

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

COMERICA BANK,

Plaintiff,

vs.

Case No. 16-2051-CB

FRANK J. AND DOROTHY J. NAZAR,
FAMILY, LLC, FRANK J. NAZAR, Sr.
DOROTHY J. NAZAR, and
FRANK J. NAZAR, Jr.,

Defendants.

OPINION AND ORDER

This matter comes before the Court on Frank R. Simon's ("Receiver") motion to determine interest in real property.

I. Factual and Procedural Background

This motion involves the question of whether a husband and wife who sold property by land contract and signed in the capacity of "husband and wife" effectively conveyed title held in the name of their family LLC. Comerica Bank is a judgment creditor to Frank J. and Dorothy J. Nazar Family, LLC ("Nazar LLC") and Frank J. Nazar, Sr. ("Mr. Nazar"). The Court appointed Frank R. Simon as receiver ("Receiver") in December 2017 with regard to the judgement.

The Receiver now seeks a determination of ownership of the real property located at 335 Hubbard Street, Mount Clemens, Michigan. In 2009, Mr. Nazar and Dorothy Nazar transferred ownership of the subject property to the Nazar LLC. Mr. Nazar and Dorothy Nazar were the principles of the Nazar LLC. Mr. Nazar executed a land contract with his wife Dorothy Nazar to

Florin Duduman on September 30, 2016, but did not indicate that they did so as representatives of the Nazar LLC. Mr. Duduman timely paid property taxes as well as the monthly payments of \$2500 for principle and interest. After receiving notice of receivership, Mr. Duduman paid the payments directly to the Receiver. To remove the cloud from the title, the Receiver filed a motion to determine interests in the real property and also filed in district court to evict Mr. Duduman.

The Court heard oral arguments on April 16, 2018, took the matter under advisement and offered the parties the opportunity to submit supplemental briefs addressing whether law or equity governs the outcome.

II. Arguments

The Receiver argues that the land contract failed to convey any interest in the subject property because Mr. Nazar and Dorothy Nazar did not sign in their capacity as representatives of the Nazar LLC. The Receiver contends that the doctrines of mistake, fraud or scrivener's error do not apply. Further, the Receiver concludes that because the parties neglected to record the land contract, the race notice statute gives the Receiver priority.

Mr. Duduman argues that the Court lacks the authority to determine an interest in real property on a motion. Further, Mr. Duduman contends that the Court should reform the contract on the basis of mistake, fraud, or scrivener's error. Therefore, Mr. Duduman concludes that the Receiver acquired interest in the property subject to his land contract. Mr. Duduman argues that the Receiver misapplies the race notice statute in this case.

III. Law and Analysis

Mr. Duduman, through his attorney, responded to the Receiver's motion by special appearance and disputed the right of the Receiver to have the Court determine an interest in real

property by motion instead of by complaint that named the interested parties. Specifically, Mr. Duduman argues that he should be made a party under MCR 2.205(A) (requiring persons to be made parties where their presence is essential to permit the court to render complete relief) and MCR 3.411. MCR 3.411 applies to actions to determine interest in property under MCL 600.2932, which states:

Any person . . . who claims any right in, title to, equitable title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff. . .

MCL 600.2932(1) emphasis added. While MCL 600.2932 authorizes actions to clear clouded title, Mr. Duduman cites no authority that requires all such determinations to be brought under that provision. The express language of MCL 600.2932(1) uses the permissive terms “may bring,” which implies that the Court may determine property interests in other contexts. While ideally the Receiver should have named Mr. Duduman as a party, the Court has no basis from which to conclude that it lacks the authority to decide the issue here. For the sake of judicial economy, and given that the parties have argued and briefed their positions before the Court, and given that the parties do not argue for further factual development, the Court will address the merits of the Receiver’s motion.

In the present case, the doctrine of *descriptio personae* supports the validity of the land contract conveyance. In reaching this conclusion, the Court relies on *McDonell v Erickson*, unpublished opinion per curiam of the Court of Appeals, issued June 26, 2014 (Docket No. 315343), p 2. Although unpublished, *McDonell* is persuasive and relevant. In *McDonell*, a trustee held an interest in property in his capacity as trustee but not as an individual. *Id.* The Court of Appeals decided that although the deed should have indicated that the trust was conveyed in the capacity of trustee, the lack of proper wording did not nullify the conveyance.

