Court of Appeals, State of Michigan

ORDER

Federal Home Loan Mortgage Corporation v Sabine E Guntzviller

Docket No. 313323

LC No. 12-000568-CH

Cynthia Diane Stephens
Presiding Judge

Henry William Saad

Mark T. Boonstra
Judges

The Court orders that the April 8, 2014 opinion in the above appeal is hereby VACATED, the parties having reached a settlement prior to the issuance of the opinion by the Court.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 15 2014
Date

Chief Clerk

STATE OF MICHIGAN

COURT OF APPEALS

FEDERAL HOME LOAN MORTGAGE CORPORATION, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED April 8, 2014
v	No. 313323 Wayne Circuit Court
SABINE E GUNTZVILLER, Defendant/Counter-Plaintiff-Appellant.	LC No. 12-000568-CH

Before: STEPHENS, P.J., and SAAD and BOONSTRA, JJ.

PER CURIAM.

Defendant/counter-plaintiff ("defendant") appeals as of right the order of the trial court granting summary disposition in favor of plaintiff/counter-defendant ("plaintiff") in this real property dispute. On appeal, defendant argues that the trial court erred in granting equitable relief to plaintiff. We reverse and remand for entry of an order granting summary disposition in defendant's favor.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Defendant and her husband, Dale Guntzviller ("Dale"), purchased the property that is the subject of this dispute in 1990. On the same day they acquired the property, defendant and Dale executed a mortgage encumbering the property. Over the next several years, defendant and Dale executed three additional mortgages. On February 13, 2002, a fifth mortgage was executed (hereinafter "the Mortgage"). This Mortgage was in the amount of $103,000, and was granted in favor of ABN AMRO Mortgage Group, Inc ("ABN AMRO"). The proceeds of the Mortgage were used to refinance two of the prior mortgages. The Mortgage, which was prepared by ABN AMRO,[1] did not contain a prepared signature line for defendant. Rather, it was prepared for signature only by Dale, and defined the term "Borrower" as Dale alone, notwithstanding the fact

[1] The first page of the Mortgage document states that it was prepared by an employee of ABN AMRO.

that in so defining the term, the Mortgage also identified Dale as "A MARRIED MAN." Consequently, only Dale signed the Mortgage; defendant did not initial or sign any page of the Mortgage document, despite being present at the mortgage closing. Defendant did sign two documents, as she was asked to do, at the closing: a settlement statement and a document entitled "Notice of Right of Rescission." Only the settlement statement included a prepared signature line for defendant; the notice form was only prepared for Dale's signature.

Both defendant and Dale signed a sixth mortgage on September 16, 2002. On August 23, 2010, Dale passed away at age 49. At some point in 2010, defendant stopped paying the earlier Mortgage, because "the money wasn't there." Plaintiff, who then held this Mortgage, foreclosed on the property on February 8, 2011. Defendant's attorney responded by mailing a letter to plaintiff's attorneys, in which he indicated that the Mortgage was invalid, as it did not contain defendant's signature. On April 26, 2011, plaintiff set aside the foreclosure. Plaintiff initiated this suit against defendant on January 13, 2012, seeking equitable relief that included a declaration that the Mortgage was valid and encumbered defendant's interest in the property. Defendant answered and filed her own counter-complaint, seeking an order quieting title to the property in her favor. The parties filed competing motions for summary disposition under MCR 2.116(C)(10). At the motion hearing, the trial court stated:

> And I guess we are talking about a large corporation as the plaintiff here, but nonetheless they still are entitled to equity if it is to be found in this particular case.
>
> And this is a real windfall for her if I rule for [defendant]. I mean, this is a real extraordinary lucky result, because of what is clearly in my view a mistake.
>
> And to me, given the history of this case, that is an inequitable result. All of her—all the history supports the notion that failure to have her sign is a simple mistake and within the obviously unique context of this case, and by that I mean the [three] prior mortgages, plaintiff is entitled to the relief requested.

The trial court entered an order granting summary disposition in plaintiff's favor, and affirming the validity of the Mortgage, from which order defendant now appeals.

