

[Cite as *Emery Woods Acquisition, L.L.C. v. Stanley*, 2010-Ohio-3421.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93706

EMERY WOODS ACQUISITION, LLC

PLAINTIFF-APPELLEE

vs.

THOMAS STANLEY, ET AL.

DEFENDANTS-APPELLANTS

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-667605

BEFORE: Kilbane, P.J., McMonagle, J., and Cooney, J.

RELEASED: July 22, 2010

JOURNALIZED:

ATTORNEYS FOR APPELLANTS

For Thomas Stanley

James P. Sammon
Justin D. Harris
Reminger Co., LPA
1400 Midland Building
101 Prospect Avenue, West
Cleveland, Ohio 44115

For Bureau of Workers' Compensation

Richard Cordray
Ohio Attorney General
Lucas Ward
Assistant Attorney General
150 East Gay Street - 21st Floor
Collection Enforcement Section
Columbus, Ohio 43215

ATTORNEYS FOR APPELLEE

For Emery Woods Acquisition

Keith A. Vanderburg
Lesley A. Weigand
George L. White, IV
Wegman, Hessler & Vanderburg
6055 Rockside Woods Boulevard
Suite 200
Cleveland, Ohio 44131

(Attorneys continued on page ii)

Also Listed:

Defendant Parkview Federal Savings Bank

Manbir S. Sandhu
1370 Ontario Street
Suite 600
Cleveland, Ohio 44113

Defendant Jim Rokakis, County Treasurer

William D. Mason
Cuyahoga County Prosecutor
Anthony Giunta
Assistant County Prosecutor
The Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellants, Thomas and Eva Stanley (“the Stanleys”), appeal the judgment of the trial court that granted summary judgment in favor of appellee, Emery Woods Acquisition, LLC (“Emery Woods”), thereby foreclosing on the Stanleys’ residence. The Stanleys maintain that summary judgment was inappropriate as there was still a genuine issue of material fact as to whether Emery Woods acted with “unclean hands.” After a review of the record and pertinent law, we affirm.

{¶ 2} The following facts give rise to the instant appeal.

{¶ 3} In August 2004, Thomas Stanley (“Stanley”) and Joseph Bobeck (“Bobeck”), formed a construction company named Sunshine Builders & Developers, L.L.C. (“Sunshine Builders”). Stanley owned a 50 percent interest in Sunshine Builders and Bobeck’s company, Bobeck Funding, owned the remaining 50 percent interest in the company.

{¶ 4} On August 16, 2007, in Case No. CV-932974, Stanley filed suit against Bobeck, Bobeck Funding, and Sunshine Builders, alleging that Bobeck was mismanaging Sunshine Builders’ assets.

{¶ 5} At some point, Sunshine Builders contracted with North American Lumber Co. (“North American Lumber”) for lumber. On November 16, 2007, North American Lumber obtained a cognovit note judgment in Case No. CV-641915, against Stanley, Tom Stanley Builders, Inc., and Sunshine Builders, LLC in the amount of \$66,314.52.¹ That same day, North American Lumber perfected its lien by filing the judgment with the clerk of courts in Case No. JL-312342.²

¹Stanley subsequently filed a motion for relief from judgment in the cognovit action, Case No. CV-641915, which was denied by the trial court. Stanley did not file an appeal.

²The initial judgment lien in Case No. JL-641915 contained a clerical error, which was later remedied when North American Lumber refiled its judgment lien in Case No. JL-327957.

{¶ 6} On June 26, 2008, North American Lumber assigned its interest in the judgment lien to Emery Woods, of which Bobeck was a founding member.

{¶ 7} On July 29, 2008, the Stanleys filed a new deed to their home, located at 6667 Brandmore Court, in Solon, Ohio, transferring the property solely to Eva via a quitclaim deed. However, the Stanleys failed to obtain a release of Emery Woods' judgment lien prior to the transfer. Therefore, the home remained encumbered by the judgment lien.

{¶ 8} On August 12, 2008, Emery Woods filed a foreclosure action, pursuant to R.C. 2329.01, against the Stanleys with respect to their Solon residence. Emery Woods alleged that it was the assignee of the judgment lien originally filed and perfected by North American Lumber.

{¶ 9} On October 17, 2008, the Stanleys filed an answer asserting numerous affirmative defenses, including the equitable defense of unclean hands.

{¶ 10} On February 13, 2009, Emery Woods filed a motion for summary judgment. Emery Woods maintained that it was entitled to foreclose on the Stanleys' property in order to collect on the judgment lien. Emery Woods presented evidence of the assignment of the judgment lien and that the Stanleys had failed to make any payments.

{¶ 11} On March 16, 2009, the Stanleys filed a brief in opposition to Emery Woods' motion for summary judgment. The Stanleys maintained that foreclosure was an equitable remedy and that Emery Woods may not seek an equitable remedy when it has unclean hands.

{¶ 12} On March 30, 2009, Emery Woods filed a motion to strike the Stanleys' brief in opposition claiming that there was no evidence that Emery Woods acted with unclean hands, and further, that the evidence presented by the Stanleys was irrelevant to the instant foreclosure action.

{¶ 13} On April 9, 2009, the Stanleys filed a brief in opposition to the motion to strike, alleging that all facts provided in their opposition to summary judgment were relevant.

{¶ 14} On May 1, 2009, the Stanleys moved to consolidate the instant foreclosure action with the action they filed against Bobeck for mismanaging Sunshine Builders (Case No. CV-632974), the disposed of action in which North American Lumber obtained its judgment against Stanley (Case No. CV-641915), and two underlying judgment lien cases (Case Nos. JL-312342 and JL-327957).

