IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DAVID J. BRANSON, Individually and as Executor of the ESTATE OF DORTHEA C. BRANSON, ALBERT E. BRANSON, JR. AND ROBERT J. BRANSON,	)	
Petitioners,	)	
	)	*Civil Action No. 7603-VCG*
v.	)	
VINCENT J. BRANSON,	)	
Respondent.	)	

MEMORANDUM OPINION

Date Submitted: May 2, 2013
Date Decided: July 19, 2013

David J. Weidman, of SERGOVIC, CARMEAN & WEIDMAN, P.A., Georgetown, Delaware, Attorney for Petitioners.

Dean A. Campbell, of LAW OFFICES OF DEAN A. CAMPBELL, LLC, Georgetown, Delaware, Attorney for Respondent.

GLASSCOCK, Vice Chancellor

This matter illustrates the lengths to which malign family relationships and mulish obstinacy, facilitated by the failure of parties to a land sale to record title with the Sussex County Recorder of Deeds, can carry litigants in this Court. Before me are cross motions for summary judgment in this action for quiet title. For the reasons that follow, the Petitioners' motion is granted and the Respondent's motion is denied.

This action is the third among these parties recently filed in this Court. The first, before Vice Chancellor Noble, was brought by the Respondent here, Vincent Branson. Vincent sought to establish his interest in a Branson family beach cottage (the "Cottage") as well as to obtain other relief arising from alleged misconduct of the executor in the Estate of Dorothea Branson (the "Estate"). Dorothea Branson was the mother of the current litigants. As will be described more fully below, Vincent[1] was entirely unsuccessful in that litigation.[2] Vincent appealed the Vice Chancellor's decision to the Supreme Court, which affirmed.[3] Among the holdings in the Vice Chancellor's Memorandum Opinion of September

[1] I refer to the litigants by their first names, not out of disrespect, but to avoid confusion due to the superabundance of Bransons here.
[2] *In re Estate of Branson*, 2010 WL 3449235, at *10 (Del. Ch. Sept. 1, 2010) *aff'd sub nom. Branson v. Branson*, 35 A.3d 418 (Del. 2011).
[3] *Branson v. Branson*, 35 A.3d 418 (Del. 2011).

1, 2010 (the "prior Memorandum Opinion") was that Vincent had received a full cash distribution of his interest in the Estate and had no further interest therein.[4]

Subsequently, Vincent filed exceptions to the executor's Final Accounting in Dorothea's Estate. I dismissed that action, finding that the prior Memorandum Opinion established that Vincent was not "entitled to share in the distribution" of the Estate, and therefore was without standing to take exception under 12 *Del. C.* § 2303(d). Meanwhile, David Branson, individually, and as executor of Dorothea's Estate, and his brothers, Albert and Robert Branson, all Vincent's siblings, filed this action to quiet title. The Petitioners' contentions here rely solely on the prior Memorandum Opinion. That Opinion found that Vincent has no interest in the Cottage. Because Vincent's name remains on the title as recorded with the Sussex County Recorder of Deeds, the Petitioners seek an order removing Vincent's illusory recorded interest.

I. BACKGROUND

A. Title to the Cottage.

The following facts are taken from the factual findings of the prior Memorandum Opinion.[5] The Cottage was acquired by these litigants' father, Albert, Sr., in 1974. He transferred the Cottage to Vincent, David, Robert, Albert

[4] *In re Estate of Branson*, 2010 WL 3449235, at *10 ("Vincent has no interest in the Cottage—he relinquished any right he may have in the Cottage when he instead elected to take his share of the Estate in cash.").
[5] I will describe only those findings of the prior Opinion pertinent here. *Id.*

and their sister, Theresa McVearry, in 1977. As part of that transfer, these siblings assumed the mortgage, which was satisfied by 1990. The siblings owned the Cottage in common, with each owning a 20% share. According to the parties, the deed of record still reflects this ownership.

