

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

TOWN CENTER DEVELOPMENT CO, INC.,

Plaintiff,

vs.

Case No. 2017-3542-CB

PND INVESTMENTS, LLC, WOLVERINE
BUILDING COMPANY, LLC, MIDTOWN
VILLAGE LOFTS, LLC, MBANK, and
WOLVERINE BANCORP, INC,

Consolidated with:
Case No. 2017-2194-CB

Defendants.

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OPINION AND ORDER

Defendant MBank ("MBank") has filed a motion for summary disposition of Plaintiff's claims against it, and for sanctions pursuant to MCR 2.625 and MCR 2.114. Plaintiff has filed a response and requests that the motion be denied.

I. Factual and Procedural History

On September 21, 2107, Plaintiff filed its complaint in this matter ("Complaint") seeking to, among other things, quiet title to a specific parcel of real property. (See Plaintiff's Verified Complaint, ¶¶ 11, 60-82.) Plaintiff claims title to the parcel pursuant to a quit claim deed dated December 4, 2009. (See "12-04-09 Quit Claim Deed", Ex B to Plaintiff's Verified Complaint.)

On September 28, 2016, Bankruptcy Court Judge Walter Shapero entered an order following an evidentiary hearing specifically holding that the 12-04-09 Quit Claim Deed did not transfer the parcel to Plaintiff but rather memorialized a redemption of the parcel by the Debtor, Town Center Flats, LLC ("TCF") thus making it property of TCF's

bankruptcy estate. (See "Bankruptcy Property Order," Exhibit S to Defendants PND Investments, LLC, Wolverine Building Company, LLC and Midtown Village Lofts, LLC's motion for summary disposition.) It is undisputed that Plaintiff participated in the Bankruptcy proceedings.

TCF appealed the Bankruptcy Property Order to the U.S. District Court. The District Court affirmed the Bankruptcy Property Order. (Id. at Exhibit T.) TCF has since appealed that decision to the United States Court of Appeals for the Sixth Circuit which remains pending. Plaintiff did not join the appeal.

On April 27, 2017, the Bankruptcy Court dismissed TCF's bankruptcy case.

On September 21, 2017, Plaintiff filed the Complaint. In the Complaint, Plaintiff asserts various claims based its position that it is the owner of certain real property by operation of the 12-04-09 Quit Claim Deed. On October 2, 2017, Movants filed their motion for summary disposition in lieu of filing an answer. On October 16, 2017, Plaintiff filed its response. On October 19, 2017, Movants filed a reply brief in support of their motion. On October 23, 2017, the Court held a hearing in connection with the motion and took the matter under advisement.

On October 16, 2017, MBank filed its instant motion for summary disposition. On November 6, 2017, Plaintiff filed its response. On November 7, 2017, MBank filed its reply brief. On November 27, 2017, the Court held a hearing in connection with the motion and took the matter under advisement.

On November 28, 2017, the Court issued in Opinion and Order with respect to Movant's motion for summary disposition. Specifically, the Court held that Plaintiff's

claims must be dismissed under the doctrine of collateral estoppel. The Court will now address MBank's motion.

II. Standard of Review

MCR 2.116(C)(7) permits summary disposition where the claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action. In reviewing a motion under MCR 2.116(C)(7), the Court accepts as true the plaintiff's well-pleaded allegations, construing them in the plaintiff's favor. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000). The Court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed or submitted by the parties when determining whether a genuine issue of material fact exists. *Id.* Where a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate. *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 736; 613 NW2d 383 (2000). Where no material facts are in dispute, whether the claim is barred is a question of law. *Id.*

III. Arguments & Analysis

In its motion, MBank adopts the arguments made by Movants in their motion. Further, MBank states that because Plaintiff's claims against it are also based on its claim of ownership under the 12-04-09 Quit Claim Deed, the same collateral estoppel arguments apply to Plaintiff's claims against it. Indeed, Plaintiff's claims against MBank rely on the Court determining that it is owner of the real property at issue. However, for the reasons set forth in November 28, 2017 Opinion and Order, Plaintiff's claims must

be dismissed under the doctrine of collateral estoppel. Accordingly, MBank's motion for summary disposition must be granted.

Finally, MBank has requested sanctions based on its position that Plaintiff's claims were frivolous. However, MBank has failed to establish that Plaintiff's claims were frivolous as a matter of law. As a result, its request will be denied.

Conclusion

Based upon the reasons set forth above, MBank's motion for summary disposition is GRANTED. MBank's request for sanctions is DENIED. This Opinion and Order resolves the last claim and CLOSES this matter. See MCR 2.602(A)(3).

IT IS SO ORDERED.

Date: FEB 08 2018

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge