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

MONROE COURT HOMEOWNER'S ASSOCIATION	:	October Term 2004
Plaintiff,	:	No. 777
v.	:	Commerce Program
SOUTHWARK REALTY COMPANY, CRAIG G. SMITH, SAUL Y. LEVY and JANET C. LEVY, and ARISTIDE LINDENMAYER	:	Control Nos. 031311, 031314
Defendant.	:	

O R D E R

AND NOW, this 11th day of August, 2005, upon consideration of the Summary Judgment Motion of Defendants Southwark Realty Company and Craig G. Smith (Control No. 031311) and the response thereto, the Summary Judgment Motion of Defendants Southwark Realty Company and Craig G. Smith (Control No. 031314) and the response thereto, and in accordance with the attached memorandum, it is hereby **ORDERED** and **DECREED** that Defendants' Summary Judgment Motions are both **DENIED**.

BY THE COURT,

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HOWLAND W. ABRAMSON, J.

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MEMORANDUM

Presently before the court are two motions for summary judgment filed by Defendants Southwark Realty Company ("Southwark") and Craig G. Smith ("Smith"). Plaintiff Monroe Court Homeowner's Association (the "Association") challenges the motions.

BACKGROUND

At the core of the dispute is a courtyard located at the rear of 228-238 Monroe Street and 233-239 Fitzwater Street in Philadelphia (the "Courtyard"). Compl., ¶6. The Association was formed to own and maintain the Courtyard and is administered by a board of directors. Compl., ¶7. The Association also held an easement for the unfettered use and quiet enjoyment of the Courtyard. Compl., ¶45; Pl. Answer to Defs. Mot. for Summ. J. ("Pl. Answer") No. 1, ¶¶1, 2, 6, 10.

Smith is the principal owner of Southwark. Compl., ¶3. Southwark served as manager of the Association with responsibility for the Courtyard until either 1991,

Answer, ¶¶10, 11, or 1999, Compl., ¶11. In any event, the fees necessary to pay the real estate taxes and liability insurance for the Courtyard were not collected from members of the Association between 1992 and 1999. Compl., ¶11. Southwark paid the taxes for 1991 through 1996. Compl., Exs. C, D.

On May 10, 1999, Southwark commenced suit against the Association to recover monies it paid for real estate taxes and liability insurance for the Courtyard. Compl., ¶12. On July 28, 1999, Smith was elected to the Association's board of directors. Compl., Ex. D. On August 6, 1999, the officers of the Association sent Smith a letter with a settlement offer for the Courtyard dispute. Compl., Ex. E. The settlement offer was refused. Compl., ¶21. On October 26, 1999, a default judgment in Southwark's lawsuit was entered against the Association. Compl., ¶14. On August 23, 2000, the default judgment was transferred to the Court of Common Pleas of Philadelphia. Compl., ¶25. On November 10, 2000, a praecipe for writ of execution was filed and a notice for sheriff's sale on February 6, 2001, was issued. Compl., ¶27.

On December 15, 2000, the Association retained counsel ("Counsel") to negotiate a settlement and resolve the judgment held by Southwark against the Association. Pl. Answer, Ex. N, at ¶10. On January 17, 2001, Smith rejected a final offer to settle the Southwark dispute. Compl., ¶22. On February 1, 2001, counsel for Southwark notified Counsel that its settlement offer had been refused. Pl. Answer, Ex. N, at ¶12. On February 6, 2001, the Courtyard was sold at a sheriff's sale to Southwark. Compl., ¶28. On May 24, 2001, the sheriff's deed was recorded. Compl., ¶28.

Subsequently, Southwark sold two portions of the Courtyard to third parties. On October 22, 2001, defendants Saul Y. Levy and Janice C. Levy (together, "Levy") purchased approximately nine hundred fifty one (951) square feet of the Courtyard.

Compl, ¶38. On November 2, 2001, Southwark conveyed approximately five hundred fifty four (554) square feet of the Courtyard to defendant Aristide Lindenmayer ("Lindenmayer"). Compl., ¶42.

