



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

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Maggie R. Clausell, Esquire
Law Office of Maggie Clausell, LLC
9 East Loockerman Street, Suite 205
Dover, DE 19901

Dean A. Campbell, Esquire
Mark H. Hudson, Esquire
Law Office of Dean A. Campbell, LLC
P.O. Box 568
Georgetown, DE 19947-0568

Christopher A. Selzer, Esquire
McCarter & English LLP
405 North King Street, 8th Floor
P.O. Box 111
Wilmington, DE 19899-0111

Re: Conaway v. Hawkins, et al.
C.A. No. 1942-VCN
Date Submitted: October 1, 2009

Dear Counsel:

I. INTRODUCTION

Defendants Linda A. Hawkins, Sterling A. Doughty, Clyde Doughty, and Laverne Andrews Maddox (the "Individual Defendants") and Defendant Parker Enterprises, Inc. Profit Sharing Plan ("Parker") renew their motions for summary judgment. Plaintiffs A. Martin Conaway, Evelyn M. Conaway, Ernest E. Conaway,

James Robert Conaway, and Mabel H. Conaway (collectively, the “Plaintiffs”) allege that they are the rightful owners of a parcel of land (the “Property”) in Millsboro, Sussex County, Delaware, that the Individual Defendants sold to Parker.

II. BACKGROUND

The Court picks up where it left off in the Bench Ruling that denied previously-filed motions for summary judgment.¹ In 1958, the Plaintiffs’ grandfather, Robert J. Conaway, conveyed the Property to “Anna W. Wiggins and/or Wm. T. Wiggins, her husband.”² Anna was Robert’s daughter and the Plaintiffs’ mother. In 1978, Anna died intestate. Her estate was co-administered by A. Martin Conaway, one of the Plaintiffs. The inventory showed the Property as an asset jointly held with William as her surviving spouse; thus, he would have acquired the Property by right of survivorship. Anna had also inherited other lands when her father died; as the putative surviving spouse, William acquired a life estate in those tracts in proportion to Anna’s share. In 1980, the attorney representing

¹ Tr. of Oral Arg. (Apr. 9, 2008) at 66-72 (the “Bench Ruling”). The Court will not revisit the Bench Ruling in any detail and will presume, perhaps somewhat unfairly, that the reader has familiarity with it.

² Parker’s Opening Br. in Supp. of its Renewed Mot. for Summ. J., Ex. D.

Anna's estate prepared a quitclaim deed in favor of the Plaintiffs that William signed.³ That deed conveyed to the Plaintiffs any interest that he might then have had in the other lands. The quitclaim deed did not convey any interest in the Property.

Later, William married Elois Wiggins, the mother of the Individual Defendants. In 1993, William died testate and left the Property to Elois. In 2001, Elois died testate and devised the Property to the Individual Defendants. The Plaintiffs filed no claim against Elois's estate to assert the claim which they now present.

III. CONTENTIONS

In 2006, the Plaintiffs filed this action, asserting that they are the sole true owners of the Property. At the core of their claim is the contention that William and Anna were never married;⁴ thus, there could not have been any right of survivorship as a (joint) tenant by the entireties.⁵ For this reason and because the deed did not

³ *Id.* at Ex. F.

⁴ The record does not indicate when the Plaintiffs learned of this alleged fact.

⁵ Although the Plaintiffs have claimed the entire ownership interest, they would, even if one accepts their version of the factual background, hold no more than a one-half undivided interest in

otherwise create a joint tenancy with right of survivorship, William could not have acquired the sole ownership interest in the Property as a result of Anna's death.

Parker asserts that the Plaintiffs' claim to the Property is time-barred. The Individual Defendants, on the other hand, maintain that the Plaintiffs have no claim against them because: they do not own the Property; they claim no current interest in the Property; and they have sold whatever interest they may have had in the Property to Parker. In short, the Individual Defendants argue that any claim that the Plaintiffs may seek to assert can only lie against Parker, as the current record title owner of the Property.

