

**Sodus Holdings, LLC v Bartucca**

2013 NY Slip Op 31822(U)

August 5, 2013

Sup Ct, Wayne County

Docket Number: 74305/2012

Judge: Dennis M. Kehoe

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF WAYNE

SODUS HOLDINGS, LLC,  
Plaintiff,

-vs-

DOMINIC BARTUCCA and  
ANTONIA M. BARTUCCA,  
Defendants

DECISION

Index No. 74305

2012

RECEIVED  
WAYNE COUNTY  
SUPREME AND COUNTY COURT  
13 AUG -6 P2:15

Boylan Code, LLP  
Mark A. Costello, Esq., of Counsel  
Attorneys for Plaintiff

Adams, Bell, Adams  
Anthony J. Adams, Esq.  
Attorneys for Defendants

The Plaintiff has moved pursuant to CPLR §3212 for an Order granting summary judgment against the Defendants for the relief requested in the Complaint. The Defendants have opposed the motion, maintaining that there are issues of fact which must be determined at trial. The Plaintiff made a subsequent motion to amend its Reply by adding the additional affirmative defense of the statute of limitations, which motion was not opposed by the Defendants.

This is an action under Article 15 of the Real Property Actions and

Proceedings Law to quiet title to a Townhouse located in a housing project in Sodus Bay, New York, a project which has never been completed. The Defendants maintain that they are the lawful owners of the Townhouse, by virtue of a deed executed in 2004. However, the Plaintiff maintains that there are fatal defects in the chain of title on which the Defendants attempt to base their claims, and that the Townhouse therefore remains a part of the larger parcel which was conveyed to the Plaintiff in 2006.

The Court has reviewed the deeds and the Abstract of Title submitted by the Plaintiff, all of which support the Plaintiff's position. Neil and Karen Baisch took title to the entire parcel by a deed from the RL Sennett Trust, which was recorded on December 2, 2003. At the same time, Mr. and Mrs. Baisch executed a mortgage in favor of ESL Federal Credit Union. In June of 2004, an entity named New Horizons Yacht Harbor, Inc. (owned by Mr. Baisch) purported to convey the entire property to Sodus Bay Development LLC, another Baisch company. (However, the records show that there was never any transfer of the property to New Horizons by Mr. and Mrs. Baisch). Nevertheless, Sodus Bay subsequently purported to convey the Townhouse to the Defendants in December of 2004. In October 2006 Neil and Karen Baisch executed a deed to the

parcel (which did not except the Townhouse from the description) to the Plaintiff Sodus Holdings, LLC.

Counsel for the Defendants has conceded that “the facts concerning record title are not in dispute”. However, the Defendants contend that the designation of Sodus Bay Development, LLC as the grantor in the deed to the Bartuccas was a mere “scrivener’s error” or a “mutual mistake of fact” on the part of both the Defendants and Mr. Baisch. Mr. Baisch’s signature on the deed has the word “owner” handwritten under his name, both of which appear under the name of Sodus Bay Development, Inc. as Grantor. The Defendants maintain that the signature, read in its entirety, is evidence that Mr. Baisch signed the deed in his individual capacity as well as in his capacity as an officer of the corporation. Therefore, the Defendants contend that they have made a prima facie case for reformation of the deed, as demanded in their Counterclaim. The Defendants also argue that, while the general rule of law states that real property held as tenants by the entirety cannot be conveyed without the signatures of both owners, there is an exception to this rule if it can be shown “... that the nonsigning spouse has complete knowledge of and actively participated in the transaction, or that he or she ratified the

purchase option after the fact.” (*Lelekakis v Kamamis*, 41 AD3d 662, 664 (2<sup>nd</sup> Dept, 2007)). If such participation or ratification can be established, a deed signed by only one spouse may be considered valid. Finally, the Defendants argue that at the least Mr. Baisch conveyed his interest in the property to the Bartuccas, thereby creating a tenancy in common between Mrs. Baisch and the Defendants. In short, the Defendants maintain that the absence of Mrs. Baisch’s signature on the deed to the Bartuccas creates a triable issue of fact, which precludes summary judgment.

In response to this argument, the Plaintiff has submitted an affidavit from Karen Baisch. In her statement Mrs. Baisch asserts that she knew nothing about the purported conveyance from Mr. Baisch to the Defendants at the time the deed was executed. (In fact, she maintains that she first learned of the conveyance on or about January 4, 2013). She also asserts that she did not consent to the transaction nor did she ratify the conveyance after the fact.

