IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

THE RESERVES MANAGEMENT CORPORATION, a Delaware corporation,	)	C.A. No. 08C-08-010 JTV
Plaintiff,	)	
v.	)	
30 LOTS, LLC, a Delaware limited liability company, and SEVERN SAVINGS BANK FSB, a foreign corporation,	)	
Defendants.	)	

Submitted: June 26, 2009
Decided: November 30, 2009

Steven Schwartz, Esq., Schwartz & Schwartz, Dover, Delaware. Attorney for Plaintiff.

Richard E. Berl, Jr., Esq., Smith, O'Donnell, Feinberg & Berl, LLP, Georgetown, Delaware. Attorney for Defendant 30 Lots.

Michael W. Arrington, Esq., Parkowski, Guerke & Swayze, P.A., Wilmington, Delaware. Attorney for Defendant Severn Savings Bank.

Upon Consideration of Defendant Severn Savings Bank's Motion For Summary Judgment
GRANTED

VAUGHN, President Judge

The Reserves Management v. 30 Lots, LLC, et al.
C.A. No. 08C-08-010 JTV
November 30, 2009

ORDER

Upon consideration of defendant Severn Savings Bank, FSB's ("Severn") Motion for Summary Judgment, the plaintiff Reserves Management Corporation's ("the plaintiff" or "Reserves Management") opposition, and the record of the case, it appears that:

1. The dispute in this case centers on real property consisting of thirty lots, and certain liens and assessments related to that property. On March 24, 2004, Reserves Development, LLC ("Reserves Development"), as seller, and Crystal Properties, LLC ("Crystal Properties"), as buyer, entered into an agreement for the sale of thirty lots ("the lots") in a development known as Reserves-Resort Spa & Country Club, Phase II ("The Reserves"). Crystal Properties assigned its rights and obligations under the contract to Bella Via, LLC ("Bella Via"). In October 2004, settlement was held and Reserves Development conveyed the lots to Bella Via. In connection with the transaction, Bella Via granted a first lien mortgage on the lots to Severn, one of the defendants. The loan note was guaranteed by four individuals who were principal owners of Bella Via.[1] On January 3, 2008, the plaintiff obtained a judgment against Crystal Properties and Bella Via for $603,959.12 in a Superior Court action. The judgment became a lien upon the lots and was subordinate to Severn's first mortgage.

2. The lots in question are governed by a Declaration of Restrictions ("the

[1] Bella Via originally consisted of four principals. At some point two principals acquired the interests of the other two; leaving Bella Via with only two principals.

Declaration"). The plaintiff, Reserves Management, is an owners' association under the Declaration. The restrictions are dated and recorded August 13, 2001. After the restrictions were recorded, the first conveyance of the lots was the above-mentioned transaction between Reserves Development and Bella Via. Portions of the Declaration are discussed below.

3. The Declaration authorizes the imposition of several forms of assessment upon lots in the development. One is an assessment for structural improvements to common areas completed after the developer performed initial improvements. Another is an annual assessment often associated with an organized development. Yet another is an initial assessment of $5,000 to help capitalize the association that is imposed upon the purchaser in the first conveyance from the developer. The plaintiff alleges that the document also authorizes another $5,000 initial assessment. The reasons upon which I decide the motion do not require me to make any judgment regarding any specific aspect of the validity or amount of the plaintiff's assessments claim.

4. In addition, the Declaration has a number of provisions regarding how assessments may be treated as liens. These provisions are as follows: assessments are secured by a lien upon the associated property; the assessments lien is subordinate to any first mortgage lien; and a sale or transfer of any lot does not affect the assessment lien, except that a sale or transfer of a lot by foreclosure of a first mortgage extinguishes the assessments lien as to payments due prior to such sale or transfer.

5. Also pertinent is the following language in the Declaration from Article VII, Sections 1 and 6:

> Each such assessment, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment was due. A personal obligation for delinquent assessment shall not pass to the Owner's successor in title (other than as a lien on the land), unless expressly assumed by them.
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> * * *
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> In addition to such lien rights, the obligation of the assessment shall be a personal obligation of the then Owner to pay any assessment, however, the personal obligation shall not pass to a successor in title (other than as a lien on the land) unless expressly assumed by them.

The foregoing provisions expressly apply to assessments imposed under Article VII. The assessment for structural improvements performed after the initial construction improvements is imposed under a different article, Article VI. I find that by legal implication the above quoted language from Article VII must also apply to assessments under Article VI. In summary, the Declaration states that the assessments are personal obligations of the owner at the time of the assessment, and that such obligations do not pass to a successor in title unless expressly assumed.

