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NO. COA02-387

NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2002

CHASE MANHATTAN MORTGAGE
CORPORATION,

Plaintiff,

v.

Mecklenburg County
No. 01-CVS-11911

JODIE LYNN ROZELL and
LEISHA RENEE St. CLAIR,

Defendants.

Appeal by plaintiff from orders entered 8 October 2001 by Judge Timothy S. Kincaid and 7 January 2002 by Judge Robert P. Johnston in Mecklenburg County Superior Court. Heard in the Court of Appeals 12 November 2002.

Horack, Talley, Pharr & Lowndes, P.A., by Robert B. McNeill and D. Christopher Osborn, for plaintiff-appellant.

Whitesides & Walker, L.L.P., by Nancy E. Walker, for defendant-appellee Leisha Renee St. Clair.

MARTIN, Judge.

Plaintiff Chase Manhattan Mortgage Corporation appeals orders dismissing its complaint against defendant Leisha Renee St. Clair and denying its subsequent motion to amend the order of dismissal and for leave to amend the complaint.

Plaintiff initiated this action alleging that in July 1994, defendant St. Clair and co-defendant Jodie Lynn Rozell purchased a

parcel of real property in Matthews, North Carolina by way of a general warranty deed from Kluttz Homes, Inc. Defendants' purchase of the property was financed by a loan in the amount of \$108,691 from American Residential Mortgage Corporation (hereinafter "the Note"). The parties intended that to secure repayment of the loan, a deed of trust would be executed in favor of American Residential giving it a first lien on the property. At the closing, only Rozell signed the Note to American Residential. Rozell also executed the deed of trust, but plaintiff alleged that due to a mutual mistake of the parties, St. Clair failed to sign the deed of trust. Defendants have not made payments as required by the Note despite notice of default. Plaintiff is the current holder of the Note and deed of trust.

Plaintiff sought reformation of the deed of trust to include St. Clair's signature relating back to July 1994. Plaintiff also sought the imposition of a constructive trust, alleging that if St. Clair were allowed to retain title to the property free of plaintiff's lien, St. Clair would be unjustly enriched. In addition, plaintiff sought judgment against Rozell for the principal, interest, attorney's fees, and late fees due under the Note. Finally, plaintiff sought foreclosure of its lien and a judicial sale of the property.

St. Clair moved to dismiss plaintiff's complaint pursuant to G.S. § 1A-1, Rule 12(b)(6). The trial court granted St. Clair's motion and dismissed the complaint as to her. Plaintiff filed a timely motion pursuant to G.S. § 1A-1, Rule 59(e) to amend the

order of dismissal, and for leave to amend the complaint pursuant to G.S. § 1A-1, Rule 15. In the motion, plaintiff argued it was entitled to amend the order to reflect that the dismissal of its complaint was without prejudice, and that it was entitled to amend its complaint, because the trial court had applied an incorrect legal standard in dismissing the complaint with prejudice. Plaintiff's motion was denied in its entirety. Plaintiff gave notice of appeal from the order dismissing its complaint against St. Clair and from the denial of its motion to amend the order of dismissal and for leave to file an amended complaint. After the record on appeal was filed in this Court, plaintiff was permitted to amend the record to reflect that a default judgment was entered against defendant Rozell on plaintiff's claims on 20 May 2002.

Defendant St. Clair has moved to dismiss plaintiff's appeal as interlocutory on the grounds that the orders from which plaintiff appealed did not dispose of all of the claims against all parties and thus, were interlocutory rather than final judgments in the case. See *Pratt v. Staton*, 147 N.C. App. 771, 556 S.E.2d 621 (2001) (orders failing to resolve all issues between all parties, such as the grant of a motion to dismiss as to some claims but not all claims in an action, are interlocutory and generally not immediately appealable). By amendment to the record on appeal as noted, however, it has now been made to appear to this Court that judgment has been entered against Rozell as to all of plaintiff's claims against her and, although plaintiff's appeal was

interlocutory when filed, the appeal is now one from a final judgment. Because a final judgment has now been entered as to all parties and all issues in this matter, we will consider plaintiff's appeal in the interest of judicial economy.

