2013 IL App (1st) 112064-U

SECOND DIVISION
November 5, 2013

No. 1-11-2064

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

B&C REALTY OF ILLINOIS, LLC, Plaintiff-Appellee and Cross-Appellant, v. CHICAGO STAND-UP MRI, LLC, DR. RONALD MICHAEL, and TIMOTHY B. WATTERS, Defendants-Appellants,	)	Appeal from the Circuit Court of Cook County No. 07 CH 18667
DR. RONALD MICHAEL and CHICAGO STAND-UP MRI, LLC, Counterplaintiffs-Appellants and Cross-Appellees, v. B&C REALTY OF ILLINOIS, LLC, Counterdefendant-Appellee and Cross-Appellant,	)	Honorable Stuart Palmer Judge Presiding.
CHICAGO STAND-UP MRI, LLC, and DR. RONALD MICHAEL, Third-Party Plaintiffs-Appellants and Cross-Appellees, v. STAND-UP MRI OF DEERFIELD, LLC, d/b/a STAND-UP MRI OF DEERFIELD, d/b/a UPRIGHT MRI OF DEERFIELD, LLC, d/b/a DEERFIELD STAND-UP MRI, TIMOTHY WATTERS, RICHARD DAY, CHARLES STEWART, WILLIAM HIELSCHER, DR. MICHAEL FOX, WILLIAM LEWKE, and TICOR TITLE INSURANCE COMPANY, Third-Party Defendants-Appellees.	)	

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Quinn and Justice Harris concurred in the judgment.

O R D E R

¶ 1 *HELD*: The court did not err by declaring that title to the property was vested in B&C Realty of Illinois, LLC, and quieting title in its favor because the sale of the property was valid pursuant to section 13-5(c) of the Illinois Limited Liability Company Act, as the articles of organization of Chicago Stand-Up MRI, LLC, did not limit either co-manager's authority to sign and deliver an instrument transferring the LLC's interest in property and B&C gave value for the property without knowledge of the co-manager's alleged lack of authority to convey the property. The court did not abuse its discretion by barring the testimony of an expert witness of Chicago Stand-Up because the court did not improperly take judicial notice of the standard procedures followed at a real estate closing in reaching its decision and the proposed testimony amounted to legal conclusions that would not have helped the court understand the evidence. The court did not err by denying B&C's petition for attorney fees and costs because the prevailing party in a quiet title action is not entitled to recover attorney fees.

¶ 2 Defendant, Chicago Stand-Up MRI, LLC (Chicago Stand-Up), appeals from orders of the circuit court of Cook County declaring that title to the property at issue was vested in plaintiff, B&C Realty of Illinois, LLC (B&C); quieting title in favor of B&C; granting judgment in favor of B&C and third-party defendants, Stand-Up MRI of Deerfield, LLC (Deerfield Stand-Up), Dr. Michael Fox, Charles Stewart, Richard Day, William Hielscher, William Lewke, and Ticor Title Insurance Company (Ticor), on Chicago Stand-Up's counterclaims for declaratory judgment and ejectment; and granting summary judgment in favor of B&C and all third-party defendants on Chicago Stand-Up's remaining counterclaims. B&C cross-appeals from an order of the court denying its petition for attorney fees and costs. On appeal, Chicago Stand-Up contends that the court erred by determining that title to the property was vested in B&C pursuant to section 13-5(c) of the Illinois Limited Liability Company Act (Act) (805 ILCS 180/13-5(c) (West 2006)), that the court's finding that B&C did not know that the co-manager of Chicago Stand-Up who signed and delivered the warranty deed did not have authority to convey the property was against

the manifest weight of the evidence, that the court abused its discretion by barring the testimony of a proposed expert witness, that the court erred by determining that some of Chicago Stand-Up's counterclaims were barred by the doctrine of laches, and that this court should vacate the entry of summary judgment on Chicago Stand-Up's remaining counterclaims. On cross-appeal, B&C contends that the court erred by denying its petition for attorney fees and costs because it was entitled to recover attorney fees as the prevailing party in an action to quiet title. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On July 16, 2007, B&C filed a complaint for a declaratory judgment and to quiet title against Chicago Stand-Up, Dr. Ronald Michael, and Timothy Watters. B&C asserted that on March 2, 2007, it purchased a condominium unit from Chicago Stand-Up for $420,000 and that the property was conveyed by a warranty deed signed by Watters in his capacity as a manager of Chicago Stand-Up. B&C also asserted that Dr. Michael, the other manager of Chicago Stand-Up, subsequently claimed that Watters did not have authority to convey the property without his consent, thereby clouding the title to the property. B&C maintained that it had no knowledge of any limitation on Watters' authority to sign and deliver the warranty deed on behalf of Chicago Stand-Up, that the consent of both managers was not necessary to convey the property, and that Chicago Stand-Up represented that Watters had authority to convey the property by allowing him to execute the deed on its behalf and providing a resolution of its members at the closing. B&C requested that the court enter a judgment declaring that title to the property was vested in B&C and that Chicago Stand-Up, Dr. Michael, and Watters no longer had any interest in the property

