

21 Park Place LLC v Granado Serv., Inc.

2015 NY Slip Op 32467(U)

November 19, 2015

Supreme Court, Nassau County

Docket Number: 15003/13

Judge: Robert A. Bruno

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SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT: HON. ROBERT A. BRUNO, J.S.C.

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21 PARK PLACE LLC,

Plaintiff,

-against-

TRIAL/IAS PART 18
INDEX No.: 15003/13
Submission Date: 09/25/15
Motion Sequence: 002

GRANADO SERVICE, INC., 800 W. MERRICK RD.
CORP.,

“JOHN DOE #1” THROUGH “JOHN DOE #20”, the
last twenty names being fictitious and unknown to plaintiff,
the persons or parties intended being the tenants, occupants,
persons or corporations, if any, having or claiming an
interest in or lien upon the premises, described in the
complaint,

Defendants.

**DECISION & ORDER
XXX**

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Papers Numbered

<i>Sequence #002</i>	
Notice of Motion, Affirmation & Exhibits	1
Affirmation in Opposition & Exhibits	2
Reply Affirmation & Exhibits	3

Upon the foregoing papers, motion by defendant 800 W. Merrick Rd. Corp. (“Merrick”) for summary judgment on its first counterclaim extinguishing plaintiff’s interest in the property located at 800 W. Merrick Road, Valley Stream, New York (the subject property) is granted. This Court declares that the Treasurer’s Deed dated May 15, 2013, and also the subsequent deed dated July 15, 2013 to plaintiff, for the subject property are void and the record owner of the subject property is Merrick.

Submit judgment on notice.

By Order dated February 23, 2015 (“the prior Order”), this Court denied plaintiff’s motion for summary judgment as premature, and granted plaintiff the opportunity to amend its complaint to allege a claim against Merrick based upon plaintiff’s grantor’s payment of a lien for unpaid taxes owed for the subject premises by the former owner, defendant Granado Service, Inc. (“Granado”). Plaintiff declined to amend, and at this time defendant Merrick moves for summary judgment.

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The facts underlying the plaintiff's claims and Merrick's counterclaims are set forth in the prior Order, which is incorporated herein. Plaintiff claims ownership of the subject property, which consists of three physical lots: Lots 224, 225 and 236. These three lots are taxed as one parcel.

Non-party 611 MNR Corp. ("MNR") is plaintiff's grantor. MNR and plaintiff are related entities.¹ Back in 2010, MNR purchased tax lien certificate #2009-03-0000662, covering "Section 37, Block 407, Lot 224" (Exhibit G to the moving papers), for \$3,766.01, representing unpaid Village taxes. Approximately three years later, MNR obtained a Treasurer's Deed (Exhibit F to the moving papers) for the subject property dated May 15, 2013, wherein the property again was identified as "Section 37, Block 407, Lot 224." The Treasurer's Deed contained no metes and bounds description. Although the Treasurer's Deed provides "Schedule A attached," no Schedule A was attached. The Treasurer's Deed was recorded on June 14, 2013 (Exhibit F).

Meanwhile, defendant Granado transferred its interest in the subject property to defendant Merrick by deed dated May 24, 2013 (Exhibit J). The purchase price was \$351,500. Granado's deed to Merrick was recorded on May 31, 2013 (see Exhibit J). At the closing, Merrick attempted to pay off all tax liens on the subject property.

Merrick's title report (Exhibit EE to the Reply papers) used at the closing identified two tax lien certificates held by MNR. The first tax lien certificate, #662-09 for unpaid Village taxes for 2009/2010, is the one that is the subject of this action. The second tax lien certificate is #969/2011 for unpaid Village taxes for 2011/2012. The second tax lien held by MNR was paid off by Merrick but not directly; plaintiff states that MNR was repaid by the Village Treasurer. The first tax lien was not paid off and is the subject of this action.

MNR conveyed its interest in the subject property to plaintiff by Bargain and Sale Deed acknowledged July 15, 2013 (Exhibit O to the moving papers; "the MNR deed"). This MNR deed was recorded on July 23, 2013 (Exhibit C to plaintiff's moving papers on the prior motion, annexed as Exhibit B to the opposition papers herein). The consideration for plaintiff's deed was \$6,644.05. On the MNR Deed the words "Schedule A attached" were crossed out.

Plaintiff commenced this action seeking to extinguish all right, title and interest of the defendants to the premises. Defendant Merrick counterclaims for judgment extinguishing plaintiff's interest in the subject property, or alternatively, finding it equitably subrogated to the interests of all the tax lien holders for the liens on the subject property paid by it at the closing in the aggregate amount of \$349,618.10. Defendant Granado, the former owner, has defaulted in answering.

¹ Plaintiff's managing agent has been identified as the agent for service of process upon a 50% owner of MNR (Exhibits L and M to the moving papers).