I.

Plaintiff first argues the trial court erred in dismissing its complaint because the complaint alleged valid claims for relief against St. Clair for (1) reformation and (2) the imposition of a constructive trust, or in the alternative, (3) unjust enrichment, warranting alternative equitable relief. We agree with plaintiff that the complaint, liberally construed, sufficiently alleges claims for reformation of the deed of trust and unjust enrichment; however, we conclude that the complaint is insufficient to state a claim for the imposition of a constructive trust.

In assessing whether plaintiff's complaint is sufficient to state valid claims for relief, we must view all allegations of the complaint as true, and determine whether, as a matter of law, the allegations are sufficient to state a claim for relief "under some legal theory, whether properly labeled or not." *Holloman v. Harrelson*, 149 N.C. App. 861, 864, 561 S.E.2d 351, 353 (citation omitted), *disc. review denied*, 355 N.C. 748, 565 S.E.2d 665 (2002). "In ruling upon such a motion, the complaint is to be liberally construed, and the court should not dismiss the complaint 'unless it appears beyond doubt that [the] plaintiff could prove no set of facts in support of his claim which would entitle him to relief.'" *Id.* (citation omitted).

A.

In order to state a claim for reformation, a plaintiff must show two things: "(1) the existence of a mutual mistake of fact, and (2) a resultant failure of the document as executed to reflect the parties' intent." *Sudds v. Gillian*, __ N.C. App. __, __, 568 S.E.2d 214, 217 (2002). In other words, the complaint "must allege the provision that was agreed upon, the provision that was written, and that the mistake was mutual." *Huss v. Huss*, 31 N.C. App. 463, 467, 230 S.E.2d 159, 162 (1976). The complaint need not allege facts showing how and why the mutual mistake came to be. *Id.* (holding allegations that plaintiff instructed grantors of deed to put property solely in his name; that plaintiff did not view deed at time of transfer; that grantors told plaintiff property was in plaintiff's name alone and plaintiff relied on that statement; that through mutual mistake plaintiff's former wife's name was placed on deed; and that plaintiff did not learn of mistake until several years later sufficient to state claim for reformation of deed).

In the present case, the complaint alleged defendants purchased the property in July 1994; that defendants borrowed money to purchase the property from American Residential; that all parties to the transaction intended that American Residential would be the beneficiary of a deed of trust providing it with a first lien on the property; that such a deed of trust was executed at closing; that all parties believed St. Clair would sign the deed of trust if necessary to give American Residential a first lien on the property; that due to a mutual mistake of the parties, St. Clair

did not sign the deed of trust; and that this mutual mistake entitles plaintiff to reformation of the deed of trust as it was recorded in July 1994 to reflect St. Clair's signature. Thus, taken as true, the allegations of the complaint establish: (1) the existence of a mutual mistake, and (2) a resultant failure of the deed of trust as executed to reflect the parties' intent. Plaintiff was not required to plead facts showing how or why the mistake occurred. Liberally construed, these allegations were sufficient to state a claim for reformation.

Moreover, plaintiff contends its claim is not barred by the three-year statute of limitations, as was apparently argued by St. Clair at the hearing of her motion to dismiss. The statute of limitations for claims grounded in fraud or mistake is three years and begins to run at the time when the mistake is discovered or should have been discovered in the exercise of due diligence. N.C. Gen. Stat. § 1-52(9) (2002); *Huss*, 31 N.C. App. at 467, 230 S.E.2d at 162-63. "Whether the plaintiff in the exercise of due diligence should have discovered the facts more than three years prior to the institution of the action is ordinarily for the jury when the evidence is not conclusive or is conflicting," and the "[f]ailure to exercise due diligence in discovering a mistake has been determined as a matter of law where it was clear that there was both capacity and opportunity to discover the mistake." *Huss*, 31 N.C. App. at 468, 230 S.E.2d at 163.

