Cite as 2013 Ark. 129

SUPREME COURT OF ARKANSAS

No. 11-900

CHASE BANK USA, N.A.
APPELLANT

V.

REGIONS BANK; THE STEPHENS FAMILY LIMITED PARTNERSHIP; KATHRYN STEPHENS; RACHEL STEPHENS; ALEX STEPHENS; JENNIFER STEPHENS; JOSHUA STEPHENS, MINOR; AND GREG STEPHENS, INDIVIDUALLY, AND AS A PARENT AND NEXT FRIEND OF THE ABOVE MINOR
APPELLEES

Opinion Delivered March 28, 2013

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT
[NO. CV-2008-7020]

HON. COLLINS KILGORE, JUDGE

REVERSED AND REMANDED; MOTION TO STRIKE APPELLEES' STATEMENT OF THE CASE AND SUPPLEMENTAL ABSTRACT MOOT.

KAREN R. BAKER, Associate Justice

Chase Bank USA, N.A. (Chase) appeals from the circuit court's order granting partial summary judgment in favor of Regions Bank (Regions), the Stephens Family Limited Partnership (SFLP), and Kathryn, Rachel, Alex, Jennifer, Joshua, and Greg Stephens (the Stephens heirs). We reverse and remand.

Wanda Stephens purchased the property at 6 River Ridge Court in Little Rock, Arkansas from her brother, Charles Ward. The property consisted of Tract A, purchased in 1978, and Tract B purchased in 1982. Tract A is a zoned residential tract upon which Wanda Stephens built a house. Tract B is contiguous to Tract A and is unzoned and undeveloped.

On June 21, 2001, Wanda Stephens executed a quitclaim deed to SFLP, in which Wanda Stephens was the general partner. The deed did not include a legal description. On July 25, 2001, Wanda Stephens mortgaged Tract A and Tract B to Regions Mortgage for $680,000 (the first mortgage).

On October 7, 2002, Wanda Stephens executed a warranty deed conveying Tract A to herself for life with a remainder to Greg Stephens and the heirs of his body, in fee tail. In 2004, Greg Stephens filed a complaint against his uncle, Steve Ward, for breach of contract in the Pulaski County Circuit Court, Sixth Division. Wanda Stephens had previously granted Ward her power of attorney, including her general partnership in SFLP. Greg Stephens alleged that Ward had used this power of attorney to commit actions against Wanda Stephens's interests, and that these actions had injured his and his minor children's rights in Wanda Stephens's property. Ward counterclaimed, asserting that the 2002 deed was void because the land had already been conveyed by the 2001 quitclaim deed to SFLP. A third-party complaint in intervention was filed by SFLP to include Kathryn Stephens, Rachel Stephens, Alex Stephens, Jennifer Stephens, and Joshua Stephens (Greg Stephens's minor children) as necessary parties to the case. Greg Stephens did not file an answer to the third-party complaint within twenty days, and the circuit court entered default judgment against him and his children on December 29, 2004, nullifying the 2002 deed.

On January 21, 2005, Wanda Stephens mortgaged property to Chase for $222,000. The legal description of the property contained in the mortgage described only Tract B. However, Wanda Stephens admitted in her response to requests for admission filed September

7, 2009, that she intended to grant a mortgage to Chase on Tract A and Tract B.

On February 16, 2005, SFLP filed a corrected quitclaim deed to correct the omission of a legal description in the 2001 quitclaim deed to SFLP. This deed included the legal description for Tract A. On May 31, 2005, Regions made a business loan to Wanda Stephens, taking as collateral (among other properties) a mortgage on Tract A and Tract B.

Wanda Stephens defaulted on the 2001 mortgage (the first mortgage) to Regions Mortgage. Regions Mortgage foreclosed on both Tract A and Tract B in a nonjudicial foreclosure proceeding. The two tracts were sold together as one parcel at auction on June 12, 2008, for $808,100. After the first mortgage to Regions Mortgage was satisfied, $308,828.02 remained from the sale. Regions filed an interpleader and placed the remaining proceeds in the registry of the court. Both Chase and Regions asserted claims to the monies. SFLP moved to intervene due to its interest in the property under the 2001 quitclaim deed and the 2005 correction deed. SFLP's motion for intervention was granted on July 7, 2009. The Stephens heirs also moved to intervene based on their interest in the property under the 2002 warranty deed. The Stephens heirs' motion to intervene was granted on February 14, 2011. Chase, Regions, SFLP, and the Stephens heirs all claimed to be first in priority.

