

STATE OF MICHIGAN
COURT OF APPEALS

NOVASTAR HOME MORTGAGE, INC.,

Plaintiff-Appellant,

v

DC ACCEPTANCE, LLC, ADVANCE
EQUITIES, LTD., and CASSANDRA D.
CLARKE,

Defendants-Appellees.

UNPUBLISHED

February 3, 2009

No. 280865

Wayne Circuit Court

LC No. 06-621753-CH

Before: Zahra, P.J., and O’Connell and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court’s order granting defendant-Cassandra Clarke’s motion for summary disposition and quieting title to the disputed property in Clarke’s favor. We reverse and remand to the trial court. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case involves the competing claims for the disputed property arising from two separate mortgages that were originally executed by William Covington. In December 2002, Covington executed a mortgage for \$26,000 in favor of Belvedere Construction, LLC, describing the mortgaged property, in pertinent part, as “N 5’ L 201 . . . Commonly known as: 19209 Fielding, Detroit, MI 48219. Parcel identification number: Ward 22 Item 188373.” In July 2003, Belvedere assigned the mortgage to defendant-DC Acceptance, LLC. The assignment contained the same property description as the Belvedere mortgage. Thereafter, in January 2004, Covington executed a mortgage for \$81,250 in favor of plaintiff Novastar Home Mortgage, Inc., describing the mortgaged property, in pertinent part, as “Lot 202 and North 5 feet of Lot 201 . . . APN #: 22-102887 which currently has the address of 19209 Fielding Street, Detroit, Michigan 48219.” After Covington defaulted on Novastar’s mortgage, in December 2004, Novastar foreclosed on its mortgage and purchased the property at the foreclosure sale for \$84,808. The sheriff’s deed issued to Novastar described the property as “Lot 202 and North 5 feet of Lot 201 . . . Commonly known as: 19209 Fielding St, Detroit MI 48219 Tax I.D. # 22-102887.” After Covington also defaulted on the Belvedere mortgage, in May 2005, Belvedere’s assignee, DC Acceptance, foreclosed on the mortgage and the property was sold at a sheriff’s sale to defendant-Advance Equities, Ltd. for \$31,278. The sheriff’s deed issued to Advance Equities described the property, in pertinent part, as “W Fielding Lot 202 N 5 ft Lot 201 . . . Commonly known as: 19209 Fielding, Detroit, MI 48219 Tax I.D. # 102887.” On July 10, 2006, Clarke

purchased the property from Advance Equities for \$116,494, which granted a warranty deed to her for the property described, in pertinent part, as “North 5 Feet of Lot 201 and All of Lot 202 . . . Commonly known as: 19209 Fielding. Tax ID # Ward 22, Item 102887.” All of the conveyances in this case were timely recorded.

Plaintiff-Novastar and defendant-Clarke now both claim to hold fee simple title to the disputed property, i.e., Lot 202.¹ Novastar claims to hold title to the property via the sheriff’s deed issued to it after purchasing the property at its foreclosure sale, while Clarke claims to hold title to the property via the warranty deed granted to her by Advance Equities, who was issued a sheriff’s deed in the entire property, 5 feet of Lot 201 and Lot 202, after purchasing the property at the foreclosure sale from DC Acceptance, Belvedere’s assignee.

Novastar filed this action to set aside DC Acceptance’s foreclosure sale to Advance Equities, declare as void the sheriff’s deed granting title in Lot 202 to Advance Equities, and enter judgment quieting title in Lot 202 in favor of Novastar. Novastar claimed that Belvedere’s encumbrance was limited to 5 feet of Lot 201 and did not encumber Lot 202. Therefore, DC Acceptance, as Belvedere’s assignee, had no interest in Lot 202 to convey, making its conveyance of Lot 202 to Advance Equities via the foreclosure sale invalid and void. It follows, according to Novastar, that Advance Equities could not convey by warranty deed Lot 202 to Clarke, and therefore, Clarke did not have a valid interest in Lot 202.