6. Now, I turn to the events that led to this particular dispute. In 2006 or 2007 the Bella Via mortgage appeared to have gone into default and the parties entered into a mortgage modification agreement dated March 30, 2007 and a forebearance agreement dated October 10, 2007.[2] These agreements added two other

[2] The plaintiff has questioned whether the Bella Via mortgage was actually in default. For purposes of this motion, I will assume that no mortgage default actually existed and that the mortgage foreclosure described herein was an amicable and collusive foreclosure as alleged by

entities as additional guarantors,[3] granted a note repayment extension, and added other real property as additional collateral. The forebearance agreement also provided that Severn, in exercising its remedies, would foreclose upon the lots owned by Bella Via before proceeding against any other collateral.

7. On January 18, 2008, Severn commenced foreclosure proceedings against the lots. On January 29, 2008, Severn and Bella Via entered into a stipulated final judgment in the amount of $3,697,602.43 plus interest, legal fees and costs.[4] On April 14, 2008, one day before the scheduled Sheriff's Sale of the lots, Bella Via, its two remaining principals, and Severn entered into an agreement which provided, in pertinent part: that the principals of Bella Via would pay a $1,700,000 escrow to be held by Severn's counsel as escrow agent; that Severn would bid no less than $2,000,000 for the property at the Sheriff's Sale if it were the only bidder, and up to $3,200,000 if there was another bidder; that if Severn was the successful bidder, the principals of Bella Via would deliver to the escrow agent by May 1, 2008 the additional amount needed, together with the escrow, to pay off the loan balance; and that if the two principals performed their part of the bargain, Severn would assign its rights as purchaser at the Sheriff's Sale to an entity controlled by them.

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the plaintiff.

[3] Those entities were Buchanan Properties, Inc. and 770 Properties, LLC.

[4] The plaintiff stated in its opposition motion that the lots were not worth nearly as much as the mortgage foreclosure judgment. Since the amount owed on the mortgage does not seem to be in dispute, I will accept as fact that the mortgage balance was much more than the value of the lots.

8. At the Sheriff's Sale the next day, April 15, 2008, Severn was the highest bidder with a bid of $2,000,000. On May 5, 2008, Severn assigned its rights as high bidder to 30 Lots, LLC ("30 Lots"), an entity owned by the two principals of Bella Via. Under the Court's rules, the sale was confirmed as a matter of course on May 9, 2008.[5] The Sheriff's deed, dated May 23, 2008, ran directly from the Sheriff to 30 Lots. Severn received approximately $2,000,000 from 30 Lots and/or its principals and financed the additional amount needed to pay off its Bella Via loan.

9. On July 23, 2008, Reserves Management wrote a letter to Severn and 30 Lots demanding payment of the following assessments on each lot: a $5,000 capital assessment; a $5,000 initial assessment for clubhouse and other recreational amenities; a $4,571 first year annual assessment; a $1,142.75 quarterly assessment for the period from July 1 to September 30, 2008; and a $966.94 pro-rated quarterly assessment for the period from April 15 to June 30, 2008. All together, the demand was for $500,420.70.[6]

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[5] Under the version of Superior Court Civil Rule 69(d) effective in 2008, return of a Sheriff's Sale was required to be made on the first Monday of the month succeeding the date of the sale. Applications to set aside the sale were to be filed on or before Thursday of that same week. Where no such application was filed by Thursday, confirmation occurred as a matter of course on the next day, Friday. In May 2008, that Friday was May 9.

[6] The agreement of sale between Reserves Development and Crystal Properties contained a provision, paragraph 4.B.(2), which stated that the buyer would pay homeowner's association dues with respect to any lot prior to the issuance of a certificate of occupancy for any home built on a lot, and which provided that certain other assessments would be paid when a lot was sold to a third party. In an affidavit, the president of Reserves Management states that this provision contractually excused Bella Via from liability for assessments, and that for this reason no quarterly billings were sent to Bella Via. This explains why the first demand for any assessments pertaining to the lots was made after Bella Via's ownership was terminated.

10. When Severn and 30 Lots refused to pay, this debt action was filed by the plaintiff seeking judgment against both defendants in the amount of $500,420.70 plus interest, legal fees, and costs. In its complaint, the plaintiff alleges that the claimed amount is due under the Declaration. Severn responded with a motion to dismiss claiming that it did not owe any of the amount claimed. That motion evolved into this motion for summary judgment.