and enter a judgment quieting title in its favor free and clear of any claims or interests of Chicago Stand-Up, Dr. Michael, and Watters.

¶ 5 On December 21, 2007, Chicago Stand-Up and Dr. Michael filed a complaint alleging various counterclaims challenging the validity of the conveyance of the property and later filed a third amended complaint against B&C, as a counterdefendant, and Deerfield Stand-Up, Dr. Fox, Stewart, Day, Hielscher, Lewke, and Ticor as third-party defendants. In the amended complaint, Chicago Stand-Up and Dr. Michael sought declaratory judgment and alleged counterclaims of conversion, conspiracy to commit conversion, conspiracy to commit theft, and conspiracy to commit forgery against all parties and set forth an action for ejectment against B&C, Dr. Fox, Lewke, Stewart, and Day.

¶ 6 Chicago Stand-Up and Dr. Michael asserted that Dr. Fox, Lewke, Stewart, and Day were owners of Deerfield Stand-Up, a stand-up MRI facility in Deerfield, Illinois, that Dr. Fox and Lewke created B&C on March 1, 2007, and that Hielscher, an attorney, represented B&C at the closing on the property at issue. Chicago Stand-Up and Dr. Michael also asserted that Chicago Stand-Up's operating agreement provided that certain actions, including the sale, exchange, or disposal of all, or substantially all, of its assets, could not be undertaken without the written consent of all managers and that the property at issue represented substantially all of Chicago Stand-Up's assets. Chicago Stand-Up and Dr. Michael further asserted that Dr. Fox, Lewke, Day, Hielscher, and Stewart knew that Dr. Michael was a co-manager of Chicago Stand-Up and that Watters did not have the authority to unilaterally sell the property.

¶ 7 Prior to trial, B&C and all third-party defendants filed a motion to bar the expert opinion

testimony of John Clavio, an attorney, as inadmissible legal opinion testimony and asserted that Clavio was expected to testify that Watters did not have authority to convey the property; that all parties to the transaction knew or should have known that Watters did not have authority to convey the property; that B&C was not entitled to retain ownership of the property; that B&C, Hielscher, and Watters engaged in collusion and fraud; and that Hielscher committed fraud and professional misconduct by concealing the interests of Chicago Stand-Up and Dr. Michael. The court granted the motion, finding that Clavio's testimony would not be helpful in understanding the evidence presented at trial.

¶ 8 The court then conducted a bench trial on B&C's claims for declaratory judgment and to quiet title and the counterclaims for declaratory relief and ejectment filed by Chicago Stand-Up and Dr. Michael. The evidence presented at trial showed that Chicago Stand-Up was formed on August 23, 2002, to develop, own, and operate a stand-up MRI facility in Chicago and that it purchased the property on May 16, 2003, for $379,000 and then bought five associated parking spaces for $20,000 each. Day, Lewke, Stewart, and Dr. Fox were investors in Deerfield Stand-Up, which operated a stand-up MRI facility in Deerfield, and Lewke, Stewart, and Dr. Fox were all investors in B&C, which was formed on March 1, 2007, for the purpose of taking title to the property. The property was conveyed to B&C on March 2, 2007, by warranty deed in exchange for $420,000.

¶ 9 Watters testified that he was an employee of Chicago Stand-Up and, in addition, he and Dr. Michael were co-managers of Chicago Stand-Up. Watters was employed by Chicago Stand-Up, beginning on September 1, 2002, pursuant to a written employment agreement and took the

title of operating manager, received a monthly salary of $10,000, and was in charge of the build-out process necessary to develop the property as a stand-up MRI facility. Chicago Stand-Up ran out of funds in April 2005, at which time the build-out process was incomplete and money was owed to various contractors. Watters stopped receiving his monthly salary at this time and, on November 8, 2005, he received a letter from Dr. Michael purporting to terminate his employment with Chicago Stand-Up "for cause." Watters' status as a co-manager was not affected by the termination letter.

