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NO. COA11-499
NORTH CAROLINA COURT OF APPEALS

Filed: 6 December 2011

BRIAN E. SIMPSON and
BRANDI L. SIMPSON,
Plaintiffs,

v.

Cabarrus County
No. 09 CVS 4609

LORAIN E. RAYMER,
Defendant.

Appeal by defendant from an order entered 29 November 2010 by Judge Theodore S. Royster in Cabarrus County Superior Court. Heard in the Court of Appeals 12 October 2011.

Kluttz, Reamer, Hayes, Randolph, Adkins & Carter, L.L.P., by Richard R. Reamer and John L. Holshouser, Jr., for plaintiff appellees.

Wyrick Robbins Yates & Ponton, LLP, by K. Edward Greene and Tobias S. Hampson, for defendant appellant.

McCULLOUGH, Judge.

Loraine Raymer ("defendant") appeals from an order granting summary judgment in favor of Brian E. Simpson and Brandi L. Simpson (collectively "plaintiffs"), compelling delivery of a deed and denying defendant's cross-motion for summary judgment.

I. Background

Plaintiff Brandi E. Simpson is defendant's niece. Pursuant to an oral agreement for plaintiffs to purchase certain real property owned by defendant in Cabarrus County, North Carolina, defendant drafted a Mortgage Agreement (the "Agreement") dated 2 April 2005. The Agreement stated a purchase price of \$240,000.00, payable in monthly installments of \$1,000.00 with zero percent (0%) interest. Defendant intended to include an interest rate of five percent (5%) per year, but accidentally typed the zero. The Agreement also stated "[g]rantee may not sell or convey to another entity until full payment has been made to the grantor, or to grantor's estate." Contemporaneously with the Agreement, defendant also prepared a proposed warranty deed dated 2 April 2005, which identified defendant as the grantor and preparer of the document.

Following execution of the documents of sale on 2 April 2005, plaintiffs moved into the home and began making timely monthly payments. In 2007 and 2008, the parties began to dispute whether plaintiffs owed defendant any interest on the purchase price. Also around this time, plaintiffs had taken out three loans on the property. Two of the loans remained active with

Wachovia Bank ("Wachovia"), secured by deeds of trust attached to the property. Later, plaintiffs discovered that defendant had signed the deed in the space designated for the notary public and not the space designated for the grantor. After determining the deed to be defective, plaintiffs requested defendant execute the deed in the correct space and return it to plaintiffs for re-recording. Defendant then executed the deed in the correct place, but returned a copy rather than the original, which prevented plaintiffs from being able to have the document re-recorded. Again, plaintiffs requested that defendant deliver the fully signed deed for re-recording or execute a new deed in proper form for the property. Defendant failed to tender the original fully signed deed or execute a new deed. Plaintiffs continued to live in the house and make timely payments to defendant, who continued to accept the payments as agreed and never gave notice of default.

On 3 November 2009, plaintiffs filed their Complaint to Compel Delivery of a Deed. Defendant filed her answer and counterclaims on 6 January 2010, alleging the affirmative defenses of estoppel and the statute of frauds. In her answer, defendant specifically alleged that plaintiffs had breached the Agreement by "conveying" the property when they recorded the two deeds of trust with Wachovia. She also counterclaimed for

declaratory judgment, reformation/mutual mistake, rescission, unjust enrichment, and constructive trust. Plaintiffs subsequently filed a reply to defendant's counterclaims and also amended their complaint to clarify that defendant had signed the deed in the incorrect place. Defendant then filed a motion to amend her answer to include a further counterclaim alleging unconscionable contract. The trial court allowed all parties to make their amendments and on 20 August 2010, plaintiffs filed a motion for summary judgment seeking judgment in their favor on both their claims and defendant's counterclaims. Defendant filed her own motion for summary judgment on 2 November 2010. The matter was heard on 15 November 2010, and on 29 November 2010, the trial court entered an order granting plaintiffs' motion for summary judgment compelling defendant to prepare, execute, and immediately deliver to plaintiffs a good and sufficient warranty deed conveying the property in question. The trial court also denied defendant's motion for summary judgment. Defendant filed her notice of appeal on 10 December 2010.

II. Analysis

A. Breach of contract

Defendant's first issue on appeal is whether the trial court erred in denying her motion for summary judgment on her counterclaims that plaintiffs breached the Agreement by

executing two deeds of trust on the property. Defendant argues that by executing the two deeds of trust plaintiffs conveyed the property and violated the provision against conveyance in the Agreement. For the following reasons, we disagree.