{¶ 15} On June 22, 2009, the trial court denied Emery Woods' motion to strike and also denied the Stanleys' motion to consolidate. On June 30, 2009, the trial court granted Emery Woods' motion for summary judgment.

{¶ 16} On July 21, 2009, the magistrate issued a decision foreclosing on Thomas Stanley's one-half interest in the Solon residence.

{¶ 17} On July 30, 2009, the Stanleys filed the instant appeal, asserting one assignment of error for our review.

{¶ 18} ASSIGNMENT OF ERROR NUMBER ONE

“WHETHER GENUINE ISSUES OF MATERIAL FACT EXISTED TO SUPPORT APPELLANTS’ CONTENTION THAT APPELLEE’S REQUEST FOR THE EQUITABLE REMEDY OF FORECLOSURE WAS BARRED BY, AMONG MANY THINGS, THE DOCTRINE OF UNCLEAN HANDS.”

{¶ 19} The Stanleys argue that the trial court erred in granting summary judgment with respect to the foreclosure action because they presented evidence demonstrating that there remained a genuine issue of material fact as to whether Emery Woods acted with unclean hands. The Stanleys maintain that if Emery Woods was acting with unclean hands, it would not be entitled to enforce the equitable remedy of foreclosure. After a review of the facts and pertinent law, we affirm.

Standard of Review

{¶ 20} In Ohio, appellate review of summary judgment is de novo. *Comer v. Risko* 106 Ohio St.3d 185, 186, 2005-Ohio-4559, 833 N.E.2d 712. “Accordingly, we afford no deference to the trial court’s decision and independently review the record to determine whether summary judgment is appropriate.” *Mosby v. Sanders*, Cuyahoga App. No. 92605, 2009-Ohio-6459,

at ¶11, citing *Hollins v. Shaffer*, 182 Ohio App.3d 282, 286, 2009-Ohio-2136, 912 N.E.2d 637.

{¶ 21} The Ohio Supreme Court stated the appropriate test in *Zivich v. Mentor Soccer Club*, 82 Ohio St.3d 367, 1998-Ohio-389, 696 N.E.2d 201, as follows: “Pursuant to Civ.R. 56, summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor.” *State ex rel. Duncan v. Mentor City Council*, 105 Ohio St.3d 372, 374, 2005-Ohio-2163, 826 N.E.2d 832, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.

{¶ 22} “The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292-293, 1996-Ohio-107, 662 N.E.2d 264, 273-274.” *Zivich* at 369-370. Once the moving party satisfies its burden, the nonmoving party “may not rest upon the mere allegations or denials of the party’s pleadings, but the party’s response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Civ.R. 56(E); see, also, *Mootispaw v. Eckstein*, 76 Ohio St.3d 383, 385, 1996-Ohio-389, 667

N.E.2d 1197. Doubts must be resolved in favor of the nonmoving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-359, 1992-Ohio-95, 604 N.E.2d 138.

Analysis

{¶ 23} As the moving party, Emery Woods had the initial burden of demonstrating that it was entitled to foreclosure, specifically by demonstrating that it possessed a valid judgment lien and that Stanley had failed to pay the judgment lien. To its motion for summary judgment, Emery Woods attached the assignment of the judgment lien, whereby North American Lumber assigned its interest in the judgment to Emery Woods. Further, Emery Woods provided an affidavit attesting to the fact that Emery Woods had not received any payment from Stanley with respect to the underlying judgment.

{¶ 24} As Emery Woods met its initial burden entitling it to summary judgment, the burden shifted to the Stanleys to demonstrate that there was a genuine issue of material fact to be litigated. In their opposition to the motion for summary judgment, the Stanleys maintained that it was unequitable for Emery Woods, which was owned by Bobeck, to foreclose on Stanleys' residence for a debt owed by both Bobeck and Stanley.

“Unclean Hands” Doctrine

{¶ 25} In order for a party to be deemed to have unclean hands, it must be demonstrated that the party has committed reprehensible conduct in regard to the subject matter of the suit. *Basil v. Vincello* (1990), 50 Ohio St.3d 185, 190, 553 N.E.2d 602. It has long been established that, “he who seeks equity must come with clean hands.” *Parmatown Spinal & Rehab. Ctr. v. Lewis*, 8th Dist. No. 81996, 2003-Ohio-5069, at ¶13, quoting *Vincello* at 190.

{¶ 26} In the instant case, Emery Woods did not seek equitable relief from the trial court, but rather, sought to enforce its statutory right of foreclosure pursuant to R.C. 2329.01. In a factually similar case, *Jamestown Village Condo. Owners Assn. v. Mkt. Media Research, Inc.* (1994), 96 Ohio App.3d 678, 645 N.E.2d 1265, this court reasoned that the affirmative defense of unclean hands was not applicable as a defense to a foreclosure action on a judgment lien. This court reasoned that the doctrine of unclean hands was an equitable remedy, and because the plaintiff was enforcing a statutory right, equitable defenses were inapplicable.

{¶ 27} The trial court specifically granted Emery Woods’ motion for summary judgment, finding that the Stanleys failed to present any evidence that Emery Woods had unclean hands. This court has previously determined that, “a reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as the basis thereof.” *State v.*

Beatty (Dec. 14, 2000), 8th Dist. No. 75926, citing *Joyce v. Gen. Motors Corp.* (1990), 49 Ohio St.3d 93, 96, 551 N.E.2d 172.

{¶ 28} As this was the Stanleys' only defense in opposition to the motion for summary judgment, and it was inapplicable because the trial court was enforcing a statutory right as opposed to an equitable one, the Stanleys' sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

CHRISTINE T. McMONAGLE, J. and
COLLEEN CONWAY COONEY, J., CONCUR