Clarke then moved for summary disposition under MCR 2.116 (C)(10) arguing that there was no genuine issue of material fact that Clarke, as Belvedere’s successor in interest, received a fee simple interest to the property in its entirety, including 5 feet of Lot 201 and Lot 202, free and clear of any interest claimed by Novastar. Clarke argued that Belvedere’s recorded mortgage clearly identifying the mortgaged property as “19209 Fielding,” its commonly known address, was sufficient to encumber the entire property. Therefore, because Belvedere properly recorded its mortgage before Novastar acquired any interest in the property, Belvedere and its successors had superior title in the entire property. Further, according to Clarke, even though the legal description on the Belvedere mortgage did not specifically identify “Lot 202,” Novastar had at least inquiry notice that the Belvedere mortgage encumbered the entire interest in the property, including Lot 202. Accordingly, Novastar could not take priority over Clarke’s interest in Lot 202 as a good faith purchaser who acquired its interest in Lot 202 without notice of Belvedere’s interest. Therefore, according to Clarke, she, as Belvedere’s successor in interest, acquired a valid interest in the entire property, 5 feet of Lot 201 and Lot 202, with priority over any interest Novastar now claimed.²

¹ Novastar admitted to holding a junior interest to Clarke, as Belvedere’s successor in interest, to 5 feet of Lot 201.

² Clarke also filed a cross-claim against Advance Equities alleging breach of Advance Equities’ warranty that it held marketable title to the entire property, including Lot 202, the property was free from all encumbrances, and Advance Equities would defend the title to the property against all lawful claims. Advance Equities also filed a cross-claim against DC Acceptance alleging that it relied on the published advertisement of the foreclosure sale and the subsequent sheriff’s deed
(continued...)

After conducting a hearing on the motion, the trial court granted Clarke's motion for summary disposition and quieted title in the entire property in her favor. In so doing, the court found that the description of the mortgaged property by its commonly known address was sufficient to show Covington's intent to encumber the entire property. The court also found that the facts placed Novastar on, at least, inquiry notice that the Belvedere mortgage encumbered Lot 202 and not just 5 feet of Lot 201. This appeal ensued.

"A trial court's decision granting summary disposition is reviewed de novo to determine whether the prevailing party was entitled to judgment as a matter of law." *PT Today, Inc v Comm'r of the Office of Fin and Ins Servs*, 270 Mich App 110, 125; 715 NW2d 398 (2006). "A motion brought under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim." *Detroit v General Motors Corp*, 233 Mich App 132, 138; 592 NW2d 732 (1998). "When reviewing a motion under MCR 2.116(C)(10), the court must examine the documentary evidence presented below and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists." *PT, supra* at 125-126. "A question of fact exists when reasonable minds could differ regarding the conclusions to be drawn from the evidence." *PT, supra* at 126. "Actions to quiet title are equitable; therefore, the trial court's holdings are reviewed de novo." *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001).

The first pertinent issue in dispute in this case is whether the mortgage Covington granted to Belvedere encumbered the entire property, i.e., 5 feet of Lot 201 and Lot 202, or whether it encumbered only 5 feet of Lot 201. It is undisputed that 19209 Fielding consisted of two parcels, Lot 202 and 5 feet of Lot 201, and that the home and garage were located on Lot 202, while no structures were located on the 5 feet of Lot 201 parcel. The Belvedere mortgage described the mortgaged property as "N 5' Lot 201...Commonly known as: 19209 Fielding, Detroit, MI." Novastar argues that, based on the legal description identifying the mortgaged property as 5 feet of Lot 201, Belvedere's encumbrance was limited to 5 feet of Lot 201, while Clarke argues that, based on the description identifying the mortgaged property by its commonly known address, "19209 Fielding," Belvedere's mortgage encumbered the entire property consisting of 5 feet of Lot 201 and Lot 202.

As Clarke contends, under Michigan law, a precise description is not required to make a conveyance valid, but the description must be sufficient to locate the property with certainty. As such, a property description identifying the property by street address is generally sufficient for a valid conveyance of property. See *Tandy v Knox*, 313 Mich 147, 155; 20 NW2d 844 (1945); *Stamp v Steele*, 209 Mich 205, 210-211; 176 NW 464 (1920). Here, the mortgage conveyance at issue described the mortgaged property not only by its commonly known address, "19209 Fielding," but also by the legal description of only one of the parcels comprising 19209 Fielding, i.e., 5 feet of Lot 201. Because 19209 Fielding consisted of two parcels, 5 feet of Lot 201 and Lot 202, we find the mortgage conveyance to be ambiguous with regard to the extent of Belvedere's encumbrance on the property. Additionally, the conveyance did not include the parcel identification number for Lot 202, instead including a different parcel number, nor did it

(...continued)

prepared by DC Acceptance describing the property as including Lot 202 and North five feet of Lot 201.