Moreover, "judgment on the pleadings in favor of a defendant who asserts the statute of limitations as a bar is proper when, and

only when, all the facts necessary to establish the limitation are alleged or admitted.'" *Groves v. Community Housing Corp. of Haywood County*, 144 N.C. App. 79, 87, 548 S.E.2d 535, 540 (2001) (citation omitted). Thus, in *Huss*, this Court determined that the trial court erred in dismissing the complaint for reformation based on the statute of limitations where the pleadings failed to disclose the facts necessary to determine whether the respondent should have discovered the mistake in the exercise of reasonable diligence more than three years prior to the filing of the action. *Huss*, 31 N.C. App. at 468, 230 S.E.2d at 163. Noting that cases which grant judgment on the pleadings on the issue of statute of limitations involve fixed dates of accrual and do not depend on a standard of reasonableness, we stated:

We need not speculate on what circumstances should have led respondent to discover the mistake more than three years previously, nor are we to judge the likelihood of respondent's success on his claim. We think it clear that the pleadings do not disclose sufficient facts to establish as a matter of law that respondent failed to exercise due diligence.

Id.; see also *Russell v. Adams*, 125 N.C. App. 637, 482 S.E.2d 30 (1997) (where complaint was silent as to when alleged emotional distress manifested, appellate court could not determine when action accrued for purposes of statute of limitations; accordingly, dismissal of complaint based on statute of limitations was improper where complaint lacked facts necessary to show action was untimely).

Applied here, these principles require us to conclude that the trial court could not have properly dismissed plaintiff's claim for

reformation on the basis of the statute of limitations where the complaint fails to allege the facts and circumstances necessary to determine as a matter of law when the claim accrued, either by plaintiff's discovery of the mistake or when plaintiff should have discovered the mistake through the exercise of due diligence. The trial court erred in dismissing plaintiff's claim for reformation.

B.

Plaintiff also argues that the complaint was sufficient to assert a claim for the imposition of a constructive trust. We disagree.

"[A] constructive trust 'arises when one obtains the legal title to property in violation of a duty he owes to another. Constructive trusts ordinarily arise from actual or presumptive fraud and usually involve the breach of a confidential relationship.'" *Patterson v. Strickland*, 133 N.C. App. 510, 521, 515 S.E.2d 915, 921 (1999) (citation omitted); see also *Miller v. Rose*, 138 N.C. App. 582, 532 S.E.2d 228 (2000) (summary judgment for defendants properly granted on plaintiff's claim for constructive trust where evidence failed to establish defendants either acted fraudulently or that they stood in a position of confidence or trust regarding plaintiff); *Guy v. Guy*, 104 N.C. App. 753, 411 S.E.2d 403 (1991) (in order to survive motion to dismiss claim for imposition of constructive trust in context of conveyance of land, plaintiff must allege a false promise by the grantee made prior to the legal conveyance which caused plaintiff-grantor to convey the land).

In the present case, the complaint does not allege that St. Clair obtained the benefit of the property unencumbered by plaintiff's lien through the breach of a duty which she owed plaintiff. Instead, the complaint affirmatively alleges that St. Clair obtained the property unencumbered through a mutual mistake of the parties. The complaint also contains no allegation that any confidential or fiduciary relationship existed between plaintiff and St. Clair, or that St. Clair acted fraudulently in obtaining the property. Because the complaint does not allege that St. Clair obtained possession of the property through any wrongdoing, be it through breach of duty, fraud, or otherwise, it fails to allege the conditions necessary for imposition of a constructive trust. See *Leatherman v. Leatherman*, 297 N.C. 618, 626, 256 S.E.2d 793, 798 (1979) ("There must be some actual or presumptive fraud, some breach of duty, or other wrongdoing before a constructive trust can be imposed.").

C.

