

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

DAI JI JING	:	JANUARY TERM 2004
	:	
v.	:	NO. 2286
	:	
LAMONT K. COLLINS and	:	CONTROL NO. 111641
SHYNIKA R. BROOKS	:	
	:	

ORDER

AND NOW, this 21ST day of December 2006, upon consideration of Defendant Lamont K. Collins's Petition to Open or Strike the Default Judgment entered on May 3, 2004, it is ORDERED and DECREED that said Petition is DISMISSED.¹

¹ Collins filed the petition to open or strike on November 22, 2006. Collins's petition did not include a brief or memorandum of law in support of his petition, as required by Phila. Court R.*210 (2006). A moving party's failure to file a brief in support of his position may be grounds for a denial of his application. *North Newton Twp. v. Singer*, 37 Pa. D.&C.3d 344 (Cumberland Co. 1985) (holding that where a defendant's new matter averred that there was defective notice but the defendant did not submit a brief in support of its position, the defective notice argument was deemed waived); *see also* *Karn v. Quick & Reilly*, 2006 PA Super 341, *10-11 (holding that where an appellant failed to support his 1925(b) statement with citations to legal authority in support of his positions, the issues on appeal were waived for the appellant's failure to provide a suitable 1925(b) statement). A party's failure to cite pertinent case law in support of a proposition is deemed a waiver of the issue. *Villoresi v. Femminella*, 856 A.2d 78, 84 (Pa. Super. Ct. 2004). By failing to brief his argument and include pertinent case law, Collins has not provided the Court with sufficient information to adjudicate his petition.

Collins's petition asserts that this Court has no subject matter jurisdiction over the case. Where a contract provides that all disputes shall be mediate in a non-binding process, the provision does not divest a court of subject matter jurisdiction over the case. *Delta/B.J.D.S. v. st. Paul Fire & Marine Ins. Co.*, 2005 Phila. Ct. Com. Pl. LEXIS 248 (June 10, 2005) (holding that where a construction contract provided for mediation and then binding arbitration of any disputes, the arbitration clause alone gave the court a lack of subject matter jurisdiction over the case). The contract for sale provided that any disputes must be mediated according to the mediation rules and procedures of the Home Sellers/Home Buyers Dispute Resolution System. There is no indication that the result of the mediation is binding, so if mediation were to fail, this Court would be the proper venue for resolution of the dispute. This court therefore has subject matter jurisdiction.

Additionally, this court has personal jurisdiction over Collins, because service of original process was not defective. Original process may be served by handing a copy of the complaint or writ of summons to the defendant, or by handing a copy to an adult family member in the defendant's home, or an adult person in charge at his lodging place or place of business. Pa.R.C.P. 402(a). Collins asserts in his petition that Jiang's process server served Collins's adult neighbor instead of Collins, which constituted defective service on the face of the record. However, the process server saw a sign placed inside the window of Collins's home

BY THE COURT,

HOWLAND W. ABRAMSON, J.

which directed all deliveries to go to the neighbor's home, causing the process server to serve Collins's neighbor. Collins's petition asserts that there were no other adults in his home; thus, Collins himself placed the sign there, authorizing the neighbor to accept process as though the neighbor were an adult in Collins's own home. Because this Court has personal jurisdiction over Collins, the trial opinion and accompanying Order in this case dated December 21, 2006 is binding upon Collins.

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OPINION

Plaintiff Dai Di Jiang brought the instant case against Defendants Lamont K. Collins and Shynika Brooks. On November 6, 2003 Jiang and Collins entered into and signed a written agreement for the purchase of real property located at 1011 South 18th Street, Philadelphia, PA 19146 (“the Property”). Jiang tendered part of the balance of the purchase price for the Property to the title company. On the settlement date scheduled, Collins did not appear. On November 24, 2003 Collins sold the Property to Brooks. The consideration recited on the deed is one dollar; the fair market value on November 24, 2003 as assessed on the Philadelphia Real Estate Transfer Tax Certification was \$14,102.40. Brooks appears on the deed as the owner of the Property.