11. After Severn filed its motion to dismiss, the plaintiff filed a motion to amend the complaint to add a claim for recovery of the $500,420.70 from the defendants under the Fraudulent Transfer Act ("the Act").[7] In that amended complaint, the plaintiff contends that the sole purpose of the foreclosure and transfer of the lots from Bella Via to 30 Lots was to accomplish the fraudulent release or discharge of the lots from the plaintiff's above-mentioned judgment and assessment liens. The plaintiff contends that Severn acted in concert with Bella Via and 30 Lots in the fraudulent scheme, and that Severn and 30 Lots are, in substance, alter egos of Bella Via. It also contends that the alleged fraudulent transfer allowed 30 Lots to avoid substantial transfer taxes and that it, in fact, paid no transfer taxes at all.[8]

12. The standard of review on a motion for summary judgment is a familiar

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[7] 6 *Del. C.* §§ 1301 - 1311.

[8] The plaintiff also contends that Severn Bank had other collateral - i.e. not the thirty lots in question - for the same debt and that it could have proceeded against that collateral instead of the lots. *See* Pls. Opp. Br, D.I. 14, at 3, 7. I am not aware of any principle of law in this Court that would require Severn Bank to proceed against other collateral before foreclosing on the lots. Marshaling debtor's assets is an equitable remedy that does not apply to actions at law in this Court. *See Short v. Short*, 11 A.2d 277, 277-278 (Del. Super. 1940).

one. Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[9] In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.[10] Summary judgment is inappropriate when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.[11]

13. First, I will consider the plaintiff's claim that it is entitled to recover from Severn under the Declaration. There is no evidence that Severn expressly assumed liability for any assessments; therefore, it is not liable on that basis. The other possible ground for a judgment against Severn under the Declaration is that assessments were imposed during a time when Severn was an owner of the lots. As mentioned above, the Declaration provides that assessments "shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment was due."

14. The Declaration defines who may qualify as an owner. Article II discusses membership in the homeowner's association and provides that every "[o]wner . . . shall be subject to assessment...." Section 2 of Article II defines terms

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[9] Super. Ct. Civ. R. 56(c).

[10] *Pierce v. Int'l Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

[11] *Mumford & Miller Concrete, Inc. v. New Castle County*, 2007 WL 404771, at *1 (Del. Super.).

and includes the following: "'Owner' shall mean and refer to the *legal owner* of each Lot and Condominium Unit within The Reserves."[12] After examining the Declaration, I conclude that the word "Owner" must be consistently construed as legal owner wherever it appears, and accordingly assessments are only imposed upon the legal owner.

15. The plaintiff contends that Severn became legal owner upon confirmation of the Sheriff's Sale. I disagree. It is well established that a purchaser at a Sheriff's Sale obtains equitable title to the property from the date of the sale.[13] It is also well established by the same authorities that, following a Sheriff's Sale, legal title is only passed by the Sheriff's deed and when passed, it relates back to the date of sale.[14] Severn was the equitable owner of the lots from April 15, 2008, when the Sheriff's Sale took place, until May 5, 2008, when Severn assigned its rights to 30 Lots. On that date, 30 Lots became the equitable owner. The sale was confirmed on May 9, 2008. The assignment occurred before confirmation of the sale. Under these facts, Severn was not at any time the legal owner. Legal title to the lots passed from Bella Via through the Sheriff to 30 Lots, and 30 Lots' legal title related back to the date of sale. Severn is not in the chain of title. Because Severn was never a legal

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[12] Emphasis added.

[13] *Soliman v. Spencer*, 115 B.R. 471, 476-484 (D. Del. 1990); *Colt Lanes of Dover, Inc. v. Brunswick Corp.*, 281 A.2d 596, 600 n.2 (Del. 1971); *Miles v. Wilson*, 3 Del. 382, 2 (Del. Super. 1841); *Crawford v. Roe*, 1 Del. 464 (Del. Super. 1834); *see* 2 Wooley's Practice in Civil Actions § 1148 (1906).

[14] *Soliman*, 115 B.R. 471, 476-484; *Colt Lanes of Dover, Inc.*, 281 A.2d 596, 600 n.2; *Miles*, 3 Del. 382, 2; *Crawford*, 1 Del. 464; *see* 2 Wooley's Practice in Civil Actions § 1148.

owner of the lots, I conclude that it is not liable under the Declaration for any assessments that fell due during its period of equitable ownership, or at any other time.

16. Next, I turn to the plaintiff's fraudulent transfer claim. I will assume for purposes of this motion, without formally acting on the plaintiff's motion to amend, that all of the facts alleged by the plaintiff in support of this claim are true.