II. STANDARD OF REVIEW

We review a trial court's grant or denial of summary disposition de novo on appeal. *Walters v Nadell*, 481 Mich 377, 382; 751 NW2d 431 (2008). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). This Court "review[s] a motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Summary disposition "is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.*; see also MCR 2.116(C)(10). "There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Management, LLP*, 481 Mich

419, 425; 751 NW2d 8 (2008). "The moving party has the initial burden of supporting its position with documentary evidence, but once the moving party meets its burden, the burden shifts to the nonmoving party to establish that a genuine issue of disputed fact exists." *Pena v Ingham County Road Comm'n*, 255 Mich App 299, 310; 660 NW2d 351 (2003). This Court may only consider "what was properly presented to the trial court before its decision on the motion." *Id*.

The question of whether equitable relief is proper under the circumstances is also reviewed de novo. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008). Although a trial court's factual findings that form a basis for the grant or denial of equitable relief are usually reviewed for clear error, *id*., the trial court may not make findings of fact or resolve issues of credibility on a motion for summary disposition. *Burkhardt v Bailey*, 260 Mich App 636, 647; 680 NW2d 453 (2004).

III. PLAINTIFF HOLDS AN INTEREST IN THE MORTGAGE

Defendant argues that plaintiff does not have an interest in the Mortgage, and therefore, cannot act to enforce it. We disagree.

Defendant's entire argument on this issue, as stated in her brief on appeal, is as follows:

> The [m]ortgage at issue identifies ABN Amro [sic] as the mortgagee. (Exhibit E). Although [plaintiff] claims that it is the current holder of the [m]ortgage, it did not present any evidence to the trial court of its alleged interest in the [m]ortgage. Accordingly, the trial court erred in determining that [plaintiff] is the current holder of the [m]ortgage.

As an initial matter, this issue is not preserved for appeal. "An issue must have been raised before and addressed and decided by the trial court to be deemed preserved for appellate review." *Lenawee Co v Wagley*, 301 Mich App 134, 164; 836 NW2d 193 (2013). Here, defendant never pursued this issue in the trial court. Defendant's only references to this issue are found in two isolated statements, each of which is found only in a footnote, in two briefs submitted to the trial court. In her trial court briefs, defendant provided no substantive argument discussing this perceived issue. Defendant did not address the issue at the motion hearing, and unsurprisingly, the issue was not addressed or decided by the trial court.

"Issues raised for the first time on appeal are not ordinarily subject to review." *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993); see also *Wiggins v City of Burton*, 291 Mich App 532, 574; 805 NW2d 517 (2011) ("We decline to address this issue for the first time on appeal."). Further, defendant provided only a cursory discussion of the issue in her brief on appeal, and provided no citation to the record or to any type of authority in support of her argument. "'An appellant may not merely announce [her] position and leave it to this Court to discover and rationalize the basis for [her] claims, nor may [she] give only cursory treatment with little or no citation of supporting authority.'" *Bronson Methodist Hosp v Michigan Assigned Claims Facility*, 298 Mich App 192, 199; 826 NW2d 197 (2012). While defendant provided a slightly expanded discussion of the issue in her reply brief,

reply briefs must be confined to rebuttal, and parties may not raise new or additional issues in a reply brief. MCR 7.212(G); see also *Bronson Methodist Hosp*, 298 Mich App at 199.

Even if the issue were properly before this Court,[2] evidence provided to the trial court by defendant herself demonstrates that plaintiff holds the Mortgage. After the foreclosure sale, defendant's attorney composed and mailed a letter informing the recipient that the foreclosure was invalid. The letter is addressed to "Trott & Trott, P.C." Defendant also provided the trial court with an affidavit expunging the foreclosure sale as of April 26, 2011. In this affidavit, the affiant states that she "is employed by Trott & Trott, P.C., attorneys for Federal Home Loan Mortgage Corporation . . . ." Thus, it is clear that defendant understood plaintiff to be the holder of the Mortgage before the instant suit was ever filed and, in fact, looked to plaintiff for relief after the foreclosure took place. Defendant has even provided the factual information she claims is lacking. In the same affidavit, the affiant goes on to state, "Federal Home Loan Corporation . . . is the holder of a mortgage made by Dale Guntzviller, a married man, original mortgagor(s), to ABN AMRO Mortgage Group, Inc., Mortgagee, dated February 13, 2002 . . . ." Based on defendant's own evidence, plaintiff clearly holds the Mortgage. Accordingly, defendant's argument fails.