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Summary Judgment Standard

Summary judgment may only be granted “when it has been clearly ascertained that there is no triable issue of fact outstanding;” it is “a highly useful device for expediting the just disposition of a legal dispute for all parties and conserving already overburdened judicial resources (*Matter of Suffolk County Dept of Social Servs. v. James M.*, 83 N.Y.2d 178, 182 [1994]). The movant must establish its defense or cause of action sufficiently to warrant a court’s directing judgment in its favor as a matter of law (*Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 967 [1988]; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 [1980]). Once this showing has been made, the burden shifts to the opponent to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial (*Giuffrida v. Citibank Corp.*, 100 N.Y.2d 72, 81 [2003]; *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 [1986]).

Good Faith Purchaser Status

A good faith purchaser for value is entitled to be protected unless such purchaser had previous notice of some fraud involved in the transaction (Real Property Law §266; see *Fleming-Jackson v. Fleming*, 41 A.D.3d 175, 176 [1st Dept. 2007]). “If the facts within the knowledge of the purchaser are of such a nature, as, in reason, to put him upon inquiry, and to excite the suspicion of an ordinarily prudent person and he fails to make some investigation, he will be chargeable with that knowledge which a reasonable inquiry, as suggested by the facts, would have revealed”(*Anderson v. Blood*, 152 N.Y. 285, 293 [1897]; *Booth v. Ameriquest Mortg. Co.*, 63 A.D.3d 769 [2d Dept. 2009]).

“The New York Recording Act (Real Property Law §290 et. seq.), protects a good faith purchaser for value from a prior unrecorded interest in real property provided, *inter alia*, that the subsequent purchaser’s interest is the first to be duly recorded”(*Jenkins-Watson v. Golabi Holdings, LLC.*, 26 A.D.3d 467, 468 [2d Dept. 2006] quoting *Rivas v. McDonnell*, 308 A.D.2d 572, 572-573 [2d Dept. 2003]). Further, the interest of a good faith purchaser for value from the record owner trumps the interest of a party claiming under an unrecorded tax deed, where the subsequent purchaser records its deed first (*Doyle v. Lazarro*, 33 A.D.2d 142 [3d Dept. 1970], *affd* 33 N.Y.2d 981 [1974]; see *Aiello v. Wood*, 76 A.D.2d 1019 [3rd Dept. 1980]).

Discussion

The facts herein are not in dispute. It is the legal consequence of the facts about which the parties disagree.

Merrick moves for summary judgment on two alternative grounds: (1) that it is a good faith purchaser for value, and because its deed is recorded before the recording of the Treasurer’s Deed its interest in the premises is superior to plaintiff’s; (2) that the Treasurer’s Deed is void for failing to properly describe the property conveyed by the Village pursuant to that deed.

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Here, MNR did obtain the Treasurer's Deed prior to the purchase of the premises by Merrick. However, MNR did not record the Treasurer's Deed until after the date of Granado's conveyance to Merrick, and after the recording of the Granado deed. The recording acts charge the purchaser with notice only of matters in the record and matters outside the chain of title do not constitute notice (*Doyle, supra* at 144; *Aiello supra*). Under these circumstances, Merrick won the race to record.

The Court must now consider the other requirements for good faith purchaser status. Merrick submits the affidavit of Avedis Nakashian, the sole shareholder of Merrick, who testifies that nearly the entire purchase price of \$351,500.00 paid by it was used to satisfy tax liens encumbering the subject property, and that Merrick has further made a significant investment in the property with the installation of a new roof, a new storefront, new windows and doors. Nakashian states that Merrick had no knowledge of the unrecorded Treasurer's Deed, and it would never have satisfied all the other tax liens and yet knowingly allowed plaintiff's tax lien in the amount of \$3,766.01 to remain.

Merrick also submits an affidavit of Charles Peknic, Merrick's closing attorney for the purchase of the subject property. Mr. Peknic insists that neither he, nor anyone on behalf of Merrick was aware of the unrecorded Treasurer's Deed. The last deeds of record showed that Granado was the sole owner, and because Granado had failed to pay real estate taxes for several years, there were many tax liens against the property which were paid off at the closing.

On this record, Merrick has made out a *prima facie* case that it is a subsequent good faith purchaser for value, protected by the recording statutes. The burden now shifts to plaintiff to raise a triable issue of fact.

In opposition, plaintiff makes various arguments. First, it argues that Merrick is charged with the knowledge that real estate taxes are regularly levied. Merrick was well aware of the many tax liens against the property, but simply had no notice of the Treasurer's Deed.

Plaintiff's claim that the Treasurer's Deed divested Granado of all interest in the premises fails to take into account the recording statutes.

Plaintiff's contention that it did not sit back and watch Merrick make improvements is not supported by evidence of letters to Merrick dated after the commencement of this action (Exhibit E to the opposition papers).

Plaintiff's managing agent, David Weinstein, testifies that Merrick's title report would have revealed that the subject property was subject to the tax lien on which the Treasurer's Deed is based. The question presented is whether this allegation raises an issue of fact that put Merrick "on inquiry" as to the existence of the Treasurer's Deed.

In its reply papers, Merrick annexes the title report for the subject premises (Exhibit EE) showing the tax lien underlying the Treasurer's Deed and the closing attorney's reply affidavit.