In 1979, Vincent, Albert, Robert and Theresa bought David's share, increasing the ownership interest of each to 25%. While this was a transaction for value, the parties did not bother to create, let alone record, a deed in evidence of the transaction. A few years later, Robert and Theresa gave their combined 50% interest in the Cottage to their mother, Dorothea. Again, the parties did not create a deed. Before 1990, Vincent sold his interest to Dorothea in exchange for forgiveness of a $25,000 debt. Again, unfortunately, and in retrospect foolishly, this transaction was not described by deed.[6] The prior Memorandum Opinion explicitly found that "by 1990, Dorothea owned 75% of the cottage, and Albert, who had never transferred any of his interest in the cottage, held the remaining 25%."[7]

Dorothea died in 2001. Under the terms of her will, all of her Estate was left in equal shares to her five children. This included her 75% interest in the Cottage.

[6] The parties' numerous land transactions, accomplished without the benefit of any written memorializing or recording, apparently relied for their efficacy on the idea that blood is thicker than water, and that due to the brotherly love shared by the siblings, justice would spontaneously prevail, an assumption which, I note, has proven unreliable. *See, e.g., Genesis* 4:8.

[7] *In re Estate of Branson*, 2010 WL 3449235, at *1.

The Estate also held stock and cash. As a beneficiary under the will, Vincent was entitled to a 15% interest in the Cottage (20% of Dorothea's 75%) and 20% of the other assets. On April 20, 2002, Theresa and her children disclaimed any interest in the Estate, raising the remaining siblings' interest to 25% of Dorothea's interest in the Cottage and in the liquid assets of the Estate. Vincent received early distributions totaling $110,000. According to the prior Memorandum Opinion, this was a "full and final distribution," in satisfaction of his interest in the Estate, including his interest in the Cottage.[8]

Although the beneficial interest in the Cottage of each sibling (except for Albert) had been transferred to Dorothea during her lifetime, the siblings remained record titleholders of the Cottage. In late June or early July of 2004, David, Albert, Robert and Theresa each signed quitclaim deeds transferring their legal interest to David as executor of Dorothea's Estate. This transfer was apparently done to facilitate clear title and the sale of the property. Currently, then, equitable ownership is in David for the benefit of David, Albert and Robert. Record title remains in the siblings, in common.

B. The Guarantee

Sometime in 1988 or thereafter, Vincent purchased stock from David in a start-up technology company, Novazen, Inc. David agreed to guarantee Vincent's

[8] *Id.* at *9.

investment or to indemnify him for any loss. Once again, as was common in Branson-family transactions, the guaranty was not put in writing. Vincent invested $85,000, in return for which he received what ultimately proved to be worthless stock. Vice Chancellor Noble found that David owed Vincent this amount, $85,000, as a result of the guaranty, but that the repayment obligation would not be triggered until the Cottage was sold.[9] He also found that the transactions prior to the date of his Memorandum Opinion did not constitute a sale of the Cottage for purposes of the guarantee.[10]

C. The Litigation Underlying the Prior Opinion

In the litigation before Vice Chancellor Noble, Vincent sought to enforce what he contended was a promise by Robert, Albert and David to sell him the Cottage for $345,000. He also sought a declaration that he was an owner of 25% of the Cottage, in common, and denied that he had transferred that interest to his mother. Finally, he contended that the early distribution he received from the Estate was not a final distribution of his interest and that he therefore was entitled to a portion of the Cottage via inheritance. He sought a partition sale.

The Vice Chancellor denied all of Vincent's claims. The Court specifically found in the prior Memorandum Opinion that Vincent had no interest in the Cottage, that Vincent's siblings were under no contractual obligation to sell the

[9] *Id.* at *2.
[10] *Id.* at *7

Cottage, and that Vincent had taken his full distribution from the Estate in cash.[11] The Court also limited its holding to the relief requested by the defendants—the Petitioners here—noting that

> Defendants have not raised a counterclaim in quiet title, and thus whether Vincent's name may remain among the land records regarding the cottage is beyond the scope of this Memorandum Opinion.[12]