IV. PLAINTIFF IS NOT ENTITLED TO EQUITABLE RELIEF

The trial court granted plaintiff's motion, finding it was "entitled to the relief requested." On appeal, defendant argues that the trial court erred in concluding that plaintiff was entitled to equitable relief. We agree.

The parties do not dispute that defendant held the property with Dale as a tenancy by the entirety. "In this state, where the common-law rule is unchanged by statute, a conveyance to husband and wife conveys an estate in entirety, but may create one in joint tenancy or in common, if explicitly so stated in the deed." *Hoyt v Winstanley*, 221 Mich 515, 518; 191 NW 213 (1922); see also *Walters v Leech*, 279 Mich App 707, 711; 761 NW2d 143 (2008) ("Our longstanding common law provides that, when a deed is conveyed to a husband and wife, the property is held as a tenancy by the entirety."); *Tamplin v Tamplin*, 163 Mich App 1, 5; 413 NW2d 713 (1987) ("Only where the instrument expressly provides otherwise is an estate other than a tenancy by the entirety created.").[3] Here, defendant and Dale were married at the time they acquired the property. The deed does not state which type of tenancy it intends to create. Accordingly, defendant and Dale held the property as a tenancy by the entirety. *Hoyt*, 221 Mich at 518; *Walters*, 279 Mich App at 711; *Tamplin*, 163 Mich App at 5.

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[2] Although the issue is not preserved, "this Court may review an unpreserved issue if it presents a question of law and all the facts necessary for its resolution are before the Court." *In re Leete Estate*, 290 Mich App 647, 655; 803 NW2d 889 (2010).

[3] Although Michigan law generally construes conveyances of land made to two or more persons as creating a tenancy in common unless otherwise stated in the deed, this rule does not apply when the grantees are married. MCL 554.44; MCL 554.45.

As our Supreme Court explained in *Tkachik v Mandeville*, 487 Mich 38, 46-47; 790 NW2d 260 (2010):

> A tenancy by the entirety is a type of concurrent ownership in real property that is unique to married persons. *Field v Steiner*, 250 Mich 469, 477; 231 NW 109 (1930). In *Long v Earle*, 277 Mich 505, 517; 269 NW 577 (1936), this Court explained that a defining incident of this tenancy under Michigan law is "that one tenant by the entirety has no interest separable from that of the other" and "has nothing to convey or mortgage or to which he alone can attach a lien." Thus, when title to real estate is vested in a husband and wife by the entirety, separate alienation by one spouse only is barred. *Id*. Furthermore, MCL 557.71 states, "a husband and wife shall be equally entitled to the rents, products, income, or profits, and to the control and management of real or personal property held by them as tenants by the entirety."
>
> In addition to these rights, both spouses have a right of survivorship, meaning that, in the event that one spouse dies, the remaining spouse automatically owns the entire property. MCL 700.2901(2)(g); *Rogers v Rogers*, 136 Mich App 125, 134; 356 NW2d 288 (1984).

"Stated more succinctly, when a husband and wife choose to hold property by the entirety, neither spouse may individually convey, encumber, devise, or alienate that property without the consent of the other spouse. Rather, the property is protected from one spouse acting alone to accomplish these types of transactions." *Canjar v Cole*, 283 Mich App 723, 730-731; 770 NW2d 449 (2009). Thus, as defendant held the property with Dale as a tenancy by the entirety, Dale could not single-handedly encumber the property, and without defendant's signature, the Mortgage was invalid. See *Tkachik*, 487 Mich at 46 ("[W]hen title to real estate is vested in a husband and wife by the entirety, separate alienation by one spouse only is barred."); *Canjar*, 283 Mich App at 730-731; see also *Amphlett v Hibbard*, 29 Mich 298, 305 (1874) (A mortgage of a homestead signed only by the husband of a married couple but not by the wife is void); MCL 566.106. Upon Dale's death, defendant became the sole owner of the property, free and clear of this invalid Mortgage, through her right of survivorship. See *Tkachik*, 487 Mich at 46-47.

