

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

This matter is before the Court on Defendants PND Investments and Midtown Village Lofts' "Motion to Strike/Discharge Plaintiff's Notice of Lis Pendens."

I. Factual and Procedural History

On September 21, 2017, Plaintiff filed its complaint in this case seeking to, among other things, quiet title to a specific parcel of real property. (Compl, ¶¶ 11, 60-82.) It claimed title to the parcel under a 2009 quit claim deed. (Ex B to Compl.) On November 21, 2017, Plaintiff recorded a notice of lis pendens with the Macomb County Register of Deeds. (Defs' Mtn, Ex A.)

In lieu of an answer, Defendants moved for summary disposition on the ground that collateral estoppel barred Plaintiff's claims because the United States Bankruptcy Court for the Eastern District of Michigan previously ruled that Plaintiff did not own or have a viable interest in the parcel. On November 28, 2017, this Court granted Defendants' motion holding that Plaintiff's claims must be dismissed under the doctrine of collateral

estoppel. The Court of Appeals affirmed this Court's ruling on July 30, 2019, *Town Centers Dev Co, Inc v PND Investments, LLC*, unpublished opinion of the Court of Appeals, (Docket No. 343247), and the Michigan Supreme Court denied Plaintiff's application for leave to appeal on March 27, 2020, *Town Centers Dev Co, Inc v PND Investments, LLC*, 940 NW2d 92. Plaintiff consistently moved for reconsideration in each of the three courts and was been denied in every instance.

On August 11, 2020, Defendants filed the instant motion to discharge Plaintiff's notice of lis pendens. Plaintiff filed a response requesting the motion be denied. The Court held a hearing on August 24, 2020 and took the matter under advisement. Both parties have since filed supplemental briefs.

## II. Arguments & Analysis

Defendants argue the Court has equitable authority to discharge Plaintiff's notice of lis pendens. In response, Plaintiff contends that because the time limit for it to file a Petition for Writ of Certiorari with the United States Supreme Court has not expired, no "final decree" has been issued, so this Court lacks authority to discharge the lis pendens. Plaintiff relies on *Maedel v Wies*, 309 Mich 424; 15 NW2d 692 (1944), where the Court stated, "The notice of lis pendens, once filed, continues in effect during the time allowed for appeal and during consideration by this court of such appeal, and can only be terminated by a final decree." But in *Silberstein v Silberstein*, 252 Mich 192, 194; 233 NW 222 (1930), our Supreme Court held that a technically proper notice of lis pendens which meets all of the statutory requirements could be cancelled on equitable principles if in the discretion of a trial judge the benefits of the notice are far outweighed by the damage it causes. Since *Silberstein*, the Court of Appeals has consistently held that a trial court's

cancellation of a notice of lis pendens is not an abuse of discretion where the plaintiff is unlikely to succeed on the merits of their claims and the presence of the notice of lis pendens harms the defendant. E.g., *Altman v City of Lansing*, 115 Mich App 495, 507; 321 NW2d 707 (1982); *Action Auto, Inc v Anderson*, 165 Mich App 620, 628; 419 NW2d 36 (1988); *Radulovich v City of Grosse Pointe Woods*, unpublished opinion of the Court of Appeals, issued July 27, 2006 (Docket No. 256594), p 7.

Here, Plaintiff has not provided any argument or evidence it has any likelihood of success on the merits of its claim. When questioned by the Court, Plaintiff's counsel couldn't explain what basis Plaintiff would assert in seeking certiorari review by the United States Supreme Court<sup>1</sup> nor could he affirmatively represent that Plaintiff will in fact seek such review. Even if Plaintiff seeks further appellate review by the United States Supreme Court, given that the Michigan state courts have thrice rejected Plaintiff's claims and consistently denied Plaintiff's motions for reconsideration, it is extremely unlikely that the Supreme Court will grant Plaintiff's petition for certiorari or rule in Plaintiff's favor. See Sup Ct R 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.")

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<sup>1</sup> Supreme Court Rule 10 identifies criteria the Court uses in determining whether to grant a petition for writ of certiorari. The two criteria relevant here are

- (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
- (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Defendants, on the other hand, contend that the notice of lis pendens constitutes an on-going harm as it has caused construction at the parcel to cease since the notice was filed in November 2017. (Defs' Supp Br, ¶11.) Indeed, the notice of lis pendens constitutes a cloud on the title of the parcel. *Buckley v Redfield*, unpublished opinion of the Court of Appeals, issued January 28, 2020 (Docket No. 344684), p 5. In light of the on-going harm to Defendants, any benefit Plaintiff may have under the notice of lis pendens is insufficient to warrant the continuation of the notice of lis pendens. Defendants stand to suffer great harm in not being able to improve or dispose of the parcel, and it is extremely unlikely Plaintiff will ever succeed in its claims. Accordingly, the equities support discharging the notice of lis pendens.

#### Conclusion

For the reasons set forth above, Defendants' motion to strike/discharge Plaintiff's Notice of Lis Pendens is GRANTED. Plaintiff must cancel the notice of lis pendens within seven days of entry of this Opinion and Order. This case remains CLOSED. See MCR 2.602(A)(3).

IT IS SO ORDERED.



signed by KATHRYN VIVIANO 10/06/2020 03:26:02 4WQJDbIV

*Kathryn A. Viviano*

Hon. Kathryn A. Viviano, Circuit Court Judge