siewak and Fred Barlow are divested of any interest they may have thereto, and to be a credit in the amount of \$150,000.00 against the portion of the California Judgment in favor of Intervenor against Siewak and Barlow jointly and severally.

11. As to Count V this Court awards Judgment in favor of Intervenor Ozzie Mancinelli as follows:

That title to the 75 acres valued at \$150,000.00 (exclusive of the manufactured home) hereinafter described in this Judgment be vested in Ozzie Mancinelli and that William B. Maubach, Cindy S. Maubach, Kathleen Siewak and Fred Barlow are divested of any interest they may have thereto, and to be a credit in the amount of \$150,000.00 against the portion of the California Judgment in favor of Intervenor against Siewak and Barlow jointly and severally.

12. As to Count VI this Court awards Judgment in favor of Intervenor Ozzie Mancinelli as follows:

- (a) That title to the 2007 Clayton Manufactured home, VIN# 24EXP3256BAH07 valued at \$72,474.34 (exclusive of the 75 acres) be vested in Ozzie Mancinelli and that Kathleen Siewak, Fred Barlow, William B. Maubach and Cindy S. Maubach are hereby divested of any interest they may have thereto and to be a credit in the amount of \$72,474.34 against the California Judgment as to Barlow individually.
- (b) That title to the 75 acres valued at \$150,000.00 (exclusive of the manufactured home) hereinafter described in this Judgment be vested in Ozzie Mancinelli and that William B. Maubach, Cindy S. Maubach, Kathleen Siewak and Fred Barlow are divested of any interest they may have thereto, and to be a credit in the amount of \$150,000.00 against the portion of the California Judgment in favor of Intervenor against Siewak and Barlow jointly and severally.

13. As to Count VII of Intervenor's Third Amended Complaint and in light of this Courts rulings as to Counts I, V and VI, this Court finds Intervenor to have an adequate remedy at law and therefore Intervenor's claim as to Count VII is denied.

14. The Court denies Intervenor's claims for punitive damages and for attorney's fees.

WHEREFORE, IT IS HEREBY Ordered, Adjudge and Decreed the title in fee simple absolute to the following described real estate is hereby vested in Intervenor Ozzie Mancinelli and that Plaintiffs Kathleen

M. Siewak and Fred Barlow and Defendants William B. Maubach and Cindy M. Maubach are hereby divested of any interest they may have in and to said real estate, to-wit:

Commencing at the Northeast corner of the Southeast Quarter of Section 9, Township 32 North, Range 14 West of the Fifth Principal Meridian, Laclede County, Missouri, thence along the North line of said Southeast Quarter North 87 degrees 32 minutes 20 seconds West 48.37 feet to the point of beginning and the Southwest Right-of-Way of Highway O and A curve to the left with a radius of 756.80 feet and a chord bearing and distance of South 21 degrees 25 minutes 30 seconds East 243.63 feet, thence along said curve and right-of-way 244.69 feet, thence continue along said right of way the following courses: South 30 degrees 41 minutes 10 seconds East 1636.44 feet, thence South 27 degrees 25 minutes 50 seconds East 588.05 feet; thence departing from said right of way North 86 degrees 58 minutes 00 seconds West 765.55 feet, thence South 00 degrees 54 minutes 10 seconds West 510.07 feet to the North right of way of Anthony Road, thence along said right of way North 86 degrees 58 minutes 00 seconds West 423.06 feet to the West line of the West Half of the Southwest Quarter of Section 10, Township 32 North, Range 14 West of the Fifth Principal Meridian, Laclede County, Missouri, thence along said West line North 01 degree 03 minutes 50 seconds East 1289.05 feet to the Southeast corner of the Northeast Quarter of the Southeast Quarter of said Section 9, thence along the South line of said Northeast Quarter of the Southeast Quarter North 87 degrees 34 minutes 10 seconds West 1298.39 feet to the Southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 9, thence North 10 degrees 08 minutes 00 seconds West 1345.19 feet to the North line of the Southeast Quarter of said Section 9, thence along said North line South 87 degrees 32 minutes 20 seconds East 1511.30 feet to the point of beginning. Subject to any part thereof deeded, taken or used for road or highway purposes. (Known as Tract 6 on survey made by Robert S. Shotts, LS 1941, dated July 13, 2007, file No. 2007-093).

SUBJECT to easement granted to Williams Pipeline across subject premises.

SUBJECT to any fence line encroachments as shown on survey made by Robert S. Shotts, LS 1941, dated July 13, 2007, file No. 2007-093.

SUBJECT to all ROW's and easements as presently located.

SUBJECT to all restrictions, reservations and conditions whether of record or not.

Same to be a credit in the amount of \$150,000.00 (exclusive of the manufactured home) against the portion of the California Judgment in favor of Intervenor against Siewak and Barlow jointly and severally.

IT IS FURTHER Ordered, Adjudged and Decreed that Judgment is entered against Defendants William B. Maubach and Cindy S. Maubach in favor of Intervenor Ozzie Mancinelli in the amount of \$34,650.00, jointly and severally. Any sums collected thereon to be credited against that portion of the

California Judgment in favor of Intervenor Ozzie Mancinelli against Kathleen Siewak and Fred Barlow jointly and severally.

IT IS FURTHER Ordered, Adjudged and Decreed that the title to the 2007 Clayton Manufactured Home, VIN# 24EXP3256BAH07 currently vested in Kathleen Siewak is hereby vested in Intervenor Ozzie Mancinelli and that Kathleen Siewak, Fred Barlow, William B. Maubach and Cindy S. Maubach are divested of any interest they may have in and to said home, same to be a credit in the amount of \$72,474.34 (exclusive of the 75 acres) against the portion of the California Judgment in favor of Intervenor against Fred Barlow individually.

Costs of this action are hereby taxed to Plaintiffs Kathleen Siewak and Fred Barlow and Defendants William B. Maubach and Cindy S. Maubach, jointly and severally. Judgment to bear interest as provided by Missouri Statute not California Statute. The Circuit Clerk of Laclede County is hereby ordered to record a certified copy of this Judgment in the deed records for Laclede County, Missouri.



KENNETH M. HAYDEN
Circuit Judge, Division II
26th Judicial Circuit

Certificate of Clerk of the Circuit Court. This is a true and correct copy of the original instrument which is on file or of record in the Laclede County Circuit Court, Lebanon, MO.
Dated this 7th day of July 2014
Wanda Tyre, Clerk
By , Deputy