reference Lot 202 by legal description or parcel identification number. There was also no extrinsic evidence presented to show Covington's intent when he granted the mortgage to Belvedere.³

From the limiting nature of the legal description identifying the mortgaged property as 5 feet of Lot 201 and the exclusion of Lot 202 from the legal description, one could reasonably infer that Covington intended to restrict the mortgaged property to only 5 feet of Lot 201. On the other hand, from the description identifying the mortgaged property by its commonly known address, one could also reasonably infer that Covington intended for Belvedere to encumber the entire property located at "19209 Fielding," comprised of both parcels. Therefore, drawing all reasonable inferences in favor of Novastar, the nonmoving party, we conclude that, given the ambiguity in the description identifying the mortgaged property, a genuine issue of material fact exists regarding the extent of Belvedere's encumbrance on the disputed property. *PT, supra* at 125-126. The extent of Belvedere's encumbrance is an issue of fact whose resolution is necessary to the determination of which party, Clarke or Novastar, had a superior interest in Lot 202. Accordingly, we conclude that Clarke was not entitled to judgment as a matter of law and reversal is necessary to resolve the issue. *PT, supra* at 125.

We agree with the trial court's conclusion that, based on the documentary evidence presented, as a matter of law, Novastar had, at least, inquiry notice that the Belvedere mortgage might encumber the property in its entirety and thus could not be a good faith purchaser who could claim superior title in Lot 202 against Clarke.⁴ However, that determination does not

³ Although Novastar argued that Covington could have granted Belvedere, a construction company, a mortgage encumbering only 5 feet of Lot 201 to improve that portion of the property, such as by building a fence or another structure, there was no evidence presented to support that assertion. It is also, at least, noteworthy, that the conveyance, identified as a home improvement mortgage, secured only \$26,000.

⁴ "Michigan is a race-notice state, and owners of interests in land can protect their interests by properly recording those interests." *Richards v Tibaldi*, 272 Mich App 522, 539; 726 NW2d 770 (2006), quoting *Lakeside Associates v Toski Sands*, 131 Mich App 292, 298; 346 NW2d 92 (1983) (citation omitted). Pursuant to Michigan race/notice statutes, "the holder of a real estate interest who first records his or his interest generally has priority over subsequent purchasers." *Richards, supra* at 539; citing *Graves v American Acceptance Mortgage Corp*, 246 Mich App 1, 5; 630 NW2d 383 (2001), rev'd on other grounds 469 Mich 608; 677 NW2d 829 (2004); MCL 565.25; MCL 565.29. A recorded conveyance serves as "notice to all persons except the recorded landowner . . . of the liens, rights, and interests acquired by or involved in the proceedings. All subsequent owners or encumbrances shall take subject to the perfected liens, rights, or interests." MCL 565.25(4). A conveyance of real estate not recorded "shall be void as against any subsequent purchaser in good faith and for valuable consideration of the same real estate or any portion thereof, whose conveyance shall be first duly recorded." MCL 565.29. Therefore, a subsequent interest holder may take priority over a previously conveyed interest only where the subsequent interest holder takes "in good faith." "Examining the issue of good faith under MCL 565.29, this Court held that '[a] good-faith purchaser is one who purchases
(continued...)"

resolve the parties' claims because the actual extent of Belvedere's encumbrance on the property remained an issue of fact, whose resolution was necessary in order to determine which party had a superior interest in the property.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra

/s/ Peter D. O'Connell

/s/ Karen M. Fort Hood

(...continued)

without notice of a defect in the vendor's title.” *Richards, supra* at 539, quoting *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992). Notice can be actual or constructive, *Richards, supra* at 539; *Royce v Duthler*, 209 Mich App 682, 690; 531 NW2d 817 (1995), and has been defined, as follows: “When a person has knowledge of such facts as would lead any honest man, using ordinary caution, to make further inquiries concerning the possible rights of another in real estate, and fails to make them, he is chargeable with notice of what such inquiries and the exercise of ordinary caution would have disclosed.” *Richards, supra* at 539, quoting *Kastle v Clemons*, 330 Mich 28, 31; 46 NW2d 450 (1951). In the instant case, the documentary evidence submitted before the trial court showed that ordinary caution would have dictated the need to make further inquiry concerning Belvedere's possible rights in the property, and thus Novastar could not be a good faith purchaser who acquired its subsequent interest in the property without notice. *Richards, supra* at 539; *Royce, supra* at 690.