Plaintiff attempts to avoid this result by invoking four separate equitable doctrines: reformation, equitable mortgage, ratification, and unjust enrichment. We will discuss each doctrine in turn.

A. REFORMATION

Plaintiff first relies on the equitable doctrine of reformation, arguing that the Mortgage must be reformed to include defendant's signature, as doing so would reflect the true intention of the parties. We disagree. This Court discussed the doctrine of reformation in *Casey v Auto-Owners Ins Co*, 273 Mich App 388, 398; 729 NW2d 277 (2006) (quotation marks and citations omitted):

> A court of equity has power to reform the contract to make it conform to the agreement actually made. To obtain reformation, a plaintiff must prove a mutual mistake of fact, or mistake on one side and fraud on the other, by clear and convincing evidence. A unilateral mistake is not sufficient to warrant reformation. A mistake in law—a mistake by one side or the other regarding the legal effect of an agreement—is not a basis for reformation.

Here, plaintiff has not argued that defendant committed any type of fraud; rather, plaintiff only argues that the parties made a mutual mistake. As this Court stated in *Casey*, only a mutual mistake *of fact* is sufficient to warrant reformation; a mistake in law is insufficient to invoke this remedy. *Id*. A "'mutual mistake of fact' is 'an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction.'" *Briggs Tax Service, LLC v Detroit Pub Schools*, 485 Mich 69, 77; 780 NW2d 753 (2010), quoting *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006).

Plaintiff argues that both parties intended for the Mortgage to encumber the entire property, i.e., the entire interest held by Dale and defendant as a tenancy by the entirety. Thus, the failure of ABN AMRO to obtain defendant's signature was, according to plaintiff, a mutual mistake that may be corrected in equity. Plaintiff's argument is flawed for a number of reasons. First, as discussed, the equitable doctrine of reformation is only available where the mistake is a mistake of *fact*, not a mistake of *law*. *Casey*, 273 Mich App at 398. Here, plaintiff has not pointed to any erroneous belief regarding a material fact affecting the substance of the transaction. See *Briggs Tax Service, LLC*, 485 Mich at 77. To the contrary, it is clear from plaintiff's drafting of the Mortgage that it was aware that Dale was "a married man"; it chose nonetheless to draft the Mortgage so as not to require defendant's signature. Its mistake was therefore one of law, not fact, relative to the legal effect of requiring only Dale's signature. Plaintiff endeavors to couch the omission of defendant's signature from the Mortgage as contrary to the parties' supposed mutual intent, and therefore as supposedly one of fact, not law. We disagree, inasmuch as plaintiff has not described an "erroneous belief," nor one that was "shared and relied on by both parties," nor one that relates to "a material fact that affects the substance of the transaction." *Id*. Because the mistake is one of law, not fact, we find that an insufficient basis for reformation. *Casey*, 273 Mich App at 398.

Even if the mistake could be considered a mistake of fact, plaintiff has not presented clear and convincing evidence demonstrating that any mistake was mutual. See *id*. The clear and convincing evidence standard is the most demanding standard applied in civil cases. *In re Martin*, 450 Mich 204, 226-227; 538 NW2d 399 (1995). Clear and convincing evidence is "'evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.'" *Id*. at 227 (quoting *In re Jobes*, 108 NJ 394, 407; 529 A2d 434 (1987)).