The Defendants maintain that they should have the opportunity to depose Karen Baisch. However, Mrs. Baisch’s sworn affidavit is clear and unequivocal, and the Defendants have offered nothing but speculation to support their argument that she either was aware of and participated in the

transaction or that she subsequently ratified the conveyance (See, e.g. Caledonia Construction v Dastigin, 13 AD3d 570 (2<sup>nd</sup> Dept, 2004)). The fact that she executed other documents subsequent to the Bartucca conveyance together with her husband supports the Plaintiff's contention that she had not ceded authority over the property to her husband. The Court also finds that, based on the language in the Bartucca deed, the deed was signed by Mr. Baisch in his official capacity as an officer of Sodus Bay Development, Inc., not as an individual, and therefore the deed did not create a tenancy in common between Mrs. Baisch and the Bartuccas.

The Court has reviewed the affidavits and exhibits submitted by the respective parties, together with their memoranda of law, and it has considered the oral arguments presented by counsel. Based upon this review, the Court finds as follows:

- 1) The Defendants were on constructive notice that Sodus Bay Development, LLC was not the title owner of the Townhouse, as it is clear from public records that the corporation's only claim to the entire parcel was based on a deed from New Horizons Yacht Harbor Inc., which never held title to the property. (This fact is set forth very clearly in the abstract

by the title company). In making its argument, the Plaintiff relies on the decision of the Court of Appeals in Witter v Taggart, 78 NY2d 234 (1991) in which the Court explains that New York law has created

“...a grantor-grantee indexing system [that] charge[s] a purchaser with notice of matters . . . . in the record of the purchased land’s chain of title dating back to the original grantor.” (Witter, at 239)

The Court goes on to point out that New York’s recording statute

“was designed to establish a public record which would furnish potential purchasers with notice, or at least ‘constructive notice’, of previous conveyances and encumbrances that might affect their interests. (citations omitted). Given the statutory purposes, it follows that a purchaser of an interest in land . . . has no cause for complaint under the statute when its interest is upset as a result of a prior claim against the land the existence of which is apparent on the face of public record at the time it purchased.” (citations omitted).

Based upon this reasoning, it is clear that the Defendants are charged with constructive notice of the chain of title to the Townhouse, as they were “legally bound” to search the grantor-grantee index for prior conveyances before proceeding with the transaction.

2) The Court agrees with the Plaintiff’s interpretation of the case law cited by the Defendant. These decisions can be distinguished from the instant scenario on their facts; they do not support the argument that the mistakes described therein should be considered in the same light as an

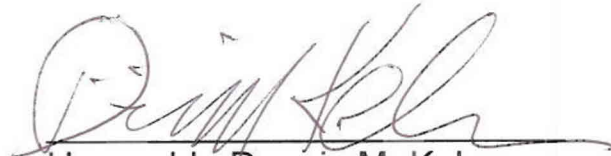
actual break in the chain of title of a parcel.

3) The Defendants make several arguments in support of their claim that they are entitled to reformation of the deed as set forth in the Counterclaim. Specifically, the Defendants maintain that the flaws in their deed were caused by a scrivener's error or, in the alternative, the result of a mutual or unilateral mistake. The Court finds that all of the Defendants' arguments are contrary to the documentary evidence. In particular, the Court notes that the Bartucca deed was prepared and executed in accordance with the terms of the parties' Purchase and Sale Agreement, thereby refuting the Defendants' claim that it was a scrivener's error which was responsible for the deficiencies in the deed. Likewise, while the parties to the deed may have been ignorant as to the true owner of the property, this "mistake" is not of such a nature that it would provide a legal basis to remedy the defects in title. Finally, the law provides that an action for reformation is subject to a six year statute of limitations. As stated above, the Plaintiff served an Amended Reply pleading the statute as an affirmative defense. The six years began to run at the time the mistake was made, that is, when the Bartucca deed was executed on December 15, 2004. Therefore, the statute of limitations expired on December 15,



has no authority to reform the deed based upon the statute of limitations and the standard of proof, which is clear and convincing evidence (see, e.g. Volbrecht v Jacobson, 40 AD3d 1243 (3<sup>rd</sup> Dept, 2007)). The Defendants' Counterclaim seeking reformation of the deed is therefore dismissed. Counsel for the Plaintiff is directed to submit a proposed Judgment to the Court pursuant to RPAPL §1521, declaring the validity of the claims to the Townhouse of the respective parties in accordance with this Decision.

Dated: *August 5, 2013*  
Lyons, New York

  
Honorable Dennis M. Kehoe  
Acting Supreme Court Justice