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Mr. Peknic states that both tax lien certificates (for the 2009/2010 taxes at issue here, and the 2011/2012 taxes that were also held by MNR) were omitted from exceptions to title as paid from the proceeds of the sale, "apparently, because our title company believed the amount paid to 611 MNR Corp. covered both tax lien certificates" (Peknic Reply Affidavit, ¶ 7).

Tax lien records do not constitute notice of a tax sale conveyance (*Doyle, supra* at 144; *Aiello, supra*). In *Doyle*, a subsequent purchaser from the record owner who recorded first did not have sufficient notice of an unrecorded tax deed to defeat his good faith purchaser status. Since a tax lien precedes a tax deed, the subsequent purchaser from the record owner who recorded first in *Doyle* was not put on notice of the unrecorded tax deed by the underlying tax lien. The same result applies here. Merrick's notice of the underlying tax lien does not constitute notice of the Treasurer's Deed. Had Merrick's title company realized its error in not paying off the tax lien that is the subject of this action, it could have held \$3,766.01 in escrow and continued with the closing. Consequently, the evidence in the record of the tax lien held by MNR does not suffice to put Merrick "on inquiry" as to the Treasurer's Deed.

Following *Doyle*, Merrick has established its good faith purchaser status, and its priority over both the Treasurer's Deed and the MNR deed to plaintiff, because it won the race to record. Under these circumstances Merrick's motion for summary judgment on its first counterclaim must be granted. The Court declares that the Treasurer's Deed and the MNR Deed are void and Merrick is the record owner of the premises.

In the interest of a complete record, the Court will consider Merrick's alternative ground for summary judgment. Merrick argues that the Treasurer's Deed is void because it only identified and purported to convey Lot 224. Merrick argues that since Lot 224 is only a sliver of the total parcel, and cannot be separated from Lots 225 and 236, the Treasurer's Deed is unenforceable.

The Treasurer's Deed provides this description of the premises:
real estate being bounded and described as follows:
All that certain plot, piece or parcel of land, with
buildings and improvements thereon erected, situate,
lying and being in
Section 37
Block 407
Lot(s) 224

The Treasurer's Deed further provides:
The property is also known as 800 West Merrick Road,
Valley Stream, New York 11580. Schedule A attached.

However, no Schedule A was attached.

The MNR deed to plaintiff contained an identical description of the subject property

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except that the words "Schedule 'A' attached," were crossed out.

Plaintiff argues that Lots 224, 225 and 236 in Block 47 of Section 37 in Valley Stream are collectively referred to as Lot 24, because Lot 24 is the Lead Lot for tax purposes. Plaintiff points out that the assessment roll, notice of lien sale, and notice to redeem all specified that Lots 224, 225 and 236 were covered by the tax lien, and the taxes represented by the lien were the taxes for Lots 224, 225 and 236.

Every instrument transferring an interest in real property must be construed according to the parties' intent (Real Property Law §240(3)). "Where the language used in a deed is ambiguous such that it is susceptible of more than one interpretation, the courts will look beyond the written instrument to the surrounding circumstances" (*Al's Atlantic, Inc. v. Shatma, LLC*, 109 A.D.3d 491, 492 [2d Dept. 2013]; *Matter of New Cr. Bluebelt, Phase 4*, 79 A.D.3d 888, 891 [2d Dept. 2010], lv. app. dsmd. 16 N.Y.3d 825 [2011]). Where extrinsic evidence raises a question of fact, summary judgment is inappropriate (*DePaulis Holding Corp. v. Vitale*, 66 A.D.3d 816 [2d Dept. 2009]; *Eliopoulous v. Lake George Land Conservancy, Inc.*, 50 A.D.3d 1231 [3d Dept. 2008]).

On this record, where the Treasurer's Deed references a Schedule "A", but no Schedule "A" is attached, the Deed is ambiguous on its face. What was intended to be conveyed raises a triable issue of fact. Consequently summary judgment on the issue of what was conveyed pursuant to the Treasurer's Deed must be denied. This conclusion is *dicta*, in view of the prior finding that Merrick is a good faith purchaser for value.

Finally, to the extent that plaintiff claims summary judgment is premature in the absence of discovery, plaintiff failed to demonstrate that discovery might lead to relevant evidence or that facts essential to oppose Merrick's motion are exclusively within Merrick's knowledge and control. Consequently denial of summary judgment on this basis is summarily denied (*Reynolds v Avon Grove Props.*, 129 A.D.3d 932 [2d Dept. 2015]; *Schiff v. Sallah Law Firm, P.C.*, 128 A.D.3d 668 [2d Dept. 2015]).

In light of the foregoing, this Court's Final Compliance Conference Order regarding outstanding discovery dated November 17, 2015 is vacated.

All matters not decided herein are denied.

This constitutes the Decision and Order of this Court.

Dated: November 19, 2015
Mineola, New York

ENTER:

ENTERED

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NASSAU COUNTY
COUNTY CLERK'S OFFICE



Hon. Robert A. Bruno, J.S.C.

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