

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

COLDWELL BANKER MORTGAGE	:	AUGUST TERM, 2005
<i>Plaintiff</i>	:	
	:	
v.	:	No. 1950
	:	
JENNIE MARIE MOORE	:	(Commerce Program)
<i>Defendant</i>	:	
	:	Superior Court Docket No.
	:	1243 EDA 2007

OPINION

Albert W. Sheppard, Jr., J. August 2, 2007

This Opinion is submitted relative to the appeal of defendant, Jennie Marie Moore (“defendant”), of this court’s Order dated October 23, 2006 granting summary judgment in favor of plaintiff, Coldwell Banker Mortgage (“plaintiff”). In that Order, this court found that plaintiff is the holder of a valid first mortgage in the principal sum of \$51,500.00 on the real property located at 6232 Sansom Street, Philadelphia, Pennsylvania. Further, this court found that any right, title or interest held by defendant in the real property is subject to the mortgage held by plaintiff.

For the reasons discussed, this court respectfully submits that its Order should be affirmed.

BACKGROUND

This case involves the transfer of real property located at 6232 Sansom Street in Philadelphia, Pennsylvania (the “Premises”). The facts of this case are not contested. On or about March 15, 1977, defendant’s mother, Jennie Allen (“Allen”) made, executed, and delivered a deed conveying the Premises to herself in Trust for her daughter, the defendant. The Trust was created within the body of the deed. No separate trust agreement was prepared with respect to the Premises.

The deed states in part:

IN TRUST, NEVERTHELESS; to let, demise and manage unto JENNIE ALLEN the premises hereinabove described, to receive the rents and profits therefrom and, after the payment of taxes, costs of repairs and maintenance, insurance, mortgage interest and amortization and all other proper and legal charges to take to appropriate and payover the whole of the net income for the benefit of [defendant], her daughter.

FURTHER, the Trustee, shall have the power to sell, convey, mortgage or otherwise encumber the said premises **free, clear and discharge of the herein created trust** and to execute, acknowledge and deliver such deeds, mortgages or other, instruments in writing in order to effectuate the foregoing powers, upon such terms and for such prices or amounts as the said Trustee shall determine in her descretion [sic] and **without liability upon the purchaser or mortgagee to see to the application of the purchase price or proceeds.**

AND UPON the death of JENNIE ALLEN, title to the above mentioned premises or the proceeds of sale thereof shall vest in [defendant], her heirs and assigns in fee simple free and discharged of and from any and all trust whatsoever.¹

On November 9, 1995, Allen made, executed and delivered a deed to the Premises to one of her daughters, Thomasina Roberts (“Roberts”). The language in the deed did not indicate that any of the conditions or provisions of the Trust were being carried

¹ See March 15, 1977 deed, pp. 1-2 (emphasis added).

forward. On August 5, 1996, Roberts made, executed and delivered the deed to the Premises back to Allen.

Allen died intestate on July 11, 1998 and her estate was administered by Roberts. Between August 5, 1996 and the date of her death, Allen made no further conveyances of the Premises. Allen did, however, mortgage the Premises in favor of the Police and Fire Federal Credit Union. On the date of her death, the balance due on the mortgage was \$14,326.20. The Premises was sold to defendant's daughter, Shawn Nix ("Nix"). On October 19, 1998, Roberts made, executed and delivered a deed to the Premises to Nix. The balance due on the mortgage was paid off as part of the transaction. With her daughter's permission, defendant lived in the Premises after the purchase.

Several years later, Nix decided to sell the Premises. On May 24, 2004, Nix made, executed and delivered a deed to the Premises to Abdul A. Muhammad ("Muhammad"). In making this purchase, Muhammad entered into a mortgage loan agreement with plaintiff in the amount of \$51,500.00. Plaintiff obtained a first mortgage lien on the Premises as part of the transaction. Muhammad made, executed and delivered a mortgage on the Premises in favor of plaintiff.

After purchasing the Premises from Nix, Muhammad was unable to obtain physical possession. Muhammad brought an action in ejectment against defendant and others in the Court of Common Pleas of Philadelphia County² in order to obtain possession of the Premises. Defendant filed an Answer, New Matter and Counterclaim, and sought an Order quieting title to the Premises. Defendant claimed that the terms of the 1977 Deed required that she execute any subsequent deeds of the Premises. Muhammad failed to file a response to defendant's Counterclaim. The Muhammad court

² Muhammad v. Doe, November Term 2004, No. 001384.

granted defendant's Motion for Judgment quieting title to the Premises in defendant and entered an Order dated April 18, 2005 stating that Muhammad had no right, title or interest in the Premises. The Order did not make any determination with respect to the mortgage lien held by plaintiff.

