

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

J TRAVIS LASTER
VICE CHANCELLOR

New Castle County Courthouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Date Submitted: January 27, 2012

Date Decided: February 8, 2012

Dennis L. Smith
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Selbyville, DE 19975

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Community Legal Aid Society, Inc.
100 West 10th Street, Suite 801
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Helen S. Starchia
28761 West Diamond Street
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RE: *Meyers v. Smith, et al.*, C.A. No. 4739-VCL

Dear Mr. Smith, Ms. Starchia, and Counsel:

This matter concerns competing claims to ownership of roughly seventeen acres of land located in Frankford, Delaware, Parcel ID #5-33-11.00-82.00 (the "Property"). The Property was bequeathed to the plaintiff, Patricia Meyers, upon the death of her father in 1990. Meyers, who suffers from numerous serious health problems, resides on the Property with her disabled adult son. Meyers deeded the Property to Dennis L. Smith in 2004 for consideration of one dollar. Smith subsequently transferred the Property to Helen S. Starchia, his mother, for consideration of ten dollars. Meyers alleges that she did not know or understand the nature of the documents that Smith induced her to sign and asserts that she never intended to transfer the Property to Smith. Smith and Starchia continued to claim ownership of the Property, but have refused to participate in this proceeding.

By Final Judgment dated April 26, 2011, this Court entered a default judgment in favor of Meyers, declared void and rescinded the deeds by which Meyers transferred the Property to Smith and by which Smith subsequently transferred the Property to Starchia, and declared Meyers to be the owner of the Property in fee simple. Despite the entry of the Final Judgment, Smith has continued to attempt to establish his ownership of the Property pursuant to (i) an agreement entitled "Sale of Complete Inherited Rights And Authorities To Real Property" dated January 5, 2004 and recorded on January 8, 2004 in Deed Record Book 02931 Page 144 and (ii) a so-called "conclusion" to the sale agreement recorded in Deed Record Book 03127 Page 201. I will refer to these documents jointly as the "Sale Documents." On January 27, 2012, Meyers filed a Motion

to Correct Final Judgment Pursuant to Rule 60(a), requesting that the Court enter a corrected final judgment rescinding the Sale Documents. After careful review, I grant Meyers' Rule 60(a) Motion and declare void and rescind the Sale Documents.

FACTUAL BACKGROUND

Meyers filed the operative complaint in this action on July 16, 2009, alleging breach of fiduciary duty, common law fraud, undue influence, and exploitation of an infirm adult. The complaint sought relief in the form of an order rescinding (i) the deed executed by which Meyers transferred the Property to Smith and (ii) the deed by which Smith transferred the Property to Starchia.

Smith and Starchia, proceeding *pro se*, did not answer the complaint. Instead, they removed the case to the United States District Court for the District of Delaware (the "District Court") on August 6, 2009. Dkt. 10. The case was summarily remanded to this Court on August 25, 2009. Dkt. 11. Smith subsequently filed a motion to reopen in District Court, which that court construed as a motion for reconsideration and denied. Dkt. 18. Smith again removed to District Court on March 11, 2010. Dkt. 39. The case was summarily remanded to this Court on May 12, 2010. Dkt. 45.

On February 9, 2011, Meyers filed a Motion for Default Judgment pursuant to Court of Chancery Rule 55(b). The Motion noted that Smith and Starchia had yet to answer the complaint. On March 2, 2011, this Court issued an Order to Show Cause why default judgment should not be entered. Smith and Starchia again did not respond, but removed the case to District Court for a third time. The case was remanded to this Court by a Memorandum Order dated April 14, 2011. Dkt. 60. The District Court's Memorandum Order noted that this was the third time Smith had removed to that court, that Smith's two prior attempts had resulted in summary remands, and that Smith's "repeated removal . . . is vexatious and an abuse of the legal process." *Id.*