Defendant consistently testified at her deposition that she was unaware of what was transpiring at the loan closing, and only signed two documents because she was asked to do so. The Mortgage document not only does not bear contain defendant's signature, but it does not even include a line for her signature. Despite defendant's presence at the closing, plaintiff has presented only two documents containing defendant's signature. Certainly, if defendant had intended to pledge her interest in the property, she could have affixed her signature to the

Mortgage document as well. Although plaintiff cites the fact that defendant previously signed other mortgages encumbering the property, as well as a subsequent mortgage encumbering the property, these instances undermine plaintiff's argument rather than support it, and only further suggest that defendant did not intend to sign this particular Mortgage.

For that matter, plaintiff has also presented little evidence that ABN AMRO intended for defendant to pledge her interest in the Mortgage. The Mortgage document identifies the borrower only as "Dale Guntzviller, a Married Man." Only Dale initialed each page of the Mortgage, and only Dale signed the Mortgage, which, again, was prepared by ABN AMRO. Indeed, only one signature line was prepared on the Mortgage; there was simply no place prepared for defendant to sign. Although defendant did sign the notice of right to rescission form, this document also contained no prepared signature line for defendant, despite having one prepared for Dale's signature. Only one document has been provided by plaintiff that could be construed as evidencing any clear intention that defendant be a party to the transaction, that being the settlement statement, which included a line for defendant's signature and identified her as a borrower.[4] However, given that the Mortgage clearly lists the only borrower as Dale and only asked for his signature, plaintiff has not presented clear and convincing evidence that even ABN AMRO intended for defendant to be a party to the transaction.

In sum, the Mortgage cannot be reformed because the mistake it alleges is a mistake of law, not a mistake of fact. Further, plaintiff has not provided clear and convincing evidence that either party to the Mortgage intended that defendant sign the Mortgage and pledge her interest in the property. Thus, were we to accept that the mistake made was a mistake of fact, considering the whole record, such a mistake would be a unilateral one on the part of ABN AMRO. Despite knowing that Dale was a married man, as evidenced by the Mortgage document stating such, ABN AMRO failed to prepare the document for joint signatures, and failed to obtain defendant's signature, even though she was present at the loan closing and apparently willing to sign whatever documents she was asked to sign. This "unilateral mistake is not sufficient to warrant reformation." *Casey*, 273 Mich App at 398.

2. EQUITABLE MORTGAGE

Plaintiff next argues that it is entitled to an equitable mortgage on the property. We disagree.

[4] The settlement statement appears to have been prepared by the settlement agent, Klear Title, although no signature appears in the prepared signature line for an agent of Klear Title. The Notice of Rescission also does not expressly indicate who prepared the document, but states "If you decide to cancel this transaction, you may do so by notifying us in writing," followed by the name and address of Klear Title. The record thus suggests that Klear Title may have recognized the desirability of having both spouses sign closing documents, notwithstanding ABN AMRO's apparent failure to appreciate the legal consequence of requiring only one spouse's signature on a Mortgage.

"[E]quitable mortgages are generally found when what appears to be an absolute conveyance on its face was actually intended as a mortgage." *Burkhardt*, 260 Mich App at 659. However, the doctrine has also been invoked to save a defective mortgage. See *Schram v Burt*, 111 F2d 557, 561-562 (CA 6, 1940) (equitable mortgage granted where the mortgage was invalid; the husband signed his wife's name to the mortgage document). "[E]quity will create a lien only in those cases where the party entitled thereto has been prevented by fraud, accident, or mistake from securing that to which he was equitably entitled." *Eastbrook Homes, Inc v Treasury Dep't*, 296 Mich App 336, 352-353; 820 NW2d 242 (2012).

This Court entertained, and ultimately rejected, a lender's attempt to invoke the equitable mortgage doctrine on similar facts in *Townsend v Chase Manhattan Mortgage Corp*, 254 Mich App 133, 138-139; 657 NW2d 741 (2002). In *Townsend*, the plaintiff purchased property with his mother, and the two took the property as joint tenants with rights of survivorship. *Townsend*, 254 Mich App at 134. However, only the plaintiff's mother was a party to a mortgage on the property, executed the same day the two acquired title to the land. *Id*. The plaintiff's mother passed away approximately five years later. *Id*. The plaintiff stopped paying the mortgage, and the defendant, who then held the mortgage, foreclosed the mortgage and conducted a foreclosure sale. *Id*. The plaintiff filed suit, seeking to have the foreclosure sale set aside. *Id*. The defendant claimed it was entitled to an equitable mortgage, citing, as does plaintiff here, *Schram*, 111 F2d 557.

