Third District Court of Appeal

State of Florida

Opinion filed August 7, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-2146
Lower Tribunal No. 17-19708

Young Land USA, Inc.,
Appellant,

vs.

Credo LLC,
Appellee.

An appeal from the Circuit Court for Miami-Dade County, Pedro P. Echarte, Jr., Judge.

Herbert B. Dell, P.A., and Herbert B. Dell (Fort Lauderdale), for appellant.

Roniel Rodriguez IV, P.A., and Roniel Rodriguez IV, for appellee.

Before SALTER, MILLER, and GORDO, JJ.

MILLER, J.

Appellant, Young Land USA, Inc., seeks review of an order granting final summary judgment and quieting title to certain parcels of property in Miami-Dade County, Florida. Appellant contends that the lower tribunal erred in declaring that the realty is owned, without encumbrance, by appellee, Credo LLC, the purchaser at various execution sales conducted by the sheriff, as its lien was improperly extinguished.[1] For the reasons articulated below, we affirm.

FACTS

Four years after two separate judgment liens were recorded against property owned by a judgment debtor in the public records of Miami-Dade County, the debtor quitclaimed his real property holdings, consisting of several parceled lots, to appellant, an entity controlled by his sister. The same day, the debtor executed a mortgage, conveying an interest in the property to appellant, without receiving value in exchange. Thereafter, appellant recorded the mortgage.

Approximately one month later, appellant quitclaimed the subject property through four separate deeds: the first parcel back to the debtor; the second parcel to

[1] We write only to address a single issue raised on appeal and we assign no error to the remaining points. See Jones v. Fla. Ins. Guar. Ass'n, Inc., 908 So. 2d 435 (Fla. 2005) (discussing that affirmative defenses are waived if not pled) (citations omitted); Goldberger v. Regency Highland Condo. Ass'n, Inc., 452 So. 2d 583, 585 (Fla. 4th DCA 1984) ("Failure to plead an affirmative defense waives that defense, and an appellate court will not consider it in reviewing a summary judgment for a plaintiff.") (citation omitted).

an assumed identity concededly used by the debtor; the third parcel jointly to the debtor and an entity; and the fourth parcel to a different entity.

Several years later, the judgment holders each separately obtained writs of execution for the multiple parcels, and the Miami-Dade County Sheriff scheduled consecutive judicial sales of the subject property. Between the sales, appellant executed and recorded a satisfaction of its mortgage.[2] Appellee was the successful bidder at the sales.

Appellee filed suit in the lower tribunal seeking to quiet title, asserting the judgment liens were superior to any other encumbrance, the satisfaction of mortgage extinguished any interest held by appellant in the property, and the unfunded mortgage was the product of a fraudulent transfer effected to thwart the collection efforts of the judgment holders. Appellant filed a counterclaim seeking to foreclose its mortgage, contending its interest in the property was paramount. The trial court granted final summary judgment on both the primary claim and counterclaim in favor of appellee. The instant appeal ensued.

STANDARD OF REVIEW

"Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law." Volusia Cty. v.

[2] No recorded rescission of the satisfaction of mortgage appears in the record on appeal.

Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000) (citing Menendez v. Palms W. Condo. Ass'n, 736 So. 2d 58 (Fla. 1st DCA 1999)). "Thus, our standard of review is de novo." Id.

ANALYSIS

Appellant asserts that its encumbrance was improvidently extinguished. "It is said that the purchaser at an execution sale takes only the right, title, and interest which the execution debtors had, subject to equities existing at the time the judgment was recorded." Mansfield v. Johnson, 51 Fla. 239, 252, 40 So. 196, 200 (1906). Accordingly, it is well-established that "the title delivered pursuant to an execution sale of real property relates back to the date of recordation of the judgment upon which the sale was based." Klein v. Advance Mortg. Corp., 450 So. 2d 601, 601 (Fla. 4th DCA 1984) (citations omitted); see also Sperling v. United States, 994 So. 2d 1139, 1140 (Fla. 3d DCA 2008) ("[T]he title under [a] sheriff's deed 'relates back' to the priority of the recorded judgment that is the basis for execution and sale.").

Here, the two certified judgments prompting the execution sales were recorded after the judgment debtor acquired title, and many years before appellant perfected any purported interest in the real property. Moreover, as correctly recognized by the trial court, "[w]hen a mortgage on land and the equity of redemption in the same lands become united in the same person, ordinarily the

mortgage is merged and the same ceases to be an [e]ncumbrance and the owner will hold the lands with an un[e]ncumbered title, if there be no other mortgage or lien." See Alderman v. Whidden, 142 Fla. 647, 649-50, 195 So. 605, 606 (1940) (citations omitted). In the instant case, following the execution of the mortgage, appellant reconveyed the property back to the judgment debtor.[3] Consequently, the mortgage "ceased to be an [e]ncumbrance." Floorcraft Distribs. v. Horne-Wilson, 251 So. 2d 138, 141 (Fla. 1st DCA 1971).

Accordingly, as both the reconveyance of the property back to the judgment debtor, following the recordation of mortgage, and the title derived from the execution sales, relating back to the date of the judgment liens, extinguished any other encumbrances on the property, we conclude the trial court correctly determined appellee is endowed with paramount title. Thus, we affirm.

Affirmed.

[3] Although the lower tribunal did not elaborate its basis for granting summary judgment, the record is replete with evidence of fraudulent transfer. See § 726.106(1), Fla. Stat. (2019) ("A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.").