¶ 10 Watters also testified that he sold two parking spaces in June 2006 and then sold the other three in October 2006 to generate funds to pay some of Chicago Stand-Up's financial obligations. Dr. Michael was not involved in the parking space sales, did not attend the closings, and did not object to the sales or attempt to stop them. Watters sent Dr. Michael numerous e-mails between July 31 and August 9, 2006, in which he indicated that it might become necessary to sell Chicago Stand-Up and its assets to avoid bankruptcy, that he would take action to avoid bankruptcy, and that potential buyers were expressing interest in Chicago Stand-Up. In January 2007, Watters showed the property to Day, Lewke, and Dr. Fox, told them that Dr. Michael was a co-manager and investor, and did not indicate that he needed Dr. Michael's consent to sell the property. On February 27, 2007, Watters, Day, Dr. Fox, and Lewke met in Deerfield and agreed to the price of $420,000 for the property.

¶ 11 Watters further testified that the closing date was set for March 2, 2007, because Chicago Stand-Up needed money quickly to meet its financial obligations. Prior to the closing, Stewart called Watters and asked if he could provide clear title to the property. Watters responded that

while it was Ticor's responsibility to provide clear title, he had every indication that the buyers would receive clear title because Ticor had already performed the closings on the parking spaces and he had provided Ticor with Chicago Stand-Up's corporate documents in connection with the sales of the parking spaces. The closing was conducted without any problems or delays, and Watters used a portion of the funds received from the sale of the property to reimburse himself for unpaid salary and expenditures he personally made on behalf of Chicago Stand-Up. Upon the conclusion of the closing, Watters signed a resolution of members at the direction of Hielscher, who said that he needed the document for B&C's file. Watters testified that Chicago Stand-Up's members did not pass a resolution to sell the property and that he did not believe he needed such a resolution to sell the property.

¶ 12 Dr. Michael testified that Chicago Stand-Up was a manager-managed LLC, that he and Watters were co-managers, and that he was the medical manager and Watters was the operating manager. By January 2005, the relationship between Dr. Michael and Watters had soured and, over the course of 2005, they became involved in various lawsuits against each other and with one of the investors of Chicago Stand-Up. In November 2005, Dr. Michael terminated Watters' employment, but did not remove him as co-manager. Around this time, Dr. Michael and Watters reached an agreement whereby Watters was left without authority to take any actions on behalf of Chicago Stand-Up, but this agreement was never memorialized or communicated to anyone else. Dr. Michael received the e-mails sent by Watters in late July and early August 2006 regarding his concern that he may need to sell Chicago Stand-Up's assets, but did not respond to them. On March 2, 2007, Dr. Michael sent a letter to Watters demanding that Chicago Stand-Up indemnify

and reimburse him for legal fees incurred in a prior lawsuit totaling $210,586.52. Dr. Michael learned of the sale of the property on April 4, 2007, and engaged in negotiations with B&C on behalf of Chicago Stand-Up regarding the possible return of the property or other compensation before filing a complaint in this matter on December 21, 2007. Dr. Michael further testified that he had not resigned as co-manager of Chicago Stand-Up or abandoned that position and that he never provided Watters with the authority to sell the property at issue.

¶ 13 Day testified that he first met Watters in November 2004 and subsequently learned from Watters that he was struggling to raise money for Chicago Stand-Up and was having trouble with one of the investors, who was eventually identified as Dr. Michael. Watters made various offers to sell the property, but Day declined each offer. Day, Lewke, and Dr. Fox visited the property in January 2007 after Watters had lowered the asking price to $420,000. On cross-examination, Day stated that he thought Watters was the sole manager of Chicago Stand-Up and Dr. Michael was the principal investor.

¶ 14 Dr. Fox testified that he first learned of the property from Day in January 2007 and visited it later that month. It was clear to Dr. Fox that the property was not ready to be used as a stand-up MRI facility and that substantial work was required. Dr. Fox believed that Watters was the operating manager of Chicago Stand-Up and that he was selling the property to clear Chicago Stand-Up's debts and had the authority to sell it. During the visit, Watters said that Dr. Michael was an investor in Chicago Stand-Up and that he had abandoned the project. An agreement to purchase the property for $420,000 was reached at a meeting on February 27, 2007, at which time Watters produced a copy of an e-mail from a title officer at Ticor which related that Ticor

had Chicago Stand-Up's corporate documents from the prior closings on the parking spaces and that "everything looks good from our end." Following the closing, Deerfield Stand-Up expended hundreds of thousands of dollars to develop the property as a stand-up MRI facility.