IV. ANALYSIS

A. Summary Judgment

In order to prevail on a motion for summary judgment under Court of Chancery Rule 56, the moving parties must show that no material facts are in dispute and that they are entitled to judgment as a matter of law.

the Property. If the deed to Anna and William was not successful in conveying a tenancy by the entirety, then both Anna and William were tenants in common, each holding a one-half undivided interest.

B. *Parker's Motion for Summary Judgment*

Parker contends that the Plaintiffs' claims to the Property are time-barred. The Court addressed this claim in the Bench Ruling denying Parker's earlier motion for summary judgment:

The defendants next invoke time bar defenses. They assert both statute of limitations and laches. With respect to real property, the legislature has provided a 20-year period through 10 *Del. C.* §§ 7901 and 7902.

Because we are dealing with real property here, and because the General Assembly has specifically addressed the time period in which someone can lose a real estate interest through inadvertent, if I can use that phrase for shorthand purposes, because the General Assembly specifically addressed that time period, I am of the view that I am going to focus on the statute of limitations and borrow that time frame for purposes of any laches analysis.

The defendants properly point out that this action was commenced more than 20 years after Anna died. The statute reflects the position that a wrongfully excluded owner of land ought to act to protect his or her interest within a 20-year period.

The problem is that William could rightly occupy the property as a one-half owner. He was not a mere trespasser. Thus, the analysis here must be informed by the case law such as the *Matter of Camp[h]er* which recognizes that in adverse possession cases, depriving a co-tenant of his

interest is a much more daunting task because proof of ouster of a co-tenant must be stronger than proof of ouster of a stranger.⁶

The record before me simply does not allow me to resolve that issue because of the uncertain factual state of it. Perhaps trial would demonstrate that William was asserting a 100 percent claim to the known and obvious exclusion of his co-tenants from as early as 1978 or 1980.⁷

That ruling, as a practical matter, left open a very narrow issue of disputed fact. The questions, in the adverse possession parlance, are whether William was asserting a hostile claim of full and exclusive ownership to the exclusion of the Plaintiffs, as potential tenants in common with him, and whether his claim was open, notorious, or otherwise known to Plaintiffs for more than twenty years before the filing of this action.⁸ If he indeed was asserting a comprehensive claim to the exclusion of the

⁶ *In re Campher*, 1985 WL 21134, at *2 (Del. Ch. Mar. 20, 1985).

⁷ Bench Ruling at 70-72. One takes title to property through adverse possession by possessing the subject property in an open, notorious, hostile and exclusive manner for a continuous twenty-year period. *Dorman v. Mitchell*, 860 A.2d 810, 2004 WL 2520911, at *1 (Del. Nov. 1, 2004) (TABLE) (citation omitted); *see also Taraila v. Stevens*, 1989 WL 110545, at *1 (Del. Ch. Sept. 18, 1989).

⁸ Acquiring title by adverse possession is a more difficult challenge when the dispossessed party is a fellow tenant in common. *See Campher*, 1985 WL 21134, at *2 (“The constructive ouster of a co-tenant as will suffice to commence the running of the Statute of Limitations may be shown by the possessor’s hostile intent coupled with notice or knowledge thereof to the co-tenants.”).

Plaintiffs and the Plaintiffs were aware of the nature of his claim, then the Plaintiffs' claim here would be time-barred.⁹

Parker renewed its motion for summary judgment following the conclusion of a legal malpractice action brought by two of the Plaintiffs, A. Martin Conaway and Evelyn M. Conaway (the "Superior Court Plaintiffs"), against the lawyer (and his law firm) who prepared the quitclaim deed in 1980; the Superior Court Plaintiffs alleged that the lawyer had not protected their interests in the Property at that time.¹⁰ The legal malpractice action was filed in August 2007. The lawyer and his law firm defended on statute of limitations grounds. In June 2008, the Superior Court granted the lawyer and law firm's motion for summary judgment and held that the three-year statute of limitations for the filing of a legal malpractice action had long passed.¹¹ The Court concluded, as an undisputed fact, that the Superior Court Plaintiffs were on notice as of 1980 that record ownership of the Property had

⁹ It is not disputed that William exercised open, exclusive, and continuous control over the Property for a period in excess of twenty years.