Following the third remand, this Court conducted a hearing on April 18, 2011 to determine whether cause existed pursuant to this Court's March 2 Order. Smith and Starchia did not appear at the hearing. On April 26, 2011, the Court entered an Order of Final Judgment granting default judgment in favor of Meyers and against Smith and Starchia. The Final Judgment declared void and rescinded (i) the deed transferring the Property from Meyers to Smith and (ii) the deed transferring the Property from Smith to Starchia. The Final Judgment also reinstated the deed transferring the Property to Meyers dated June 30, 2003 (the "Operative Deed") thereby rendering Meyers the sole owner of the Property in fee simple, but declared that Meyers' ownership remained subject to any transfers of interests in the Property that post-date the Operative Deed. By crafting its order in this fashion, the Court protected the interests of a third party *bona fide* transferee

who acquired a portion of the Property pursuant to an unrelated judgment after the execution of the Operative Deed. The Court did not intend to preserve any right that Smith or Starchia might purport to hold in the Property.

In December 2011, the Court was notified that Smith had contacted the Recorder of Deeds for Sussex County, Delaware and attempted to remove Meyers from the Property. On December 19, 2011, the Court issued an Order to Show Cause as to why Smith was not in contempt of the Final Judgment. Smith did not respond to the December 19 Order, but instead wrote a letter to Special Agent Rising of the Federal Bureau of Investigation, dated December 27, 2011, claiming ownership in the Property under the Sale Documents. Dkt. 73. In a second letter to Special Agent Rising dated January 18, 2012, Smith challenged the validity of the Final Judgment, claiming that the case was removed to District Court at the time of the April 18, 2011 default judgment hearing, that the hearing was therefore “unlawfully and unconstitutional,” and that this Court “fraudulently claimed that “Defendants” fail to appear **and** Defaulted.” Dkt. 76 (errors in original). The letter further stated that “I (Mr. Smith) **will never agree** to – or – **answer to** any document etc, based on this VOID JUDGMENT dated April 26, 2011” *Id.*

LEGAL ANALYSIS

Under Court of Chancery Rule 60(a), “[c]lerical mistakes in judgments, order or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party” Ct. Ch. R. 60(a); *cf.* Theodore A. Donahue, Jr., *A History and Interpretation of Rule 60(a) of the Federal Rules of Civil Procedure*, 42 Drake L. Rev. 461, 470 (1993) (“The purpose of [Federal] Rule [of Civil Procedure] 60(a) is to permit the correction of discrepancies in the original record or judgment in order to make them ‘speak the truth’ and ‘reflect what was intended at the time of trial.’” (quoting, respectively, 11 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2854 (1973) and *Warner v. City of Bay St. Louis*, 526 F.2d 1211, 1212 (5th Cir. 1976), *aff’d*, 552 F.2d 583 (5th Cir. 1977) (footnote omitted))).

Meyers brought this case seeking the rescission of the documents granting Smith and Starchia ownership of the Property. Smith and Starchia opted not participate in this case, resulting in a default judgment being awarded in favor of Meyers. By issuing the Final Judgment, the Court intended to grant in full the relief Meyers’ requested in the Complaint and declare void and rescind all documents by which Smith and Starchia might claim an interest in the Property. The Final Judgment, however, overlooked the Sale Documents. The Court became aware of these documents only after the entry of the Final Judgment when Smith used the Sale Documents in an effort to transfer title to the

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Property into his name. Declaring void and rescinding the Sale Documents corrects omissions in the Final Judgment to achieve the result intended by the Court. Accordingly, I declare void and rescind the Sale Documents. Consistent with the Final Judgment, Meyers owns the Property in fee simple, subject to any *bona fide* transfers of interests in the Property to third parties that post-date the Operative Deed.

Finally, in his January 18, 2012 letter to Special Agent Rising, Smith contends that the Final Judgment is void because it was entered while the case was removed to the District Court. The Memorandum Order issued by the District Court remanding the case to this Court is dated April 14, 2011. The Final Judgment was entered on April 26, 2011. Therefore, the Final Judgment is not void and does not suffer from any constitutional defect.

CONCLUSION

Smith and Starchia have refused to appear, participate, or respond to this Court's inquiries. I will wait no longer and hereby declare void and rescind the Sale Documents. Meyers' Motion to Correct Final Judgment Pursuant to Rule 60(a) is granted. A corrected Final Judgment has been filed contemporaneously.

Very truly yours,

/s/ J. Travis Laster

J. Travis Laster
Vice Chancellor