NO. COA09-1605

NORTH CAROLINA COURT OF APPEALS

Filed: 6 July 2010

U.S. BANK, N.A., SUCCESSOR
TRUSTEE TO WACHOVIA BANK,
AS TRUSTEE,
Plaintiff,

v.

Rowan County
No. 09 CVS 1700

DONNIE R CUTHBERTSON and
WIFE, TIA B. CUTHBERTSON
and PRIORITY TRUSTEE
SERVICES OF NC, L.L.C.,
Defendants.

Appeal by defendants from order entered 22 September 2009 by Judge John Holshouser in Rowan County Superior Court. Heard in the Court of Appeals 12 May 2010.

Johnston, Allison & Hord, P.A., by Michael J. Hoefling, for plaintiff-appellee.

Malcolm B. Blankenship, Jr. for defendants-appellants.

HUNTER, Robert C., Judge.

Donnie R. Cuthbertson and Tia B. Cuthbertson ("defendants") appeal from the trial court's order granting U.S. Bank's ("plaintiff") motion for judgment on the pleadings. After careful review, we affirm.

Background

At the time of the hearing in this matter, defendants were the owners of a piece of real property located at 335 Will Black Road

in Rowan County, North Carolina. Defendants obtained the property pursuant to a general warranty deed recorded in the Rowan County Register of Deeds on 16 May 2000. On 13 December 2001, defendants borrowed the principal sum of $170,000.00 from Long Beach Mortgage Company pursuant to a promissory note secured by a deed of trust on the Will Black Road property. It is undisputed that the parties intended for the .499 acres of property, as described in the original deed, to serve as collateral for the loan. However, an error occurred by which the deed of trust securing the loan from Long Beach Mortgage Company contained a description of an easement on the Will Black Road property instead of the full .499 acres owned by defendants. On 22 April 2005, Long Beach Mortgage Company assigned the deed of trust to Wachovia Bank, N.A. ("Wachovia"). Plaintiff subsequently became the successor trustee to Wachovia.

On 31 July 2006, defendants filed for relief under Chapter 13 of the federal bankruptcy code. On 30 November 2007, defendants' bankruptcy case was converted to Chapter 7 bankruptcy. Defendants' duly appointed Chapter 7 trustee informed defendants that the deed of trust could be subject to avoidance due to the fact that the deed of trust contained a description of the easement, not the full .499 acres of property. After discussions between defendants' trustee and plaintiff, the trustee acknowledged that the deed of trust was unavoidable and consented to allow plaintiff "to exercise its rights under its Deed of Trust . . . including, but not limited to, this action for reformation of the Deed of Trust." On 28 May 2009, plaintiff filed a Complaint or Equitable Reformation of

Written Instrument, in which plaintiff requested, *inter alia*, "[t]hat the Court reform the Deed of Trust by replacing the incorrect property description of the Easement with the Property description set forth in the Deed." On or about 28 July 2009, defendants filed an answer in which they "[d]enied for lack of information" plaintiff's statement that it was, in fact, the successor trustee to Wachovia. Defendants admitted in their answer that their trustee agreed that a reformation of the deed of trust was proper; however, defendants asserted that they are not bound by the trustee's statements. Defendants further acknowledged that the deed of trust contained the alleged mistake. Defendants "pray[ed] that plaintiff be denied the remedy of reformation and that a remedy equitable to all parties be granted by the Court."

Plaintiff then moved for judgment on the pleadings pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure, claiming that "[t]he pleadings in this matter entitled Plaintiff to judgment as a matter of law." On 22 September 2009, after conducting a hearing on plaintiff's motion, the trial court issued an order granting plaintiff's motion for judgment on the pleadings, holding, *inter alia*: (1) "Reformation of the Deed of Trust is necessary to achieve equity and justice and reflect the true inten[t]ions of the parties"; (2) "Reformation will not prejudice the rights of any party"; and (3) "Reformation is applied in cases in which there has been a mutual mistake of fact by the parties." Defendants timely appealed to this Court.

Discussion

Defendants' sole argument on appeal is that "the trial court erred in granting plaintiff's motion for judgment on the pleadings because the answer raised the unresolved issue of whether the plaintiff was the noteholder." Rule 12(c) states in pertinent part: "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." N.C. Gen. Stat. § 1A-1, Rule 12 (2009). "Judgment on the pleadings . . . is appropriate when all the material allegations of fact are admitted in the pleadings and only questions of law remain." *Groves v. Community Hous. Corp.*, 144 N.C. App. 79, 87, 548 S.E.2d 535, 540 (2001) (internal citations and quotations omitted). "[T]he trial court must view the facts and permissible inferences in the light most favorable to the non-moving party." *Id.* "This Court reviews a trial court's grant of a motion for judgment on the pleadings *de novo*." *Carpenter v. Carpenter*, 189 N.C. App. 755, 757, 659 S.E.2d 762, 764 (2008).

With regard to reformation of a written instrument, the Supreme Court has held:

> "The party asking for relief, by reformation of a deed or written instrument, must allege and prove, first, that a material stipulation, as alleged, was agreed upon by the parties to be incorporated in the deed or instrument as written; and, second, that such stipulation was omitted from the deed or instrument as written by mistake, either of both parties, or of one party, induced by the fraud of the other, or by the mistake of the draftsman. *Equity will give relief by reformation only when a mistake has been made, and the deed or written instrument, because of the mistake, does not express the true intent of both parties*. The mistake of one party to the deed or instrument alone, not induced by the fraud

> of the other, affords no ground for relief by reformation."

Matthews v. Shamrock Van Lines, Inc., 264 N.C. 722, 142 S.E.2d 665 (1965) (emphasis added) (quoting *Smith v. Smith*, 249 N.C. 669, 674, 107 S.E.2d 530, 533 (1959)).

In the present case, there is no dispute that a mistake was made in the deed of trust when it was executed and recorded in 2000. Defendants acknowledged the mistake in their answer, but attempt to argue on appeal that there was a factual issue raised in the pleadings as to who the "noteholder" is. Plaintiff claimed in its complaint that it was the successor in interest to Wachovia, who was assigned the deed of trust from Long Beach Mortgage Company. Defendants' answer generally denied plaintiff's claim due to "lack of information." We fail to see the relevance of defendants' argument where clearly the issue before the trial court was not who the noteholder was; rather, the issue was whether the deed of trust should be reformed to reflect the original intent of defendants and Long Beach Mortgage Company, regardless of who the noteholder may have been at that time. Defendants fail to cite to any authority to support the proposition that the identity of the current noteholder is a material issue of fact in an action to reform a deed of trust where it is *undisputed* that an error occurred in the recordation of the *original* deed of trust between the *original* parties. Defendants' failure to cite to any authority is in violation of N.C. R. App. P. Rule 28(b)(6). Nevertheless, upon review of the pleadings *de novo*, we find no error in the trial court's order, which strictly details the undisputed facts, as

established in the pleadings, and reaches the conclusion that there were no genuine issues of material fact. We agree, and, consequently, we affirm the order.

Affirmed.

Judges GEER and STEPHENS concur.

Report per Rule 30(e).