Shortly thereafter, a series of lawsuits over Southwark's acquisition of the Courtyard ensued. On November 7, 2001, several members of the Association filed suit against Smith and Southwark (the "Marucci Action"). Pl. Answer, Ex. K, at 3. On November 20, 2001, counsel for Smith and Southwark entered an appearance in the Marucci Action and noted that a *lis pendens* had been filed. Pl. Answer, Ex. F. On April 17, 2002, Levy and Lindenmayer were notified that a complaint had been filed against Smith and Southwark in the Marucci Action. Pl. Answer, Ex. D. On May 15, 2002, following the defendants' motion for summary judgment, the Marucci Action was dismissed due to the individual plaintiffs' lack of standing. Pl. Answer, Ex. K.

In July 2002, several members of the Association and the Association itself filed suit against Smith and Southwark (the "McGill Action"). Pl. Answer, Ex. G. On July 9, 2002, plaintiffs' counsel in the McGill Action notified counsel for Smith and Southwark that a complaint, acting as a *lis pendens*, had been filed. Pl. Answer No. 1, ¶11; Pl. Answer, Ex. H. Although an amended complaint was filed in the McGill Action, Pl. Answer, Ex. G, on April 12, 2004, the McGill Action terminated with a voluntary non-suit by plaintiffs, Pl. Answer, Ex. J.

In January 2003, the Association filed suit against Counsel and against the Association's president during the pendency of the initial Southwark dispute. Pl. Answer, Ex. N. The Association alleged professional negligence against Counsel and negligence against its president for the loss of the Courtyard. Pl. Answer, Ex. N, at ¶¶18, 22. The lawsuit resulted in a confidential settlement. Pl. Answer, ¶9. Also, in January

2003, an individual member of the Association filed suit against the seller and the seller's realtor alleging misrepresentation in the purchase of her condominium with respect to the Courtyard. Pl. Answer, ¶10. Following a jury trial, the member received $17,000. Pl. Answer No. 1, ¶10.

In this equity matter, Plaintiff filed the Complaint on October 8, 2004. Plaintiff brings claims to set aside the transfer of title to the Courtyard by the sheriff's deed (Count I), to quiet title to the Courtyard as to Smith and Southwark (Count II), to quiet title to the Courtyard as to Levy (Count III), to quiet title to the Courtyard as to Lindenmayer (Count IV), and to eject Smith, Southwark, Levy, and Lindenmayer from the Courtyard (Count V). Underlying Plaintiff's claims are allegations of breach of fiduciary duty against Smith. Compl., ¶31; February 7, 2005, Mem. Op., at 4.

DISCUSSION

Pursuant to Pa. R.C.P. 1035.2, a party may move for summary judgment when (1) there is no genuine issue of material fact as to a necessary element of the cause of action or defense or (2) an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense. The court must review the entire record in the light most favorable to the nonmoving party and resolve all genuine issues of material fact against the moving party. Basile v. H & R Block, Inc., 563 Pa. 359, 365, 761 A.2d 1115, 1118 (2000).

Defendants move for summary judgment on the grounds that a prior action at law bars this equity matter and, in the alternative, laches. Plaintiff contends the prior litigation over the Courtyard is wholly distinct from the current matter and does not affect the outcome and asserts that laches cannot be established.