In *Schram*, the court granted an equitable mortgage where the defendant wife had never signed the mortgage at issue, but her husband had signed her name to the mortgage. *Schram*, 111 F2d at 562; see also *Townsend*, 254 Mich App at 138. This relief was appropriate because the husband had acted as his wife's agent in signing the mortgage, and because the bank had no reason to believe that the husband was not authorized to sign the mortgage on his wife's behalf. *Schram*, 111 F2d at 562, 564. In discussing *Schram*, the *Townsend* Court emphasized that the *Schram* decision was based upon a finding of agency. *Townsend*, 254 Mich App at 138-139. Here, plaintiff makes no argument, and the record does not support the conclusion, that Dale acted as defendant's agent. As was the case in *Townsend*, "the mortgage company had no reason to believe that [defendant] had executed the mortgage." *Id*. at 139. There is no evidence that ABN AMRO was in any way prevented from securing defendant's signature on the Mortgage; rather, defendant's existence was known, as evidenced by the Mortgage's description of Dale as a married man, defendant's presence at the Mortgage closing, and her apparently willingness to sign what she was asked to sign. As this Court has previously stated:

> The only equity that [plaintiff] seeks to have done here is to save [plaintiff] from the mistake of the original mortgagee in not insisting that [defendant] pledge [her] interest in the property to secure the loan, a mistake that [plaintiff] could easily have discovered by comparing the names on the deed with the names on the mortgage before it purchased the mortgage. We think it insufficient to invoke equity to save the mortgagee from its own mistake, particularly where the mortgagee is a sophisticated commercial lender. [*Townsend*, 254 Mich App at 139-140.]

In further support of its argument that it is entitled to an equitable mortgage, plaintiff cites to our Supreme Court's decision in *Richardson v Richardson*, 266 Mich 194; 253 NW 265

(1934). In *Richardson*, the plaintiff sought to cancel a deed she executed conveying her property for no consideration "because of misrepresentations of her son, she at the time believ[ing] it was a paper having something to do with the guardianship of her minor children." *Richardson*, 266 Mich at 196. The trial court found the deed invalid, and a mortgage, executed by the grantees of the deed in the amount of $4,000, was deemed invalid as well. *Id*. at 195-196. Our Supreme Court reversed in part, holding that the plaintiff was not entitled to cancellation, as she benefitted from the mortgage, having herself used the mortgage proceeds to repay a number of debts related to the property. *Id*. at 197-198.

Richardson is distinguishable for at least two reasons. First, in *Richardson*, it was the property owner, not the lender, seeking an equitable remedy. *Id*. at 195. Our Supreme Court deemed that equity was *not* available to the property owner because she benefitted from the mortgage proceeds. *Id*. at 197. It does not necessarily follow, as plaintiff seems to assume, that a lender would be affirmatively *entitled* to equitable relief on the same facts. Second, there is simply no discussion of an equitable mortgage in *Richardson*; rather, the Court's focus was entirely on whether the property owner was entitled to her own equitable remedy of cancellation. *Id*. at 196-198. *Richardson* does not compel a different result in the instant case. Plaintiff is not entitled to an equitable mortgage.

3. RATIFICATION

Plaintiff's third argument is that it is entitled to enforce the Mortgage against defendant because defendant, by paying the Mortgage and otherwise failing to object to its existence, ratified the Mortgage in regard to her own interest in the property. Plaintiff argues that, because defendant ratified the Mortgage, defendant is estopped from challenging the validity of the Mortgage. We disagree.