With respect to the $85,000 guaranty, the Court found that Vincent was contractually entitled to $85,000 from David "upon sale of the cottage."[13] The Court held that the Cottage had "not been sold for purposes of triggering the Guaranty, which is therefore not yet due and payable. . . ."[14] The Court also denied Vincent's request to impose an equitable lien upon the property for the amount of the Guaranty.[15]

Because they had not placed a timely request to quiet title before the Court in the context of the prior Memorandum Opinion, the Petitioners were forced to bring this separate action to quiet title. That is the matter before me: whether, as a result of Vincent's transfer of all his interest to his mother prior to 1990 in consideration for the release of a $25,000 debt, and due to the fact that he released

[11] *Id.* at *8-*10.
[12] *Id.*
[13] *Id.* at *10.
[14] *Id.* at *11.
[15] *Id.* at *11 n.139.

any interest under Dorothea's will in return for a cash payment, Vincent's name should be removed from the title.

Vincent's response was to seek to interplead individuals whom he asserted might have an interest in the Cottage (excluding, obviously, the Petitioners) and to move for summary judgment on two grounds: (1) that Vice Chancellor Noble denied the Petitioners' prior request to quiet title, and therefore the current Petition was barred by *res judicata*, and (2) that the Petitioners had failed to give notice of their Petition "to the world."[16] In other words, Vincent considered this an *in rem* proceeding to quiet title against all claimants generally and sought to interplead individuals—including his daughter—who (according to Vincent) may have an interest in the matter.[17] Vincent's characterization of the matter, while understandable, was incorrect. The Petition itself sought to quiet title only against Vincent, but was inartfully drafted. Though not crafted as an *in rem* proceeding, it contained language purporting to request a determination from the Court that the Petitioners were "the sole and rightful owners of the [Beach Cottage] and that they are entitled to the quiet and peaceful possession of said property, and that no other persons have any right, title or interest in said property or any part thereof."[18]

[16] Resp.'s Mot. Summ. J. 5.
[17] Interpleader Pet., Aug. 20, 2012. Vincent's daughter Lee Branson also sought to intervene in this action, a request that has been withdrawn. See Not. of Vol. Withdraw 1, May 6, 2013.
[18] Pet. ¶ 23-1.

I heard oral argument on all outstanding motions—including the Petitioners' Motion to Dismiss Vincent's Interpleader Petition—on January 24, 2013, at which point I denied Vincent's Motion for Summary Judgment and his Interpleader Petition, and, with the consent of Petitioners, limited their Petition to the request that Vincent Branson's name be removed from the title to the Cottage.[19] Subsequently, the Petitioners moved for summary judgment, and the Respondent moved to reargue my January 24 bench ruling.[20] Oral argument on these motions was held on April 9, 2013, and at that hearing I denied again the Respondent's Interpleader Petition and Motion to Dismiss, holding that this action is an *in personam* action to quiet title against Vincent Branson.[21] Because the Respondent at that hearing—for the first time—raised the issue of whether the Cottage would be distributed as Estate property, I reserved decision on the case dispositive motions until after a hearing on Vincent Branson's Exceptions to the Final Accounting of the Estate of Dorthea Branson.[22] Those exceptions were denied on May 31, 2013. What follows is my decision on the outstanding Motions for Summary Judgment.

[19] *See* Oral Arg. Tr. 15:19-17:11.
[20] *See* Resp. Br. Supp. Mot. Reargue.
[21] Oral Arg. Tr. 10:8-21, Apr. 9, 2013.
[22] *Id*. at 22:20-24:5.

II. DISCUSSION

A. Standard of Review

Summary judgment may be granted to the moving party when that party demonstrates that there is no issue of material fact, and that the moving party is entitled to judgment as a matter of law.[23] Where the parties have submitted cross-motions for summary judgment on a stipulated record, as the parties here have done, I may treat the matter as submitted for a decision on the merits.[24]

B. Vincent's Lack of Interest in the Cottage has Been Determined as a Matter of Law.

The Petitioners' Motion for Summary Judgment must be granted, because Vincent has no interest in the Cottage, and therefore no basis to resist removal of his name from record title to the Cottage.