Both parties recognize that an action in equity will not lie where there is an adequate remedy at law. Redmond Finishing Co. v. Ginsburg, 301 Pa. Super. 51, 54, 446 A.2d 1330, 1331-32 (1982). Defendants assert that the two actions filed in January 2003 provided an adequate legal remedy to Plaintiff. Both the Association's lawsuit against its Counsel and president and the current controversy find their genesis in the loss of the Courtyard. However, for the prior lawsuit to bar this equity action, the two cases must cover the same issues. Id., at 54, at 1331. A review of the complaint in the earlier matter reveals that the Association sought damages for professional negligence and negligence in the loss of Courtyard, Compl., Ex. N, at ¶¶18, 22, against parties not holding title to the Courtyard. In this matter, the Association seeks to overturn the sheriff's sale and recover its rights to the Courtyard from the current owners. Compl., ¶¶33-46. Similarly, the suit brought by an individual member of the Association has its basis in the loss of the Courtyard. As the court filings in that matter are not contained in the record, however, the court cannot determine the precise issues in that case as they pertain to the Courtyard. Since neither of these two earlier lawsuits covers the same issues as this matter, summary judgment on the basis of the Association having an adequate remedy at law is denied.

Laches is an equitable doctrine that bars relief when the complaining party is "guilty of want of due diligence in failing to promptly institute the action to the prejudice of another." Sprague v. Casey, 520 Pa. 38, 45, 550 A.2d 184, 187 (1988). To prevail on laches, Defendants must establish "(1) a delay arising from [Plaintiff's] failure to exercise due diligence and (2) prejudice to [Defendants] resulting from the delay." Stilp v. Hafer, 553 Pa. 128, 134, 718 A.2d 290, 293 (1998). Since laches requires a factual determination, it is generally inappropriate for summary judgment. Id.

Defendants rely on the statute of limitations to demonstrate Plaintiff's delay in bringing this action. In this instance, the analogous statute of limitations is two years for the breach of fiduciary duty underlying the sale of the Courtyard. 42 Pa. C.S. §5524(7). Plaintiff's contention that the relevant statute is five years, based upon a resulting trust, 42 Pa. C.S. §5526(3), is misguided. To have a resulting trust, the "transfer of property is made to one person and the purchase price is paid by another." Bower v. Bower, 531 Pa. 54, 61, 611 A.2d 181, 184 (1992). Southwark both acquired and paid for the Courtyard. Compl., ¶28.

Although "[e]quity courts may not rely solely on the statute of limitations in determining if a claim is timely," United Nat'l Ins. Co. v. J.H. France Refractories Co., 542 Pa. 432, 441, 668 A.2d 120, 125 (1995), it does "provide guidance in determining the reasonableness of any delay," Kay v. Kay, 460 Pa. 680, 685, 334 A.2d 585, 587 (1975). The Complaint indicates that the Courtyard was sold on February 6, 2001, and the deed recorded on May 24, 2001. Compl., ¶28. The Complaint was filed on October 8, 2004, Pl. Answer, Ex. A, in excess of three years from the date Southwark acquired the deed to the Courtyard. Contrary to Plaintiff's assertion that the Marucci Action and the McGill Action demonstrate diligence on its behalf, these two actions are distinct from the current matter. Furthermore, Plaintiff knew, no later than November 10, 2000, Compl., ¶27, that its rights in the Courtyard were endangered. Plaintiff also knew all the defendants in this case no later than July 9, 2002. Pl. Mem. No. 1, at 12. Based on these facts, Plaintiff has failed to exercise due diligence and Defendants have demonstrated a delay by Plaintiff.

Defendants assert prejudice due to the sale of two portions of the Courtyard to Levy and Lindenmayer. "The sort of prejudice required to raise the defense of laches is some changed condition of the parties which occurs during the period of, and in reliance

on, the delay." Sprague v. Casey, 520 Pa. 38, 46, 550 A.2d 184, 188 (1988). Although both sales predate this lawsuit, Compl., ¶¶38, 42, the record is silent as to what both Levy and Lindenmayer knew at the time each acquired their portion of the Courtyard. In addition, neither Levy nor Lindenmayer is a party to either of Defendants' motions for summary judgment and Defendants cannot represent their interests. Furthermore, the sales to Levy and Lindenmayer do not impact the portion of the Courtyard still held by Southwark. Therefore, the court cannot determine whether the Defendants have been prejudiced by Plaintiff's delay in filing suit. Defendants' motions will be denied.

BY THE COURT,

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HOWLAND W. ABRAMSON, J.