Plaintiff initiated the instant action against defendant and petitioned this court to enter an Order declaring that plaintiff is the holder of a valid first mortgage on the Premises; that defendant's right, title and interest in the Premises is subject to the mortgage held by plaintiff; and that the Order dated April 18, 2005 is not binding on plaintiff and does not have any effect upon plaintiff or its mortgage lien on the Premises. In an Order dated October 23, 2006, this court granted plaintiff's Motion for Summary Judgment. Further, this court ordered that plaintiff has a valid first mortgage on the Premises, and that any right, title or interest held by defendant in the Premises is subject to the mortgage.

DISCUSSION

Defendant now appeals this court's decision and asserts that this court erred in finding that: (1) any right, title or interest held by defendant in the Premises is subject to the mortgage entered into between plaintiff and Abdul Muhammad; and, (2) plaintiff's lawsuit is not barred by the doctrine of *res judicata*.

I. **This Court Properly Found That Plaintiff Holds a Valid First Mortgage in the Premises.**

At issue in this case is the preparation and execution of the 1995 Deed which transferred the Premises from Allen to Roberts. Defendant claims that Roberts procured the deed through fraud and deception such that the transfer of the Premises did not constitute a valid transfer of title. Defendant further claims that as a result of this

fraudulent transfer, all transfers of the Premises after November 9, 1995 are invalid. This court disagrees.

It is well established that “in interpreting a trust instrument, the intent of the settlor is paramount and if that intent is not contrary to law, it must prevail.”³ The 1977 Deed created a trust instrument that specifically gave Allen the ability to sell, convey or mortgage the Premises free and clear of the Trust. The language of the 1977 Deed did not place any restrictions or limitations on Allen’s power to convey the Premises. Thus, when Allen conveyed the Premises to Roberts in November 1995, she did so under the authority granted to her in the 1977 Deed.

This court is not persuaded that the 1995 Deed transferring the Premises from Allen to Roberts was procured through fraud and deception. It is well established by our Supreme Court that fraud must be proved by “evidence that is clear, precise and convincing.”⁴ This court finds that defendant has failed to offer sufficient evidence to establish her fraud claim. Allen transferred the Premises to Roberts in November 1995. It was transferred back to Allen in August 1996 and Allen died in 1998. Each transfer of the Premises was properly recorded with the Philadelphia Department of Records. The simple fact that the deed to the Premises was transferred between Roberts and Allen does not prove that Roberts acted fraudulently.

As for defendant’s claim that plaintiff would have discovered that defendant was the owner in fee of the Premises had it inquired into Muhammad’s chain of title, this court disagrees and finds that plaintiff made reasonable investigation of Muhammad’s title to the Premises. The purpose behind the recording of a deed is to provide

³ Estate of Taylor v. Smeltzer, 522 A.2d 641, 642 (Pa. Super. 1987).

⁴ Delahanty v. First Pennsylvania Bank, N.A., 464 A.2d 1243, 1252 (Pa. Super. 1983).

constructive notice to any subsequent purchasers or mortgagees.⁵ Whether plaintiff had notice of defendant's use of the Premises is not relevant. Plaintiff had record notice of Muhammad's title to the Premises. It was reasonable for plaintiff to rely upon the title Muhammad acquired when he purchased the Premises from Nix. This court finds that Muhammad had good title to the Premises at the time he delivered the mortgage to plaintiff. Thus, plaintiff has a valid mortgage lien on the Premises.

II. This Court Properly Found that Plaintiff's Cause of Action Is Not Barred by the Doctrine of *Res Judicata*.

Defendant asserts that plaintiff's cause of action is barred by the doctrine of *res judicata*. This court disagrees. The doctrine of *res judicata* precludes a claimant from asserting the same cause of action in a later lawsuit. The two actions must have the following common elements: identity of the thing sued upon; identity of the cause of action; identity of the parties; and, identity of the capacity of the parties.⁶ Plaintiff brought the instant action to petition the court to declare that its mortgage lien against the Premises is valid. In the previous case, Muhammad filed an action in ejectment to obtain possession of the Premises. Coldwell Banker was not a party to the previous lawsuit. Moreover, the causes of action are very different. Thus, plaintiff's claim is not barred by the doctrine of *res judicata*.

⁵ Graham v. Lyons, 546 A.2d 1129 (Pa. Super. 1988).

⁶ Kelly v. Kelly, 887 A.2d 788, 792 (Pa. Super. 2005).

CONCLUSION

For these reasons, this court respectfully submits that its Order of October 23, 2006 should be affirmed.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.