In the litigation before Vice Chancellor Noble, Vincent argued that he retained his 25% interest in the property despite his transfer of that interest to his mother before 1990. He also argued that he has an interest in the property as a beneficiary under Dorothea's will. As noted above, those matters were conclusively decided in the prior Memorandum Opinion. Vincent transferred his interest in the property to his mother for consideration and thereafter retained no interest other than the bare record title which is the subject of this suit. In addition,

[23] Ct. Ch. R. 56(c).
[24] Ct. Ch. R. 56(h).

the Court found that Vincent exchanged his interest in the Cottage arising under the will of Dorothea Branson for a cash distribution. Therefore, he obtained no interest in the Cottage under the will.

The prior Memorandum Opinion is *res judicata* as to Vincent's claims that he retains any ownership rights in the Cottage.[25] Vincent appears to be a record title holder of the property only because the parties foolishly failed to memorialize and record the sale of Vincent's interest in the Cottage to Dorothea. Thus, the legal title of record indicates an apparent, but misleading, ownership interest in Vincent. In order for title to the property to be cleared, it is necessary that an order be recorded providing that Vincent's interest in the property was transferred, in full, to Dorothea Branson, in or before 1990, to be effective upon filing the order with the Recorder of Deeds, *nunc pro tunc*.

Vincent resists entry of such an order on a number of grounds, all of which are frivolous. First, Vincent argues that the prior Memorandum Opinion, which found that the Estate had not sought and therefore was not entitled to quiet title in that action, itself precludes the relief sought here under the rubric of *res judicata*.

[25] *See LaPoint v. AmerisourceBergen Corp.*, 970 A.2d 185, 192 (Del. 2009) ("Res judicata operates to bar a claim where the following five-part test is satisfied: (1) the original court had jurisdiction over the subject matter and the parties; (2) the parties to the original action were the same as those parties, or in privity, in the case at bar; (3) the original cause of action or the issues decided was the same as the case at bar; (4) the issues in the prior action must have been decided adversely to the appellants in the case at bar; and (5) the decree in the prior action was a final decree.").

Nothing in the prior Memorandum Opinion[26] or the 2011 Letter Opinion,[27] however, renders a decision about whether title could be cleared in a subsequent action; those decisions simply recited the obvious fact that the defendants in that action had not sought the remedy of an order to quiet title. On the contrary, the prior Memorandum Opinion explicitly states that "whether Vincent's name may remain among the land records regarding the Cottage *is beyond the scope of this memorandum opinion*."[28] The Petitioners' action here only seeks to clear legal title to reflect the interest found in the prior Memorandum Opinion.[29]

Next, Vincent alleges that "unclean hands" should prevent the order the Petitioners seek here. He contends that the Petitioners should be barred from receiving relief due to "perjury, abuse of process, breach of fiduciary duty . . . and the negligence of the Executor. . ." in the underlying Estate.[30] In addition to the fact that these allegations are purely conclusory, even if true they do not relate to the relief sought here, which is simply the removal of the Respondent's name from

[26] *In re Estate of Branson*, 2010 WL 3449235, at *8.
[27] Letter to Counsel, C.A. No. 681-VCN, at 3 (Feb. 2, 2011) ("[T]he Court's final order will not include any affirmative relief directed toward Vincent.").
[28] *In re Estate of Branson*, 2010 WL 3449235, at *8 (emphasis added).
[29] A logical implication of the Respondent's argument is that a party's initial failure to seek to quiet title can then prevent the rightful owners of real property from *ever* obtaining marketable title to sell the property. The U.S. Supreme Court has recognized that "the quieting of the title to . . . land . . . is [a purpose] towards which a court of equity is always liberally disposed, as tending to promote the peace of society and the security of property." *Thompson v. Maxwell*, 95 U.S. 391, 399 (1877). It would be manifestly inequitable to allow Vincent's obstinance to create an eternal cloud on the title to the Cottage.
[30] Answer Opp. Pet'rs' Mot. Summ. J. 4-5.