During the course of the litigation, Greg Stephens filed a motion to vacate the 2004 default judgment in the Pulaski County Circuit Court, Sixth Division. The court denied his motion as well as his motion for reconsideration. He appealed in the court of appeals. At the same time, he filed a collateral attack claiming that the 2004 default judgment was void. On January 15, 2010, the Pulaski County Circuit Court, Second Division, found that the 2004

default judgment against Greg Stephens and his minor children was void. The circuit court's order voiding the default judgment also declared Greg Stephens and the heirs of his body to be "the true and lawful owners" of the property upon the expiration of Wanda Stephens's life estate. The court of appeals then dismissed his pending appeal as the relief requested had already been received.

Regions, SFLP, and the Stephens heirs moved for partial summary judgment arguing that their interests were superior to Chase's. The circuit court granted partial summary judgment against Chase. The remaining parties settled. This appeal followed.

On appeal, Chase asserts that the circuit court erred in granting the motion for partial summary judgment because the relief granted was not in accord with Arkansas Code Annotated section 18-50-109 (Repl. 2003) and because genuine issues of material fact remained to be decided. Chase further asserts that the circuit court erred in denying several of its motions: a motion to deem interrogatories to Wanda Stephens admitted, a motion to disqualify Wanda Stephens's lawyers, a motion to strike Wanda Stephens's deposition answers, and a motion for sanctions against Wanda Stephens. Finally, Chase asserts that the circuit court erred in the distribution of proceeds from the sale.

Although it is Chase's second point on appeal, we first review Chase's argument that the circuit court erred in granting summary judgment because genuine issues of material fact remain unresolved as we find that it is dispositive of the issues. Summary judgment is to be granted only when it is clear that there are no genuine issues of material fact to be litigated, and the party is entitled to judgment as a matter of law. *Gallas v. Alexander*, 371 Ark. 106,

263 S.W.3d 494 (2007). On appellate review, we determine if summary judgment was appropriate based on whether the evidentiary items presented, viewed in the light most favorable to the party resisting the motion, leave a material question unanswered. *Id.*

Chase asserted several equitable claims, including reformation. Chase's arguments in equity rest on whether it was a bona fide purchaser as to the other parties and whether the other parties were bona fide purchasers as to Chase. In order to be a bona fide purchaser of land in Arkansas, one must take property in good faith, for valuable consideration, and without notice of a prior interest. *Bill's Printing, Inc. v. Carder*, 357 Ark. 242, 161 S.W.3d 803 (2004). A subsequent purchaser will be deemed to have actual notice of a prior interest in property if he is aware of such facts and circumstances as would put a person of ordinary intelligence and prudence on inquiry that, if diligently pursued, would lead to knowledge of the prior interest. *Killam v. Texas Oil & Gas Corp.*, 303 Ark. 547, 798 S.W.2d 419 (1990). Whether one buying land has actual notice of another's interest in the land is a question of fact. *McGill v. Grigsby*, 205 Ark. 349, 168 S.W.2d 809 (1943).

Chase presented evidence that the 2001 quitclaim deed to SFLP did not contain a sufficient legal description, that the 2004 default judgment set aside the 2002 warranty deed to the Stephens heirs, and that Regions's 2005 mortgage, SFLP's correction deed, and the order vacating the 2004 default judgment were all filed subsequent to Chase's mortgage. Chase asserted that it had no notice of the Stephens heirs' claim on the property because it relied on the 2004 order vacating the Stephens heirs' 2002 warranty deed. Because the question of whether a party had actual notice of another party's interest is a question of fact,

summary judgment was inappropriate. Thus, we reverse and remand on this point.

Having held that the circuit court erred in granting partial summary judgment against Chase, we must reverse the distribution order as well and need not consider whether the relief granted was in accord with Arkansas Code Annotated section 18-50-109. In Chase's remaining points on appeal, Chase asserts that the circuit court erred in denying its motions. However, the circuit court did not deny the motions, but instead deemed them moot upon his grant of partial summary judgment and dismissed them. Because we reverse the order granting partial summary judgment against Chase, the circuit court's order finding that the motions are moot is also reversed.[1]

Reversed and remanded.

CORBIN, DANIELSON, and GOODSON, JJ., concur.

The McMullan Law Firm, by: *Amy Clemmons Brown*, for appellant.

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., by: *Donald Henry* and *Anton L. Janik, Jr.*, for appellant Regions Bank.

Greg Stephens, for appellants Stephens Heirs, Kathryn Stephens, et al.
with co-counsel *Janis Chalmers*.
Southern & Allen, by: *Byron Southern* and *Kate Bridges*, for appellant The Stephens Family Limited Partnership.

[1]Because we reverse and remand, Chase's motion to strike appellee's statement of the case and supplemental abstract is moot and dismissed.