¹⁰ A copy of the complaint in the legal malpractice action appears as Exhibit H to Parker's Opening Brief.

¹¹ *Conaway v. Griffin*, No. 076-08-017 (Del. Super. June 19, 2008).

passed entirely to William, as Anna's surviving husband,¹² and that the Superior Court Plaintiffs were to be charged with such notice. The Superior Court Plaintiffs appealed that determination to the Supreme Court, which in March 2009 affirmed the Superior Court and wrote:

While the [Superior Court Plaintiffs] assert that the Superior Court should not have granted [the lawyer's] motion for summary judgment because there are material facts that remain in dispute, such is not the case. The undisputed material facts are that the [Superior Court Plaintiffs] were on notice, at least as of February 1980 that ownership of [the Property] had passed to [William] as [Anna's] surviving husband.¹³

In reliance upon of the Supreme Court's affirmance of the Superior Court's determination that the Superior Court Plaintiffs were on notice of William's claim to full ownership of the Property as early as 1980, Parker invokes the doctrine of collateral estoppel in support of its renewed motion for summary judgment.

¹² The inventory of Anna's estate reflected that William had acquired (and thus he claimed) full title as the surviving spouse to real property that had been held in a tenancy by the entireties. *Id.* at 4. The filing of the inventory constituted constructive ouster under these circumstances.

¹³ *Conaway v. Griffin*, 970 A.2d 256, 2009 WL 562617, at *2 (Del. Mar. 5, 2009) (TABLE).

Collateral estoppel, or issue preclusion, “prevents a party from relitigating a factual issue that was previously adjudicated.”¹⁴ A court, before it applies the doctrine of collateral estoppel as a bar to relitigating previously adjudicated issues, must resolve whether:

(1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party or in privity with the party to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.¹⁵

As the result of a factual determination in the legal malpractice litigation, the Superior Court Plaintiffs are collaterally estopped from contesting the factual determination that as of 1980, they were on notice that William was claiming the full interest to the Property. That is precisely the issue which was resolved in the legal malpractice action. With the Supreme Court’s affirmance of the Superior Court’s decision, that prior action has been “finally adjudicated on the merits.” The Superior Court Plaintiffs were parties to the action and, even though they were self-

¹⁴ *Troy Corp. v. Schoon*, 959 A.2d 1130, 1133 (Del. Ch. 2008) (internal quotations and citation omitted).

¹⁵ *Betts v. Townsends, Inc.*, 765 A.2d 531, 535 (Del. 2000).

represented litigants in that effort, had a “full and fair opportunity” to address the issue.

Accordingly, with the establishment of this additional material fact as undisputed, Parker is entitled to summary judgment against the Superior Court Plaintiffs because their claims, for the reasons otherwise set forth in the Bench Ruling, are time-barred.

That leaves the claims of Plaintiffs Ernest E. Conaway, James Robert Conaway, and Mabel H. Conaway (the “Other Plaintiffs”). Parker seeks to bar their claims as well, based upon the fact that was conclusively determined in the legal malpractice action. Even though the Other Plaintiffs were not parties to the legal malpractice action, there are instances where the bar of collateral estoppel may extend to persons who were not parties to the earlier litigation.¹⁶ Parker contends that it is appropriate to bind the Other Plaintiffs with the adverse factual findings of the legal malpractice action because the Superior Court Plaintiffs are the moving

¹⁶ See, e.g., *Pub. Serv. Comm’n v. Util. Sys., Inc.*, 2010 WL 318269, at *3 (Del. Ch. Jan. 21, 2010); *Kohls v. Kenetech Corp.*, 791 A.2d 763, 769 (Del. Ch. 2000), *appeal refused*, 765 A.2d 950 (Del. 2000), *aff’d*, 794 A.2d 1160 (Del. 2002).

force behind this action, have a common interest with the Other Plaintiffs, and are, of course, closely related to them. The Other Plaintiffs argue that they should not be bound by the resolution of a factual question in the legal malpractice action because their interests were not fully and fairly represented by the self-represented Superior Court Plaintiffs.