recorded title. This Court will bar those who seek equitable relief who themselves have behaved inequitably with respect to the transaction at issue, but malfeasance in separate matters does not bar equitable relief.[31]

Finally, Vincent alleges that, notwithstanding the specific findings of the prior Memorandum Opinion, he *does* have a cognizable interest in the Cottage. Vincent points to the $85,000 Guaranty as basis for ownership in the Cottage, but Vice Chancellor Noble specifically denied him an equitable lien based upon the Guaranty. Vincent next argues that he has "a fiduciary duty to ensure that the beach home is distributed according to his mother's intent and Vincent would be subject to suit if he breached that duty,"[32] but at oral argument, Vincent's counsel was unable to cite any basis for that dubious assertion.[33] Vincent asserts, frivolously, that a *lis pendens* which he has filed gives him an ownership interest in the real property. Finally, Vincent asserts again his legal title and his interest arising under the will, arguments which were specifically denied in the prior Memorandum Opinion. Finally, the Respondent seeks to dismiss because "Petitioners hold only a mere expectancy as beneficiaries and the Estate has not been closed."[34] The Final Account in the Estate, however, has been approved. The

[31] *See Encite, LLC v. Marsh*, 2011 WL 5920896, at *6 (Del. Ch. Nov. 28, 2011) ("The Court of Chancery jealously guards its domain as a court of equity; therefore, one who seeks equity from the Court must not have acted inequitably himself *in the same transaction*.") (emphasis added).
[32] Answer Opp. Pet'rs' Mot. Summ. J. 9.
[33] Oral Arg. Tr. 30:4-31:12.
[34] Resp.'s Mot. to Dismiss and for Summ. J. 35.

Estate is not insolvent. It is clear that the Petitioners have a sufficient interest to have standing to bring this action. Accordingly, the Respondent's Motion to Dismiss and for Summary Judgment must be denied.

C. Petitioners' Request for Fee Shifting

Finally, I address the Petitioners' request that I shift fees to the Respondent under Rule 11 and because the Respondent has litigated this matter in bad faith. As noted above, this litigation was partly prolonged by a poorly drafted Petition to Quiet Title. Vincent's decision to treat the Petition as an *in rem* action was not unreasonable. However, other arguments made by Vincent in this litigation were so obviously meritless that the only possible justification for making them was to delay resolution of this matter and so avoid the consequences of the prior Memorandum Opinion.[35] The Petitioners are correct that they should not bear the costs of purely vexatious legal maneuvers. The Petitioners should submit for my consideration a statement of fees which they believe reflect the costs of those maneuvers.

III. CONCLUSION

A prior decision of this Court found that Vincent transferred all the interest he held in the Cottage to his mother by 1990. The parties to that transaction,

[35] Vincent's counsel was well aware that I was dubious that a good-faith basis existed to oppose the relief sought by the Petitioners. Teleconf. Tr. 6:6-12, Dec. 12, 2012 ("I have no idea what [Vincent's] interest is, nor do I understand how this proceeding could be in good faith. . . . I want you to inform your client that I don't know what his good faith reason for going forward is, and if I find that he doesn't have one, I won't hesitate to shift fees and costs.").

however, failed to file a deed or other document removing Vincent's name from the record title. It is therefore appropriate that an order of this Court be filed providing that such a transaction occurred and was effective *nunc pro tunc*. The order should also provide that any interest Vincent Branson received under the will of Dorothea Branson was waived by Vincent's receipt of a cash distribution in lieu of an interest in the Cottage. More than this, however, I cannot do. There is no *in rem* quiet title action before me. The Branson family, through its informal transfers of interest in the Cottage, both before and after Dorothea's death, created a mare's nest of title issues. Those issues may have been fully resolved in the prior Memorandum Opinion. However, this Memorandum Opinion addresses only the interests of Vincent Branson in the property. Because of the nature of this Petition, nothing in this Opinion shall be deemed to affect property rights in the Cottage other than those of Vincent Branson.

The Petitioners should provide a form of order consistent with this Opinion.