The instant action was instituted January 21, 2004. On May 3, 2004, Jiang filed a praecipe for entry of default judgment against the defendants. Brooks successfully petitioned to open the default judgment and filed an answer, new matter, and cross claim.² Jiang’s Complaint lists two counts against Brooks: intentional interference with the land sale contract between Jiang and Collins, and fraud. Trial occurred on October 2, 2006. At trial, Brooks testified that she did not purchase the Property, rather her uncle (who is not a

² Collins did not petition to open or strike the default judgment until November 22, 2006. That petition appears on the record as Control No. 111641, and was dismissed on December 21, 2006.

party to the instant case) did, and she was a straw party to the transaction. Brooks has never lived at the Property, was unaware that there was a mortgage on the Property, and did not know that she had been named as a party in a foreclosure action on the Property. Collins did not appear at the trial. Jiang petitions the Court for a remedy at equity, namely, that the deed dated November 24, 2003 be decreed fraudulent, void and of no effect, and that Collins and Brooks be directed to reconvey the Property to Jiang.

Brooks did not intentionally interfere with the Jiang-Collins contract for the Property. Intentional interference with a contract occurs where a defendant intentionally and improperly interferes with the performance of a contract between the plaintiff and a third person by inducing or otherwise causing the third person not to perform the contract, and the plaintiff suffers pecuniary loss from the third person's failure to perform the contract. Restatement (Second) of Torts § 766 (1979); *see also Adler v. Epstein*, 482 Pa. 416, 429 (1978); *Yaindl v. Ingersoll-Rand Co. Standard Pump-Aldrich Div.*, 281 Pa. Super. 560, 582 (1980). At trial, Brooks testified that she was the straw person in the transaction between Collins and Brooks's uncle, and that she did not believe that she had purchased the Property. Brooks's trial testimony and pleadings indicate that she had no knowledge of the Jiang-Collins contract when she was involved in the sale with Collins and Brooks's uncle. Because Brooks did not know of the existence of the contract, she could not have exhorted Collins to break it.

Brooks also did not defraud Jiang by forging Collins's signature, as alleged in the complaint. A fraud is (1) a knowingly false representation; (2) a concealment which is calculated to deceive; or (3) a person's failure to disclose information which he has no privilege to withhold. *Boyle v. Odell*, 413 Pa. Super. 562, 569 (1992). In order to rebut the

presumption that a deed is duly executed, an allegation of forgery must be proved by clear and convincing evidence. *Nebesho v. Appeal of Brown*, 846 A.2d 721, 727 (Pa. Super. Ct. 2004). The record of this case indicates that in March 2005, the pretrial conference was continued in order to allow the parties to cooperate with the District Attorney's investigation of forgery, but the record does not indicate that a forgery was discovered. Additionally, Jiang submitted no evidence of forgery on the deed during the trial.

Jiang petitions the Court to declare the deed dated November 24, 2003 fraudulent, void and of no effect, and to direct that Collins and Brooks be directed to reconvey the Property to Jiang. Jiang essentially petitions the Court for specific performance of the land sale contract. To succeed in a suit for specific performance, an equitable owner must show either that he has performed his contractual duties or that he is currently able to perform those duties in full. *See, e.g., Bafle v. Borough of Muncy*, 527 Pa. 25, 28-29 (1991); *Francis Gerard Janson, P.C. v. Frost*, 422 Pa. Super. 36, 41 (1993). An equitable owner of real property is a buyer in the executory phase of a land sale contract who has yet to pay the purchase price in full. *See Zitzelberger v. Salvatore*, 312 Pa. Super. 402, 405 (1983). A bona fide purchaser is a buyer who has paid value for the subject property, with no knowledge of any prior interest in the land. *Roberts v. Estate of Pursley*, 718 A.2d 837, 841 (Pa. Super. Ct. 1998). A bona fide purchaser's right outweighs any other right to the property. *Long John Silver's, Inc. v. Fiore*, 255 Pa. Super. 183, 190 (1978).

Brooks is not a bona fide purchaser for value because she did not believe she purchased the Property at all. Jiang is an equitable owner of the Property by virtue of having paid part of the purchase price to the title company. She has remained ready, willing, and able to consummate the sale. Because Jiang's right to the Property is superior

to Brooks's (who is the deed owner), and because Jiang is currently ready, willing, and able to consummate the sale, specific performance of the land sale contract is granted.

CONCLUSION

For the forgoing reasons, Jiang's petitioned-for relief is granted. An order consistent with this opinion shall be issued.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

Dated: December 21, 2006