Id. The Court reasoned that “trustee” is not part of the name but merely a *descriptio personae*, or a description of the person. *Id.* citations omitted. Consequently, the omission of the descriptive word to indicate capacity as trustee did not render the conveyance ineffective. *Id.*

Michigan Courts have long recognized the principle of *descriptio personae*—that the description of a role is not essential to a document’s validity. See e.g., *Pungs v Hilgendorf*, 289 Mich 46, 52–53; 286 NW 152 (1939) (Although deed described party as a trustee, yet conveyed to heirs and assigns forever, title conveyed interest individually because the words as trustee were *descriptio personae*); *Levine v Katz*, 293 Mich 493, 498–499; 292 NW 466 (1940) (The word trustee is not part of the name of the creditor but is merely *descriptio personae*). The *Pungs* Court decided that despite a facially limiting descriptor of “trustee,” the conveyance of title was to the party in an individual capacity. *Id.*

The *descriptio personae* doctrine applies here because Mr. Nazar would have had to sign the conveyance in either event—whether he personally conveyed the property or conveyed on behalf of the Nazar LLC. That is, a limited liability corporation is a legal fiction that could sign legal documents only by and through its officers. *Saint Joseph Valley Bank v Napoleon Motors Co*, 230 Mich 498, 501; 202 NW 933 (1925); MCL 450.4406. Therefore, the only distinction between a personal conveyance and a conveyance in the capacity of manager of an LLC is the description of the role that follows the name. Those words, while ideally included, only describe the role of the signor. They do not render the signature invalid. In this case, the failure to include the description of Mr. Nazar reflects an error as there is no evidence of fraud before the Court. As a general proposition, fraud will not be presumed and cannot be lightly inferred. *Goodrich v Waller*, 314 Mich 456, 461; 22 NW2d 862 (1946). The Court has the authority to correct such mistakes. See e.g., *Freybler v Lucas*, 39 Mich App 78, 79; 197 NW2d 284

(1972)(Reforming a mortgage where scrivener failed to include the words “as joint tenants with right of survivorship” since mistake of the scrivener is ground for reformation).

Consequently, the failure to include a phrase indicating that Mr. Nazar signed on behalf of the LLC does not in this case render the conveyance invalid. Mr. Duduman timely made payments under the land contract which Mr. Nazar and later the Receiver accepted. A receiver takes an asset subject to the existing equities between the parties. *Gray v Lincoln Hous Tr*, 229 Mich 441, 446; 201 NW 489 (1924). The receiver’s rights are therefore no greater than the one in whose shoes he stands. *Id.* Therefore, the Receiver takes subject to Mr. Duduman’s land contract.

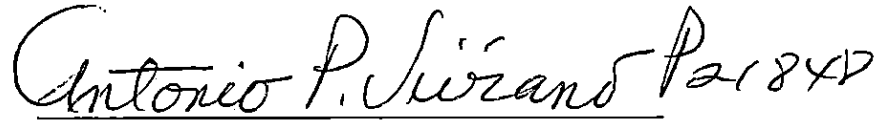
Finally, the Receiver’s reliance on the recording statute in MCL 565.29 is misplaced. The Receiver is not a good faith purchaser for value. Further, the Receiver had constructive notice by virtue of Mr. Duduman’s possession of the property. See, *Kastle v Clemons*, 330 Mich 28, 31; 46 NW2d 450 (1951) (Open, manifest and unequivocal possession of premises constitutes constructive notice). Consequently, the failure to record the land contract does not render it invalid with respect to the contracting parties nor does the race notice statute give the Receiver a superior interest.

For the above stated reasons, the Court concludes that the land contract is a valid conveyance of interest in the subject property.

IV. Conclusion

For the reasons set forth above, the Receiver’s motion is DENIED. Florin Duduman has a valid interest in the subject real property pursuant to land contract. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

Handwritten signature of Antonio P. Viviano in black ink, written in a cursive style. The signature includes the name and the year '2018'.

ANTONIO P. VIVIANO
In Absence of RICHARD L. CARETTI
Circuit Court Judge

Dated: May 7, 2018

cc: Steven A. Roach, Attorney for Plaintiff
Jeffrey Grasl, Attorney for Defendants
John W. Polderman, Attorney for Receiver
John M. Shureb, Attorney for Florin Duduman, Interested Party