17. The plaintiff pursues its claim under two provisions of the Act, sections 1307 and 1308. The remedies of creditors under the Act are set forth in § 1307, in pertinent part, as follows:

> (a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in § 1308 of this title, may obtain:
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> (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
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> (2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by applicable law;
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> (3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:
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> a. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
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> b. Appointment of a receiver to take charge of the

> asset transferred or of other property of the transferee; or
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> c. Any other relief the circumstances may require.
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> (b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

In addition, § 1308 - which describes a transferee's defenses, liability, and protections - provides, in pertinent part:

> (b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under § 1307(a)(1) of this title, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:
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> (1) The 1st transferee of the asset or the person for whose benefit the transfer was made; or
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> (2) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

18. The plaintiff advances four arguments in support of its claim that it is entitled to a judgment against Severn under the foregoing sections of the Act. First, it contends that it may recover against Severn under § 1307(b) because that section allows the creditor to levy execution on the asset transferred or "its proceeds." It contends that the $2,000,000 which Severn received from 30 Lots and/or its principals when it assigned its bid constitutes "proceeds" of the asset transferred.

Second, it contends that it may recover under § 1307(a)(2), which authorizes an attachment or other provisional remedy against the asset transferred "or other property of the transferee" in accordance with the procedure described by applicable law. Third, it contends that it may recover under § 1307(a)(3)(c), which provides that a creditor may obtain "[a]ny other relief the circumstances may require." Finally, it contends that it can recover under § 1308(b), which allows a creditor to recover judgment for the value of the asset transferred from the "1st transferee" or any "subsequent transferee."

19. Consideration of certain definitions under the Act exposes a fatal defect in the plaintiff's case. A fraudulent transfer is one made by the debtor.[15] The Act defines "transfer," in pertinent part, as "every mode, direct or indirect, . . . of disposing of or parting with an asset.[16] Therefore, in order to have a transfer, there must be an "asset." "Asset" is defined by the Act as "property of a debtor, but the term does not include . . . [p]roperty to the extent it is encumbered by a valid lien."[17] A "valid lien" is defined as a lien which is "effective against the holder of a judicial lien subsequently obtained."[18] I recognize that a mortgage foreclosure action against the debtor may, in some circumstances, be a fraudulent transfer. In this case, however, because Severn's mortgage lien was valid and exceeded the value of the

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[15] 6 *Del. C.* §§ 1304, 1305.

[16] 6 *Del. C.* § 1301(12).

[17] 6 *Del. C.* § 1301(2).

[18] 6 *Del. C.* § 1301(13).

property, the lots are not an "asset" of Bella Via, as defined under the Act. The mortgage foreclosure sale was not, therefore, a "transfer" by the debtor that the Act recognizes.[19]

20. Since the mortgage foreclosure sale was not a transfer -- and, therefore, not a fraudulent transfer -- the plaintiff cannot fit the facts within the Act's remedies. For the following reasons, each of the plaintiff's four arguments fail: under § 1307(b), since the plaintiff obtained no judgment against the debtor for the assessments which are the subject of this action, and no "asset" was "transferred" by the debtor, there are no "proceeds" of any transferred asset; under § 1307(a)(2), there was no "asset transferred" and no "transferee;"[20] putting aside the issue of this Court's jurisdiction to award relief under § 1307(a)(3), I find as a matter of law that the relief which the plaintiff seeks in this Court is not required by the circumstances; and finally, under § 1308(b), there cannot be recovery of any judgment against Severn because the value

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[19] *See SieMatic Mobelwerke GmbH & Co. KG v. SieMatic Corp.*, 643 F. Supp. 2d 675, 691 (E.D. Pa. 2009) ("[U]nder PUFTA there is no transfer subject to possible avoidance where the "asset" "transferred" is encumbered by a valid prior lien. In other words, a transfer is fraudulent only if the debtor disposes of property that the creditor would have a legal right to look for in satisfaction of his claim.") (citations and internal quotations omitted); *see also Epperson v. Entm't Express, Inc.*, 338 F. Supp. 2d 328, 346 (D. Conn. 2004); *Nat'l Loan Investors, L.P. v. World Properties, LLC*, 830 A.2d 1178, 1183 (Conn. App. 2003); *Farstveet v. Rudolph ex rel. Eileen Rudolph Estate*, 630 N.W.2d 24, 34 (N.D. 2001); 37 C.J.S. Fraudulent Conveyances § 9 ("[O]nly equity in property in excess of the amount of encumbering liens thereon is an asset reachable by creditors under the Uniform Fraudulent Transfer Act. A transfer of property in which the debtor has no equity cannot be the subject of a fraudulent transfer action because creditors cannot show that they would have received anything by avoiding the transfer....").

[20] It is not necessary for me to reach the question of whether Severn Bank can be the subject of an attachment.

of the "asset" "transferred" was zero.

21. In conclusion, there is no remedy against Severn which the plaintiff is entitled to obtain in this Court. I express no opinion as to any issue as it may pertain to 30 Lots. For the foregoing reasons, defendant Severn's motion for summary judgment is ***granted***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr
President Judge

oc: Prothonotary
cc: Order Distribution
File