2015 IL App (1st) 141235-U

THIRD DIVISION
May 27, 2015

No. 1-14-1235

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

30-4909 LLC, MAIL TO,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 CH 24679
	)	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	)	The Honorable
	)	Sophia H. Hall
Defendant-Appellee.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held*: Where a valid *lis pendens* notice had already been recorded when plaintiff acquired its alleged interest in the property at issue, the trial court properly dismissed plaintiff's complaint to quiet title.

¶ 2 This appeal arises from the trial court's order dismissing plaintiff 30-4909 LLC, Mail To's (Mail) complaint against defendant JPMorgan Chase Bank, National Association (Chase) to quiet title to a condominium. On appeal, Mail asserts the trial court improperly determined that a *lis pendens* notice, regarding separate foreclosure proceedings, was recorded before Mail acquired its interest and thus, Mail's title was subject to those proceedings. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The following facts are derived from Mail's complaint filed in the present action (2013 CH 24679) as well as the documents attached thereto. On August 5, 2008, Washington Mutual Bank, FA (WAMU) filed a foreclosure action (2008 CH 28485) against William R. Reynolds concerning the property to which he held title, commonly known as 30 East Huron Street, Units 4909 and P-94, in Chicago (the Property). In addition, WAMU recorded a notice of foreclosure *lis pendens* on August 7, 2008. The *lis pendens* notice specified that the aforementioned foreclosure action was pending in the trial court in case number 08 CH 28485 based on Reynolds' mortgage of the Property. Notwithstanding the pending action and the *lis pendens* notice on file, on October 28, 2008, Reynolds deeded his interest in the Property to Chicago Title Land Trust Company (Chicago Title) as Trustee under Trust #8002352065. Chicago Title recorded that quitclaim deed on November 10, 2008. On June 3, 2010, the trial court entered an order in the foreclosure action confirming sale of the Property to Chase (confirmation order). According to Mail, the *lis pendens* notice was no longer in effect after that date.

¶ 5 A judicial selling officer's deed, which explicitly referenced 08 CH 28485, was executed in favor of Chase and recorded on June 16, 2010. On March 2, 2011, however, the trial court entered General Administrative Order (GAO) No. 2011-01 requiring that judgments entered in foreclosure cases filed by the law firm of Fisher and Shapiro, LLC, which had represented

WAMU in the foreclosure action, be vacated due to altered affidavits. The GAO further stated that the firm could present motions for the entry of new judgments.

¶ 6 Pursuant to the GAO, the confirmation order was vacated on September 7, 2011. The September order, which identified case number 08 CH 28485, stated, "IT IS HEREBY ORDERED THAT THE Selling Officer's Deed recorded in the Cook County Recorder's Office on June 16, 2010 as document number 1016722027 is void. A copy of this order shall be recorded in the office of the Recorder of Deeds of Cook County." It appears to be undisputed that the September order was in fact recorded.

¶ 7 While foreclosure proceedings were once more pending, Chicago Title granted Mail a trustee's deed to the Property on February 3, 2012. That quitclaim deed stated that it was "made subject to the lien of every trust deed or mortgage (if any there be) of record in said county given to secure the payment of money, and remaining unreleased at the date of the delivery hereof." Mail recorded the deed on March 13, 2012. On October 23, 2012, the trial court again entered a judgment of foreclosure in case number 08 CH 28485.

¶ 8 More than three months later, on February 6, 2013, Mail petitioned to intervene in the foreclosure proceedings. Chase objected and the court agreed, denying the petition to intervene without prejudice. Mail did not, however, file another petition to intervene and the Property was sold to Chase the next day. The court confirmed the judicial sale on August 7, 2013,[1] and Chase recorded its deed on August 29, 2013.

¶ 9 On October 31, 2013, Mail commenced this action to quiet title, arguing that because Chase had failed to give Mail or Chicago Title notice of the additional foreclosure proceedings or file a new *lis pendens* notice, and had objected to Mail's intervention in those proceedings,

[1] Although Mail failed to attach that order to the complaint, Chase later supplied that order.

Mail held superior title to the Property. In response, Chase moved to dismiss this action pursuant to section 2-615 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-615 (West 2012)). Chase argued, in pertinent part, that the foreclosure proceedings extinguished Mail's interest in the Property and it was improper for Mail to collaterally challenge those proceedings through this new action. Chase added that Mail had moved to intervene pursuant to the permissive intervention statute (735 ILCS 5/15-1501(e) (2) (West 2012)), and the trial court merely exercised its discretion by denying the petition. Furthermore, a *lis pendens* notice was on file when Mail acquired its alleged interest and neither the vacatur of the original deed nor the filing of new documents negated the *lis pendens* notice. Thus, Mail was bound by both the foreclosure judgment and order approving sale, despite not being a party in that action. Conversely, Mail argued that the GOA effectively created a new lawsuit, imposing additional obligations on Chase in order secure a superior title to the Property. The trial court granted Chase's motion to dismiss with prejudice and Mail now appeals.