¶ 15 Lewke testified that he noticed during the January 2007 visit to the property that the mail at the property was addressed to Watters as the operating manager of Chicago Stand-Up and that he believed Watters was the operating manager of Chicago Stand-Up based on his knowledge of the business. During the visit, Watters described Dr. Michael as "a difficult investor" and said that Chicago Stand-Up was selling the property to cover its debts. Watters also mentioned his prior sale of the parking spaces, and Lewke took that as an indication that he had the authority to sell the property. In March 2007, the B&C investors created Upright MRI of Chicago to operate a stand-up MRI facility at the property.

¶ 16 Stewart testified that, prior to the closing, he asked Watters if he had authority to sell the property, and Watters responded that he had already completed three transactions regarding parking spaces connected to the property. Stewart testified that Watters' statement regarding the parking spaces "was proof to me that he had – that he had the ability to sell the building."

¶ 17 Dawn Stanley, an escrow closer for Ticor, testified that Hielscher represented B&C at the closing and Watters represented Chicago Stand-Up. Watters did not bring Chicago Stand-Up's letters of office or articles of organization to the closing and Stanley went to her underwriter's office with Watters and Hielscher to determine if the closing could proceed. Stanley was then instructed to proceed with the closing.

¶ 18 Hielscher, a real estate attorney who also worked as a title agent for Ticor, testified that

he received a copy of the title commitment at the closing and that he prepared a resolution of Chicago Stand-Up's members "to represent to the title company that [Watters] had the authority to consummate the transaction," which was then signed by Watters. On cross-examination, Hielscher denied that Stanley indicated during the closing that any documents were missing or that he left the closing with Stanley and Watters to meet with Ticor's underwriters. Hielscher also stated that he prepared the resolution of members which Watters signed at the closing and that while he assumed the members had resolved to sell the property, he did not actually know if such an agreement had been reached.

¶ 19 On June 28, 2010, the circuit court entered an order declaring that title to the property was vested in B&C as of March 2, 2007, and quieting title in favor of B&C free and clear of any claims or interests of Chicago Stand-Up and Dr. Michael. The court also granted judgment in favor of B&C and the third-party defendants on the counterclaims for declaratory judgment and ejectment alleged by Chicago Stand-Up and Dr. Michael. In doing so, the court determined that the sale of the property was valid pursuant to section 13-5(c) of the Act because Chicago Stand-Up was a manager-managed LLC and its articles of organization did not limit Watters' authority to convey property on its behalf and found that B&C's representatives reasonably believed that Watters had authority to convey the property because Watters represented that he had such authority and never indicated that he needed Dr. Michael's permission to sell the property. The court also determined that the counterclaims alleged by Chicago Stand-Up and Dr. Michael were barred by the doctrine of laches because they did not bring their claims until eight months after Dr. Michael learned of the sale and, during that time, B&C had spent substantial time and money

preparing the property for its use as a stand-up MRI facility.

¶ 20 The court subsequently entered summary judgment against Chicago Stand-Up and Dr. Michael on their remaining counterclaims, finding that the tort of conversion did not apply to real property and there was no evidence that the parties entered into an agreement to commit theft or forgery. B&C then filed a petition to recover attorney fees and costs, asserting that it was entitled to recovery because it was the prevailing party in an action to quiet title. The court denied the petition, finding that the prevailing party in a quiet title action is not entitled to recover attorney fees.

¶ 21 ANALYSIS

¶ 22 Chicago Stand-Up contends that the court erred by determining that Watters had authority to convey the property pursuant to section 13-5(c) of the Act. Issues of statutory interpretation present questions of law and are reviewed *de novo*. *Krautsack v. Anderson*, 223 Ill. 2d 541, 553 (2006).