"Our standard of review of an appeal from summary judgment is *de novo*; such judgment is appropriate only when the record shows that 'there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.'" *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (quoting *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007)). The law is well settled in North Carolina that when our Court reviews a written instrument, it is to be strictly construed against the preparing party. *Wilkie v. New York Life Insurance Co.*, 146 N.C. 513, 60 S.E. 427 (1908). Also, "[w]hether . . . the language of an agreement is ambiguous or unambiguous is a question for the Court to determine. . . [;] [i]n making this determination, words are to be given their usual and ordinary meaning, and all the terms of the agreement are to be reconciled if possible[.]" *Anderson v. Anderson*, 145 N.C. App. 453, 458, 550 S.E.2d 266, 269-70 (2001) (internal quotation marks and citation omitted). "A deed of trust is a three-party arrangement in which the borrower conveys legal title to real property to a third party trustee to hold for the

benefit of the lender until repayment of the loan." *Skinner v. Preferred Credit*, 361 N.C. 114, 120, 638 S.E.2d 203, 209 (2006). "When the loan is repaid, the trustee cancels the deed of trust, restoring legal title to the borrower, who at all times retains equitable title to the property." *Id.* at 121, 638 S.E.2d at 209.

In the case at bar, the Agreement provides that "[g]rantee may not sell or convey to another entity until full payment has been made to the grantor or grantor's estate." According to *The American Heritage Dictionary, Second College Edition*, the definition of "sell" is "[t]o exchange or deliver for money or its equivalent." *The American Heritage Dictionary* 1114 (2d College Ed. 1991). Also, "convey" means "[t]o transfer ownership or title to." *Id.* at 321. In our opinion, these definitions do not include the two equity line deeds of trust executed against the property by plaintiffs. "When the words used are given their ordinary significance, we think the plain and unambiguous meaning of the" words "sell" or "convey" are the transfer of full ownership, as in both legal and equitable title, to a piece of property. *Lester Brothers, Inc. v. Thompson Co.*, 261 N.C. 210, 217, 134 S.E.2d 372, 377 (1964). If defendant had wished to include a provision prohibiting the conveyance of legal title by plaintiffs to a third party, she could have easily included one in the Agreement. Despite their temporary conveyance of legal

title to Wachovia, plaintiffs at all times retained equitable title to the property, and cannot be said to have sold or conveyed the property based on the usual and ordinary meaning of those terms. Defendant also argues that a temporary conveyance of legal title should be seen as a sale or conveyance, which is prohibited in the Agreement. However, this argument, under the above analysis, is contrary to the usual and ordinary meanings of those words. Thus, the trial court properly concluded that there was no genuine issue as to any material fact and properly denied defendant's motion for summary judgment.

B. Execution and Delivery of Deed

Defendant's second issue on appeal is whether the trial court erred when it granted plaintiffs' motion for summary judgment, compelling defendant to execute and immediately deliver a full and sufficient warranty deed. Defendant again argues that plaintiffs breached the Agreement by executing two deeds of trust with Wachovia against the property. Additionally, defendant argues that a valid deed had already been delivered. We disagree.

Defendant first argues plaintiffs had no right to compel delivery of a deed because defendant had already delivered a valid deed. Defendant notes that "[i]n North Carolina the word 'deed' ordinarily denotes an instrument in writing, signed,

sealed, and delivered by the grantor whereby an interest in realty is transferred from the grantor to the grantee." *Williams v. Board of Education*, 284 N.C. 588, 594, 201 S.E.2d 889, 893 (1974). While the deed was signed by defendant, she signed in the location designated for the notary. A person reviewing the deed would not consider the deed to be valid while lacking a signature on the designated grantor line. Clearly, the Cabarrus County Register of Deeds did not consider the deed to be valid because it included a notation on the bottom of the file stamped deed that "NOTARY NOT CERTIFIED DUE TO NO GRANTOR SIGNATURE 4-4-2005." Thus, the deed would not be valid against purchasers for value. N.C. Gen. Stat. § 47-18 (2009). Therefore, the initial deed was invalid due to defendant signing in the incorrect place, and as a result, defendant must deliver a full and sufficient warranty deed.

Also, as noted above in applying *Wilkie*, a strict interpretation of the Agreement's covenant not to convey leads our Court to the conclusion that plaintiffs did not "convey" or "sell" the property when they executed the two deeds of trust with Wachovia. See *Wilkie*, 146 N.C. 513, 60 S.E. 427. Thus, the alleged breach of the Agreement has no merit and plaintiffs are entitled to a full and sufficient warranty deed.

III. Conclusion

The trial court properly granted summary judgment in favor of plaintiffs in compelling defendant to execute a full and sufficient warranty deed to the property. Plaintiffs had fully complied with all terms of the Agreement and were entitled to the deed. Similarly, the trial court also properly denied defendant's motion for summary judgment alleging a breach of the Agreement, as plaintiffs cannot be seen to have sold or conveyed the property by executing two deeds of trust against it with Wachovia.

Affirmed.

Judges STEELMAN and ERVIN concur.

Report per Rule 30(e).