¶ 10 II. ANALYSIS

¶ 11 A section 2-615 motion to dismiss attacks the complaint's legal sufficiency and raises defects apparent from the face of the pleadings. *Hartmann Realtors v. Biffar*, 2014 IL App (5th) 130543, ¶ 14. Thus, we consider whether the complaint sufficiently alleges a cause of action, not the merits of the plaintiff's claim. *Hartmann Realtors*, 2014 IL App (5th) 130543, ¶ 14. In ruling on a section 2-615 motion, the court accepts as true all well-pleaded facts and all reasonable inferences to be drawn there from as well as any exhibits attached to the complaint. *Karimi v. 401 North Wabash Venture, LLC*, 2011 IL App (1st) 102670, ¶ 9. Conversely, legal conclusions will be disregarded. *Randle v. AmeriCash Loans, LLC*, 403 Ill. App. 3d 529, 533 (2010). Dismissal is proper if, when construed in the light most favorable to the plaintiff, the pleadings

and attachments, show the plaintiff cannot prove any set of facts that would entitle it to relief. *Karimi*, 2011 IL App (1st) 102670, ¶ 9. We review the trial court's order granting a defendant's motion to dismiss pursuant to section 2-615 *de novo*. *Westlake Financial Group, Inc. v. CDH-Delnor Health System*, 2015 IL App (2d) 140589, ¶ 10.

¶ 12 An action to quiet title to a property is an equitable proceeding, wherein a party attempts to remove a cloud on the title to his property. *Stahelin v. Forest Preserve District of Du Page County*, 376 Ill. App. 3d 765, 779 (2007). Specifically, a "cloud" exists where there is a semblance of a legal or equitable title, which is unfounded or which it would be inequitable for the court to enforce. *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 52 (2009). "Any instrument or proceedings in writing which appears of record and casts doubt upon the validity of the record title constitutes a cloud on the title." *Allensworth v. First Galesburg National Bank & Trust Co.*, 7 Ill. App. 2d 1, 4 (1955). Furthermore, a plaintiff must actually have title in order to claim there is a cloud on his title. *Gambino*, 398 Ill. App. 3d at 52; *Marlow v. Malone*, 315 Ill. App. 3d 807, 812 (2000). "The plaintiff must recover on the strength of his own title rather than on defects in the defendant's title." *Hoch v. Boehme*, 2013 IL App (2d) 120664, ¶ 41.

¶ 13 The *lis pendens* doctrine generally provides that one who acquires his interest in property while a lawsuit concerning the property is pending, is bound by the result of that action. *Wagemann Oil co. v. Marathon Oil Co.*, 306 Ill. App. 3d 562, 572 (1999). This doctrine avoids the endless litigation of property rights otherwise caused by transfers of interest in the property and the necessity of filing new actions against transferees. *First Midwest v. Pogge*, 293 Ill. App. 3d 359, 363 (1997). In addition, the doctrine protects parties to the litigation from other individuals who acquire an interest in the property while litigation regarding the property is

pending and who would prevent the court from granting the requested relief. *Knodle v. Jeffrey*, 189 Ill. App. 3d 877, 883-84 (1989). The doctrine also protects purchasers by notifying them that they may be bound by a judgment in a pending action. *Admiral Builders Corp. v. Robert Hall Village*, 101 Ill. App. 3d 132, 137 (1981).

¶ 14 At common law, the *lis pendens* doctrine bound purchasers of property to the results of lawsuits that were pending regarding the property when it was purchased (*First Midwest*, 293 Ill. App. 3d at 363), and the mere filing of the complaint constituted notice to the subsequent purchaser (*Knodle*, 189 Ill. App. 3d at 883). In order to ameliorate the doctrine's harsh effects on innocent purchasers, the legislature modified and codified the doctrine to provide that subsequent purchasers are not bound by the results of pending lawsuits unless they have constructive notice of the pending action. *First Midwest*, 293 Ill. App. 3d at 363. Furthermore, the filing of a *lis pendens* notice in the recorder's office creates constructive notice. *Id*. Specifically, section 2-1901 of the Code states, in pertinent part, as follows:

> "Except as otherwise provided in Section 15-1503, every condemnation proceeding, proceeding to sell real estate of decedent to pay debts, or other action seeking equitable relief, affecting or involving real property shall, from the time of the filing in the office of the recorder in the county where the real estate is located, of a notice signed by any party to the action or his attorney of record or attorney in fact, on his or her behalf, setting forth the title of the action, the parties to it, the court where it was brought and a description of the real estate, be constructive notice to every person subsequently acquiring an interest in or a lien on the property affected thereby, and every such person and every person acquiring an interest or lien as above stated, not in possession of the property and whose interest or lien is not shown of record at the time of filing such

> notice, shall, for the purposes of this Section, be deemed a subsequent purchaser and shall be bound by the proceedings to the same extent and in the same manner as if he or she were a party thereto." (Emphasis added.) 735 ILCS 5/2-1901 (West 2008).

