

REL: November 1, 2019

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

2180742

US Bank Trust, N.A., as trustee for LSF8 Master Trust

v.

William Trimble

Appeal from Chilton Circuit Court
(CV-18-900228)

MOORE, Judge.

US Bank Trust, N.A., as trustee for LSF8 Master Trust ("US Bank"), appeals from a judgment entered by the Chilton Circuit Court ("the trial court") concluding that US Bank's

2180742

attempt to redeem certain real property located in Chilton County ("the property") from William Trimble was untimely. We reverse the trial court's judgment.

Facts and Procedural History

The facts in this case are largely undisputed. Warren Dennis and Diane C. Dennis owned the property, subject to a mortgage in favor of Household Finance Corporation of Alabama dated June 29, 1998. On May 6, 2013, Trimble purchased the property at a tax sale. Subsequently, Trimble sent a letter to Household Finance and the Dennises, notifying them that he had purchased the property at a tax sale. Thereafter, on August 4, 2014, the mortgage on the property was assigned to US Bank.

Trimble testified that, at some point in 2016, he entered into an agreement with the Dennises, pursuant to which he agreed to lease the property to them. Trimble testified that Diane Dennis had since died but that he had known Warren Dennis for a long time and wanted to maintain his lease with Warren.

In July 2018, US Bank began sending letters to Trimble requesting to redeem the property. On October 5, 2018, US

2180742

Bank filed in the trial court a complaint seeking a judicial redemption of the property. See Ala. Code 1975, § 40-10-83. US Bank also included claims seeking to quiet title to the property and for ejectment.

On November 7, 2018, Trimble answered the complaint. After a trial, the trial court entered a judgment on April 1, 2019, stating:

"Case called for trial on February 26, 2019. Parties present with counsel of record and testimony taken with record.

"Upon hearing the testimony and argument concerning limitation on actions, this Court finds that [US Bank] is outside [its] time for the redemption of this subject property, therefore, Judgment entered for [Trimble]."

On May 10, 2019, US Bank filed its notice of appeal to the supreme court; that court transferred the appeal to this court, pursuant to Ala. Code 1975, § 12-2-7(6).

Discussion

On appeal, US Bank asserts that the trial court erred in determining that its request to judicially redeem the property was untimely.

Section 40-10-83, Ala. Code 1975, provides, in pertinent part:

"When the action is against the person for whom the taxes were assessed or the owner of the land at the time of the sale, his or her heir, devisee, vendee or mortgagee, the court shall, on motion of the defendant made at any time before the trial of the action, ascertain (i) the amount paid by the purchaser at the sale and of the taxes subsequently paid by the purchaser, together with 12 percent per annum thereon, subject to the limitations set forth in Section 40-10-122(a) [, Ala. Code 1975]; ... (iii) with respect to any property which contains a residential structure at the time of the sale regardless of its location, all insurance premiums paid or owed by the purchaser for casualty loss coverage on the residential structure and the value of all preservation improvements made by the purchaser determined in accordance with Section 40-10-122, together with 12 percent per annum thereon, subject to the limitations set forth in Section 40-10-122(a); and (iv) a reasonable attorney's fee for the plaintiff's attorney for bringing the action. The court shall also determine the right, if any, of the defendant to recover any excess pursuant to Section 40-10-28[, Ala. Code 1975,] and shall apply a credit and direct the payment of the same as set forth in subsection (b) of Section 40-10-78[, Ala. Code 1975]. Upon such determination the court shall enter judgment for the amount so ascertained in favor of the plaintiff against the defendant, and the judgment shall be a lien on the land sued for. Upon the payment into court of the amount of the judgment and costs, the court shall enter judgment for the defendant for the land, and all title and interest in the land shall by such judgment be divested out of the owner of the tax deed."

Section 40-10-83 authorizes a mortgagee of real property at the time of a tax sale to commence an original action to force the tax-sale purchaser to propound his or her tax claim, lien,

2180742

or tax title so that the tax-sale purchaser can be paid and the tax deed removed as cloud on the title to the real property. Georgia Loan & Tr. Co. v. Washington Realty Co., 205 Ala. 288, 289, 87 So. 794, 795 (1921).¹

Section 40-10-82, Ala. Code 1975, provides, in pertinent part, that "[n]o action for the recovery of real estate sold for the payment of taxes shall lie unless the same is brought within three years from the date when the purchaser became entitled to demand a deed therefor" Generally speaking, a tax-sale purchaser is entitled to demand a tax deed after the expiration of three years from the date of the sale. Ala. Code 1975, § 40-10-29. Our supreme court has construed § 40-10-82 as establishing a "short statute of limitations" for tax-deed cases, pursuant to which, "to bar redemption under § 40-10-83, the tax purchaser must prove continuous adverse possession for three years after he is entitled to demand a tax deed." Gulf Land Co. v. Buzzelli, 501 So. 2d 1211, 1213 (Ala. 1987); see also Austill v. Prescott, [Ms. 1170709, July

¹In Karagan v. Bryant, 516 So. 2d 599, 600 (Ala. 1987), our supreme court noted that Ala. Code 1975, § 40-10-83, "traces to the 1907 Code, with the only material change being the reduction of the interest rate from 25%. Code 1907, § 2312; Code 1923, § 3108; Code 1940, t. 51, § 296."

2180742

12, 2019] ___ So. 3d ___ (Ala. 2019) (authored by Bryan, J., with one Justice concurring and the Chief Justice and two other Justices concurring in the result) (in which Justice Mitchell, in a special writing concurring in the result, and Justice Mendheim, in a dissent, discuss the meaning of § 40-10-82 in light of 2009 amendment to the statute).

In the present case, Trimble became entitled to demand a tax deed on May 6, 2016. Even assuming Trimble had sufficiently adversely possessed the property beginning on that date, US Bank still had until May 6, 2019, to commence an action to judicially redeem the property. US Bank began sending letters requesting to redeem the property in 2018 and commenced the underlying action to judicially redeem the property on October 5, 2018, well within the "short statute of limitations" set forth in § 40-10-82. Therefore, we conclude that the trial court erred in determining that US Bank's redemption action was time-barred and in entering a judgment in favor of Trimble as to all of US Bank's claims on that basis.

2180742

Conclusion

Based on the foregoing, we reverse the trial court's judgment and remand the cause for further proceedings.

REVERSED AND REMANDED.

Thompson, P.J., and Donaldson, Edwards, and Hanson, JJ., concur.