Nevertheless, the complaint is sufficient to state a claim for unjust enrichment, for which a constructive trust is a possible remedy, if the evidence at trial so warrants. "In order to state a claim for unjust enrichment, the plaintiff's allegations must set forth that a benefit was conferred on the defendant, that the defendant accepted the benefit, and that the benefit was not gratuitous." *Jackson v. Carolina Hardwood Co., Inc.*, 120 N.C. App. 870, 872, 463 S.E.2d 571, 573 (1995). Plaintiff's complaint in the present case avers that the parties executed a deed of trust giving

American Residential a first lien on the property to secure a Note in the amount \$108,691 for monies loaned to Rozell and St. Clair for the purchase of the property; that due to a mutual mistake of the parties, St. Clair did not execute the deed of trust as the parties had intended; that plaintiff is the current holder of the Note and deed of trust, and therefore should have a first lien on the property; and that St. Clair's ability to retain title to the property free and clear of plaintiff's lien results in her unjust enrichment allowing her to "hold title to the Property in a manner in which she ought not in equity and good conscience hold and enjoy." Thus, the complaint establishes that a non-gratuitous benefit has been conferred on and accepted by St. Clair. Accordingly, the complaint, liberally construed, states a claim against her for unjust enrichment.

Moreover, the fact that the foregoing allegations were captioned "(Constructive Trust)" in the complaint is of no consequence, for "when the allegations in the complaint give sufficient notice of the wrong complained of, an incorrect choice of legal theory should not result in dismissal of the claim if the allegations are sufficient to state a claim under some legal theory." *Buchanan v. Hunter Douglas, Inc.*, 87 N.C. App. 84, 87, 359 S.E.2d 271, 272-73 (citation omitted), *disc. review denied*, 321 N.C. 296, 362 S.E.2d 779 (1987); *see also North Carolina State Ports Authority v. Lloyd A. Fry Roofing Co.*, 32 N.C. App. 400, 232 S.E.2d 846 (1977) (failure to demand correct form of relief not crucial to complaint, as under Rule 54, a court may grant any

relief to which a party is entitled, regardless of whether it has been demanded in the pleadings), *affirmed*, 294 N.C. 73, 240 S.E.2d 345 (1978). In *Norman v. Nash Johnson & Sons' Farms, Inc.*, 140 N.C. App. 390, 537 S.E.2d 248 (2000), this Court held that the plaintiff stated a claim for unjust enrichment, despite its being labeled in the complaint as one for *quantum meruit*, where the complaint alleged that the defendants received benefits for which they had not paid, thereby injuring the plaintiff and depriving it of such benefits. *Id.* at 417, 537 S.E.2d at 266.

For the foregoing reasons, we hold that the trial court erred in dismissing plaintiff's complaint, and we remand this action for further proceedings with respect to plaintiff's claims for reformation and unjust enrichment.

II.

In its second argument, plaintiff maintains the trial court erred in denying its motion to amend the order of dismissal and for leave to amend the complaint. Plaintiff argues the order dismissing its complaint failed to state whether the dismissal was with prejudice, and that plaintiff was entitled to seek amendment of the order under Rule 59 to reflect that the dismissal was without prejudice. Given our determination that the trial court erred by dismissing plaintiff's complaint, its subsequent denial of plaintiff's Rule 59 motion to amend the order to reflect that it was entered without prejudice is inconsequential.

However, we affirm the trial court's denial of plaintiff's Rule 15 motion to amend the complaint. A motion to amend the

complaint under Rule 15 "is addressed to the discretion of the trial judge, whose ruling will not be disturbed absent proof that the judge manifestly abused that discretion." *Harrold v. Dowd*, 149 N.C. App. 777, 785, 561 S.E.2d 914, 920 (2002). Reasons warranting the denial of such a motion include undue delay. *Id.* Thus, in *Harrold*, where the plaintiff's second motion to amend was filed in response to the defendants' motion to dismiss, this Court upheld the denial of the "last minute motion." *Id.* at 786, 561 S.E.2d at 920 (citing *Gunter v. Anders*, 115 N.C. App. 331, 444 S.E.2d 685 (1994) (finding no abuse of discretion in denial of motion to amend where plaintiffs did not seek amendment until defendants moved to dismiss complaint)).

The record reveals that plaintiff did not move to amend its complaint until after the trial court had granted St. Clair's motion to dismiss. On these facts, we cannot agree that the trial court's subsequent order denying plaintiff's motion to amend its complaint was a manifest abuse of discretion. Accordingly, we affirm the trial court's order denying plaintiff's motion to amend the complaint.

Affirmed in part; reversed in part, and remanded.

Chief Judge EAGLES and Judge GREENE concur.

Report per Rule 30(e).