¶ 23 Section 13-5(c) of the Act provides that any manager of a manager-managed LLC "may sign and deliver any instrument transferring or affecting the company's interest in real property" unless the manager's authority is limited by the articles of organization. 805 ILCS 180/13-5(c) (West 2006). Chicago Stand-Up asserts that Watters did not have authority to convey property pursuant to section 13-5(c) because his authority was limited by Chicago Stand-Up's articles of organization. While the articles of organization provided that Chicago Stand-Up was a manager-managed LLC and was co-managed by Watters and Dr. Michael, the articles did not contain any limitation on the authority of either manager to sign and deliver an instrument transferring or

affecting Chicago Stand-Up's interest in real property. In fact, section 9.3(a) of Chicago Stand-Up's operating agreement provides that any manager may execute or deliver any document or instrument purporting to convey any or all of Chicago Stand-Up's assets. Accordingly, Watters, as a manager of Chicago Stand-Up, had authority to sign and deliver an instrument transferring Chicago Stand-Up's interest in property pursuant to section 13-5(c).

¶ 24 Chicago Stand-Up also asserts that Watters' authority was limited by the Act because section 15-1(b)(2) (805 ILCS 180/15-1(b)(2) (West 2006)) provides that, where the LLC has more than one manager, any matter relating to the business of the LLC may be decided by a majority of the managers, and section 15-1(c)(11) (805 ILCS 180/15-1(c)(11) (West 2006)) provides that the consent of all the members of a LLC is required to sell all, or substantially all, of the LLC's property. We also note that section 9.1 of the operating agreement provides that "the Manager may make all decisions and take all actions for the Company (which action may be taken without a meeting by written consent of the Manager, or if more than one Manager, by a consent signed by all of such Managers)," including the sale, exchange, or disposal of all, or substantially all, of the LLC's assets. As the Act requires the consent of all members to sell substantially all of a LLC's property, the operating agreement requires the written consent of both managers to sell substantially all of Chicago Stand-Up's property without such a meeting, and the record shows that the property at issue constituted substantially all of Chicago Stand-Up's assets, Watters was required to either obtain the consent of all of Chicago Stand-Up's members or the written consent of Dr. Michael to sell the property.

¶ 25 While the record shows that Watters did not obtain the consent of the members or Dr.

Michael prior to selling the property, section 13-5(c) provides that, to the extent a manager signs and delivers an instrument transferring the company's interest in real estate without having the authority to do so, the instrument is conclusive in favor of a person who gives value without knowledge of the manager's lack of authority. 805 ILCS 180/13-5(c) (West 2006). In this case, the circuit court found that the representatives of B&C did not have any knowledge of Watters' lack of authority to sell the property and reasonably believed that Watters' could sell the property because Watters represented that he had such authority and never indicated that he needed Dr. Michael's permission to sell the property. As such, we will now consider whether that finding was against the manifest weight of the evidence.

¶ 26 A court's decision is against the manifest weight of the evidence "only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on the evidence." *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 70. In this case, Day testified that he believed Watters was the sole manager of Chicago Stand-Up, Dr. Fox and Lewke testified that they believed Watters was the operating manager, and Lewke testified that the mail at the property was addressed to Watters as the operating manager. Dr. Fox testified that Watters said that Dr. Michael was an investor who had abandoned the project and Lewke testified that Watters said that Dr. Michael was "a difficult investor." While Watters testified that he told Day, Lewke, and Dr. Fox that Dr. Michael was a co-manager and investor, he also testified that he did not tell them that he needed Dr. Michael's consent to sell the property. B&C also presented evidence showing that Watters told Lewke and Stewart that he had already sold the parking spaces on Chicago Stand-Up's behalf and that they took those statements as proof that Watters

had the authority to sell the property. In addition, prior to the closing, Watters produced a copy of an e-mail from a title officer at Ticor relating that Ticor had Chicago Stand-Up's corporate documents from the prior closings on the parking spaces and that "everything looks good from our end." Also, while Watters did not obtain the consent of all of Chicago Stand-Up's members prior to the closing, Hielscher testified that he assumed that the members had resolved to sell the property and the record shows that Watters confirmed that assumption at the conclusion of the closing by signing the resolution of members Hielscher had prepared.

¶ 27 Accordingly, the circuit court's finding that B&C's representatives reasonably believed that Watters had the authority to sell the property is based on the evidence presented at trial and is not against the manifest weight of the evidence. As such, the court did not err in determining that the sale of the property was valid because, pursuant to section 13-5(c) of the Act, Watters, as a co-manager of Chicago Stand-Up, had authority to sign and deliver an instrument transferring Chicago Stand-Up's interest in property and, in any event, the warranty deed signed and delivered by Watters is conclusive in favor of B&C because B&C gave value in exchange for the property without knowledge of Watters' lack of authority to sell the property.