The Court, however, does not need to address that contention because Parker's reliance upon the outcome of the legal malpractice litigation faces an even greater obstacle. In order for collateral estoppel to apply, "the issue previously decided [must be] identical" to the fact determined in the earlier litigation. All the legal malpractice action resolved—perhaps because that is all that was before the Court in that action—was that the Superior Court Plaintiffs were on notice in 1980 of William's claim of full ownership. Nothing in any of the legal malpractice action opinions indicates any judicial determination as to the knowledge of the Other Plaintiffs.¹⁷ That the Superior Court Plaintiffs were on notice is a fact distinct from

¹⁷ Given the similar circumstances of the Other Plaintiffs and the Superior Court Plaintiffs, it may turn out—indeed, it may even be likely that it will turn out—that the Other Plaintiffs will be found to have had comparable notice. That, however inefficient the process may be, is a question that cannot be resolved at this procedural juncture as a matter of undisputed fact.

whether or not the Other Plaintiffs were on notice. Accordingly, because the issue that must now be found in order to entitle Parker to summary judgment—that the Other Plaintiffs were on notice of William’s claim of ownership to the exclusion of the co-tenants in common as of 1980—simply was not determined in the legal malpractice litigation. Therefore, Parker may not rely upon the doctrine of collateral estoppel to establish the final linkage essential to success on its renewed motion for summary judgment. It follows that, as to the Other Plaintiffs, Parker’s motion for summary judgment must be denied.

C. *The Individual Defendants’ Motion for Summary Judgment*

The gist of the Plaintiffs’ claims against the Individual Defendants seems to be that they had no right to convey the Property to Parker because the Plaintiffs owned the Property. If the Individual Defendants did not have the right to convey any interest of the Plaintiffs in the Property, then the deed purporting to convey any such interest is of no force and effect. The “victim” of any such conveyance would not have been the Plaintiffs; instead, it would have been Parker which, presumably, would have paid the purchase price to individuals who did not have the right to

convey title to the Property. More importantly, the objective of the Plaintiffs in this action has been to regain their ownership rights, or particularly, record title, to the Property.¹⁸ Because record title is now fully held by Parker, only Parker can be the source of that relief. Any order restoring record title to the Property to the Plaintiffs would be against Parker, as the current record owner.

Additionally, insofar as the Plaintiffs have sued the Individual Defendants for monetary damages for “loss of the use of” and physical damage to the “family home place,” these claims, as they apply to the Individual Defendants, should have been brought as ouster and waste claims respectively. They were not formally brought as such, and more importantly, the Plaintiffs have not demonstrated any harm caused by the Individual Defendants while all may have been co-tenants in common.¹⁹ To the extent that their claims may have matured after the purported conveyance to

¹⁸ In the Amended Complaint, the Plaintiffs’ requested relief included 1) an injunction and restraining order to prevent further action being taken by the Defendants; 2) specific performance in the form of a conveyance of all interest that William had in the Property from himself to the Plaintiffs; and 3) an award for the costs of the action, including attorney’s fees, monetary damages for loss of the use and physical damage to the family home, harassment, mistreatment of senior citizens, and attorney’s costs.

¹⁹ As co-tenants in common, the Individual Defendants, on this record, had just as much right to use of the Property as did the Plaintiffs.

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Parker, those claims may only be brought against Parker. This perspective is consistent with the Plaintiffs' fundamental focus—reacquiring record title to the Property. Thus, there are simply no damages claims against the Individual Defendants. In short, the Plaintiffs have no claim against the Individual Defendants, and they are, accordingly, entitled to summary judgment.

V. CONCLUSION

For the foregoing reasons, the Individual Defendants' motion for summary judgment and Parker's motion for summary judgment as to the Superior Court Plaintiffs are granted; Parker's motion for summary judgment as to the Other Plaintiffs is denied. An implementing order will be entered.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K