Furthermore, section 15-1503 provides:

> "A notice of foreclosure, *** made in accordance with this Section and recorded in the county in which the mortgaged real estate is located shall be constructive notice of the pendency of the foreclosure to every person claiming an interest in or lien on the mortgaged real estate, whose interest or lien has not been recorded prior to the recording of such notice of foreclosure. *** A notice which complies with this Section shall be deemed to comply with Section 2-1901 of the Code of Civil Procedure and shall have the same effect as a notice filed pursuant to that Section; however, a notice which complies with § 2-1901 shall not be constructive notice unless it also complies with the requirements of this Section." 735 ILCS 5/15-1503 (West 2008).

¶ 15 Mail does not dispute that a visit to the recorder's office would have revealed that a *lis pendens* notice regarding case number 2008 CH 28485 had been recorded; rather, Mail essentially asserts it had the right to disregard that notice because it was no longer effective, relying on the principle that *lis pendens* ends with the entry of a final decree. *Eich v. Czervonko*, 330 Ill. 455, 459 (1928); *Duncan v. Farm Credit Bank of St. Louis*, 940 F.2d 1099, 1101-02 (7th Cir. 1991). We disagree, as the judgment in the foreclosure action was not final when Mail acquired its alleged interest in the Property.

¶ 16 When the trial court confirmed sale of the Property to Chase on June 3, 2010, the parties and the trial court undoubtedly believed that the judgment was final. To be sure, the finality of the judgment was undermined only by individuals not party to the foreclosure action, WAMU's

attorneys. Under these anomalous circumstances, however, the trial court exercised its authority to enter GAOs under Illinois Supreme Court Rule 21 (eff. Dec. 1, 2008), and pursuant to that authority, the June 2010 judgment was vacated. Consequently, the foreclosure proceedings continued and the June 2010 judgment was not final. See *Eich*, 330 Ill. at 459 (A decree is final where it fully decides and disposes of the merits). Although the complaint represented that the judgment was final on June 3, 2010, this constitutes an impermissible legal conclusion, not a well-pled fact to be taken as true.

¶ 17 Similarly, the vacated judgment's effect on the *lis pendens* notice presents a legal question, not a factual dispute. Because the foreclosure judgment was not final, the *lis pendens* notice was not terminated. See *Applegate v. State of Illinois Department of Transportation*, 335 Ill. App. 3d 1056, 1063 (2002) ("vacatur restores the status *quo ante*, as though a judgment had never been entered."); *Flavell v. Ripley*, 247 Ill. App. 3d 842, 847 (1993) ("Where a judgment order is vacated, the effect is to leave the pleadings as if no judgment were ever entered."); see also *New York Life Insurance Co. v. Sogol*, 311 Ill. App. 3d 156, 158 (1999) ("An order vacating the inadvertent dismissal of a plaintiff's complaint renders the dismissal order nugatory and returns the parties to the status they had prior to the entry of the dismissal order."). Moreover, any reasonably diligent party who examined the chain of title when Mail acquired its interest would have seen that a deed entered in favor of another party in 08 CH 28485 had been declared void and would have made further inquiries into the effect of that declaration on the foreclosure case and the *lis pendens* notice. See *Bank of New York v. Langman*, 2013 IL App (2d) 120609, ¶ 22 (if facts appearing within the chain of title would cause an ordinary prudent person to investigate, he cannot close his eyes); see also *Bayview Loan Servicing, LLC v. 2010 Real Estate Foreclosure, LLC*, 2013 IL App (1st) 120711, ¶ 40 ("We will not vacate the confirmation of a

judicial sale at the insistence of an interested party whose complained-of error was the result of its own negligence."). We are not sympathetic to Mail's position.

¶ 18 We further reject Mail's assertion that the vacatur of the original judgment and deed resulted in a brand new judicial proceeding. At all times, foreclosure proceedings occurred under case number 2008 CH 28485. *Cf. Eich*, 330 Ill. at 459-60 (where a final judgment was entered and the losing party did not appeal, the *lis pendens* terminated and the losing party's subsequently filed writ of error constituted a brand new action). In addition, we are unpersuaded by Mail's speculation that the original foreclosure judgment was actually vacated under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)), as the recorded vacatur order made no reference to section 2-1401. Accordingly, the requirements of that statute are irrelevant. Because a valid *lis pendens* notice was pending when Mail acquired its interest, Mail is bound by the foreclosure proceedings to the same extent and in the same manner as if it were a party thereto. Mail's allegations concerning its failed attempt to intervene in the foreclosure action do not further its position.

¶ 19 Construing all facts in the light most favorable to Mail, the complaint fails to state a cause of action to quiet title. The allegations show only Chase holds superior title to the Property.

¶ 20 For the foregoing reasons, we affirm the trial court's judgment.

¶ 21 Affirmed.