Contracts that are void may not be ratified. *Utica State Sav Bank v Village of Oak Park*, 279 Mich 568, 579; 273 NW 271 (1937). As discussed above, because the property was owned by defendant and Dale as a tenancy by the entirety, the Mortgage was void without defendant's signature. See *Tkachik*, 487 Mich at 46 ("[W]hen title to real estate is vested in a husband and wife by the entirety, separate alienation by one spouse only is barred."); *Canjar*, 283 Mich App at 730-731. Accordingly, regardless of defendant's conduct, she could not ratify the Mortgage. *Utica State Sav Bank*, 279 Mich at 579.

Plaintiff cites *Tacey v State Bank of Linwood*, 242 Mich 258; 218 NW 676 (1928), as support for its position. However, *Tacey* is distinguishable. In *Tacey*, the plaintiffs sought relief on the basis of an alleged fraud. *Id*. at 260. If present, fraud makes a contract *voidable* by the innocent party. *Barclae v Zarb*, 300 Mich App 455, 480; 834 NW2d 100 (2013). Here, because defendant and Dale owned the property as a tenancy by the entirety, Dale's attempted conveyance was not merely voidable, but void, and thus entirely invalid. See *Tkachik*, 487 Mich at 46; *Amphlett*, 29 Mich at 305. Because the Mortgage was void at its inception, defendant could not later ratify the Mortgage. *Utica State Sav Bank*, 279 Mich at 579. Accordingly, plaintiff is not entitled to equitable relief under a theory of ratification.

4. UNJUST ENRICHMENT

As a final argument, plaintiff asserts that, at a minimum, it is "entitled to have a contract implied and to have an [o]rder subordinating [defendant's] interest in the [p]roperty to the encumbrance of the Mortgage." This is so, plaintiff argues, because to hold otherwise would unjustly enrich defendant. We disagree.

"Unjust enrichment is defined as the unjust retention of money or benefits which in justice and equity belong to another." *Tkachik*, 487 Mich at 47-48 (quotation marks and citation omitted). "[T]he law will imply a contract to prevent unjust enrichment only if the defendant has been unjustly or inequitably enriched at the plaintiff's expense." *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006). To sustain such a claim, plaintiff must demonstrate two elements: (1) defendant received a benefit from plaintiff; and (2) an inequity will result to plaintiff if defendant is allowed to retain the benefit. *Id*. "[N]ot all enrichment is necessarily unjust in nature." *Id*. at 196. One is not unjustly enriched solely because he or she receives a benefit from a contract to which he or she is not a party. *Id*.

Here, it is clear that defendant has been enriched through the Mortgage, as the Mortgage proceeds were used to discharge two prior, valid mortgages. However, it does not necessarily follow that this enrichment is also unjust. *Morris Pumps*, 273 Mich App at 196. Plaintiff presented no evidence that defendant requested this benefit or misled anyone in order to acquire the benefit. In fact, despite its knowledge that Dale was married, ABN AMRO only listed Dale as a borrower, and although defendant was present at the loan closing, ABN AMRO never asked for her signature, or even her initials, anywhere in the entire Mortgage document. Plaintiff later acquired the Mortgage, but apparently did not undertake a sufficient investigation to determine whether the Mortgage fully encumbered the property, despite the Mortgage's acknowledgement that Dale was married, and the existence of a deed carrying defendant's name. In these circumstances, any enrichment conferred upon defendant was not unjust; rather, it was ABN AMRO's initial mistake, one compounded by plaintiff's subsequent failure to investigate, that resulted in defendant's enrichment. Accordingly, plaintiff is not entitled to relief under a theory of unjust enrichment. *Morris Pumps*, 273 Mich App at 195.

IV. CONCLUSION

In sum, although plaintiff held the Mortgage, plaintiff is not entitled to equitable relief on any of the grounds it presented to the trial court. Because the Mortgage was invalid, it does not encumber the property, and defendant, through her right of survivorship, became the sole owner of the property upon Dale's death.

We reverse the order of the trial court and remand for entry of an order granting summary disposition and quieting title in defendant's favor. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens
/s/ Henry William Saad
/s/ Mark T. Boonstra