¶ 28 While Chicago Stand-Up contends that the circuit court erred by determining that its counterclaims for declaratory relief and ejectment were barred by the doctrine of laches, we need not consider that claim as we have already concluded that the court did not err by quieting title in favor of B&C. To the extent Chicago Stand-Up contends that this court should vacate the circuit court's grant of summary judgment on its remaining counterclaims in the event we reverse the circuit court's order declaring title to the property to be vested in B&C and quieting title in B&C's

favor, we need not consider that claim as we have already concluded that the circuit court did not err by entering that order.

¶ 29 Chicago Stand-Up also contends that the court abused its discretion by barring the expert opinion testimony of John Clavio, an attorney. The decision to admit or bar expert testimony lies within the sound discretion of the circuit court and will not be reversed absent an abuse of that discretion. *Snelson v. Kamm*, 204 Ill. 2d 1, 24 (2003). A person will be allowed to testify as an expert if the proposed expert has specialized knowledge that will aid the trier of fact in reaching its conclusions. *Thompson v. Gordon*, 221 Ill. 2d 414, 428 (2006). However, an expert will not be allowed to infringe upon the duties of the trier of fact by testifying as to legal conclusions that will determine the outcome of the case. *Todd W. Musburger, Ltd. v. Meier*, 394 Ill. App. 3d 781, 800 (2009).

¶ 30 Chicago Stand-Up asserts that the court improperly took judicial notice of the standard procedures followed at a closing when it stated during the hearing on the motion to bar Clavio's testimony that "in order for me to allow an expert witness to testify, I should be saying well, I need an expert to come in here and tell me something that's beyond my knowledge." The court, however, was merely restating the proper standard for determining whether a person will be allowed to testify as an expert, and was not taking judicial notice of anything.

¶ 31 Chicago Stand-Up also asserts that the court abused its discretion by barring Clavio's testimony because it deprived Chicago Stand-Up of the ability to prove that B&C had knowledge of Watters' lack of authority to sell the property. In its Rule 213 disclosures, Chicago Stand-Up and Dr. Michael related that Clavio would testify that Watters did not have authority to convey

the property; that all parties to the transaction knew or should have known that Watters did not have authority to convey the property; that B&C was not entitled to retain ownership of the property; that B&C, Hielscher, and Watters engaged in collusion and fraud; and that Hielscher committed fraud and professional misconduct. As the matters about which Clavio was going to testify amounted to legal conclusions that would have determined the outcome of the case, the court did not abuse its discretion by determining that Clavio's testimony would not have helped it understand the evidence at trial and barring that testimony.

¶ 32 B&C contends on cross-appeal that the court erred by denying its petition for attorney fees and costs. While a court's determination of reasonable attorney fees will not be reversed absent an abuse of discretion, its decision as to the availability of attorney fees as a matter of law is reviewed *de novo*. *Baez v. Rosenberg*, 409 Ill. App. 3d 525, 533 (2011). As the court's denial of B&C's petition for attorney fees was based on its legal determination that a prevailing party in an action to quite title is not entitled to attorney fees, we will review the denial of B&C's petition *de novo*.

¶ 33 In *Home Investment Fund v. Robertson*, 10 Ill. App. 3d 840, 844 (1973), this court held that while the general rule is that a party may not recover the ordinary expenses and burdens of litigation, attorney fees may be recoverable when they are incurred as a result of a defendant's malicious acts and the prevailing party in an action for slander of title can recover attorney fees because slander of title actions involve the element of malice. The court specified that recovery should only be permitted for those costs and attorney fees which directly flow from the wrongful disparagement and that the plaintiff in that case was entitled to recover those costs and attorney

fees "directly related to the quieting of his title and to those damages directly related to a slander of his title." *Id.* In *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 67 (2009), this court held that the plaintiffs were entitled to recover attorney fees on their slander of title claims and cited to the *Robertson* decision for support. Thus, pursuant to *Robertson* and *Gambino*, the prevailing party in a slander of title action may recover attorney fees because the plaintiff must establish the element of malice to prevail on such a claim, but may only recover those fees and costs directly related to the quieting of title brought about by the corresponding slander of title. As B&C has not alleged a claim of slander of title or established malice on the part of Chicago Stand-Up or Dr. Michael, it was not entitled to recover attorney fees and the court did not err by denying its petition for attorney fees and costs.

¶ 34 CONCLUSION

¶ 35 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 36 Affirmed.