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

HAWTHORNE HOMEOWNERS ASSOCIATION, INC.,	:	February Term 2008
Plaintiff,	:	No. 3237
v.	:	
HAWTHORNE COMMUNITY COUNCIL, INC., MARIE WILLIS and T.R. PHILADELPHIA, L.P.,	:	COMMERCE PROGRAM
Defendants,	:	
v.	:	
MAURICE M. SAMPSON and JOHN DOES 1-50,	:	
Third-Party Defendants.	:	

TRIAL OPINION

I. Factual Background

A. Parties

Plaintiff Hawthorne Homeowners Association, Inc. (hereinafter "the Association") is a non-profit organization created by defendant Hawthorne Community Council (hereinafter "HCC"). The Association was created to represent homeowners of a newly constructed residential community known as Hawthorne II. (Exhibit P-17 Declaration of Rights, Easement, Restrictions and Covenants). Maurice M. Sampson (hereinafter "Sampson") is the current President of the Association and an owner in Hawthorne II. (N.T. Volume I. p. 30, 35). Hawthorne II is located between twelfth and thirteenth and Bainbridge, Catherine and Kater Streets in Philadelphia, Pa. (Exhibit P-17). Hawthorne II was built for low to middle income citizens who met certain levels of income. (N.T. Volume I p. 37).

Defendant HCC is a non profit corporation organized in April 1, 1966 to purchase, own, sell and convey, assign, mortgage and lease interest in real estate and personal property to lower income families displaced from urban renewal areas, government action and major disasters. (P-

31-By Laws of HCC) Defendant Marie Willis is the current president of HCC. (N. T. Volume I p. 121).

Defendant T.R. Philadelphia, L.P. is a limited partnership which owns and develops real estate in the vicinity of Hawthorne II. (N.T. Volume II p. 5). Anthony Rufo (hereinafter "Rufo"), is the sole member of T.R. Philadelphia, L.P. (N.T. Volume II p. 6).

B. Declaration of Rights, Easements, Restrictions and Covenants dated September 12, 1983.

On September 12, 1983, HCC executed a Declaration of Rights, Easements, Restrictions and Covenants (hereinafter "Declaration") for Hawthorne II. The Declaration provided in part as follows:

> Article IV
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> Common Area
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> ***
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> Section 6. Title to Common Area. The **Developer hereby covenants that it shall convey the Common Area to the Association, free and clear of all liens and financial encumbrances, not later than the conveyance of the first House to an Owner other than the Developer.** Developer covenants and agrees to improve the Common Areas by installing the parking areas and walkways and passageways and by grading, paving, marking, providing suitable drainage, planting and landscaping on the area substantially as set forth in the Site Plan attached hereto as Exhibit B. Developer reserves all easements reasonably necessary or desirable in order to accomplish the same. (Exhibit P-17)(emphasis added).

The Declaration gives the Association the exclusive management and control of the common area as well as the responsibility to establish rules for the use of the areas. (Exhibit P-17 section 3, p. 5). The parking lots located at 1118-1128 Bainbridge Street (hereinafter "Parking Lot Properties") comprise one of the common areas governed by the Declaration.

C. The Parking Lot Properties.

The Association has had control over the parking lot properties since HCC's first conveyance of the first home to an owner. (N.T. Volume I pp. 38-40). There are sixteen parking spaces available on the parking lot properties. (N.T. Volume I p. 40). The Association manages the parking lot properties and through the years has established a parking lot committee to assist in the administration of the parking spaces. The committee issues parking permits to those members who pay their Association dues on a first come basis. (N.T. Volume I. p. 40; N.T. Volume II p. 104). The Association also maintains the parking lot properties. The maintenance includes cleaning drains, removing snow, painting lines to designate parking spaces and contracting with a towing company to tow illegally parked cars. (N.T. Volume I. p. 39; N.T. Volume II p. 99,100,103).

D. The Association's Attempts to Transfer the Deed.

From April 1984, when the first Association meeting occurred and for two years thereafter, the Association and HCC discussed on numerous occasions the official transfer of the deed from HCC to the Association. (N.T. Volume II p. 93, 113). During those discussions, the Association was told that Ms. Lipscomb, the president of HCC at the time, wanted to procure tax abatements for the parking lot properties before effectuating the deed transfer. (N.T. Volume II p.93). While waiting for the tax abatement, the Association used, controlled and maintained the parking lot properties. (N.T. Volume II p. 93).

In 1994, the Association once again renewed its efforts to have the deed to the parking lot properties officially transferred to the Association. (N.T. Volume II p. 94-95). In 1995, the University of Pennsylvania School of Law agreed to assist the Association in this task. (N.T. Volume II p. 95-96, 122). The Association worked with the law school for approximately two

years and ultimately recommended bringing the case to trial. (N.T. Volume II p. 96). The Association rejected the law school's recommendation and decided to handle the situation internally since they did not want to offend Alice Lipscomb. (N.T. Volume II p. 96). At all times, the Association continued to use, control and maintain the parking lot properties.

On April 16, 1998, the City of Philadelphia sent notice of its intention to foreclose on one of the parking lot properties, 1118 Bainbridge, for failure to pay real estate taxes. The Association retained counsel in order to prevent the foreclosure and entered into discussions with HCC to legally transfer the deed to the Association. (Exhibit P-52). The sale was stayed. At this time, the Association was not removed, ejected or prohibited from using, controlling or maintaining the parking lot properties.

In 2003, John Mondlak, a homeowner and a real estate attorney with the City of Philadelphia, recognized that the real taxes were a big problem and felt the Association needed to act quickly. (N.T. Volume I. p. 159). Mondlak ordered a title report and scheduled a meeting with HCC to discuss transferring the deed to the parking lots. (N.T. Volume I. p. 160). Mondlak also drafted a letter to Mr. Edwin Moore, Esquire regarding the deed transfer. (N.T. Volume I. p. 161). Moore recommended bringing a quiet title action against HCC. (N. T. Volume I. 162-63, 165). John DeAngelo, Esquire, another attorney contacted by the Association regarding the parking lot properties, also suggested instituting a quiet title action against HCC. (N.T. Volume II p. 123-24). The Association never retained Moore or DeAngelo. (N.T. Volume I. p. 162; N.T. Volume II p. 125).

E. Sale of the Parking Lot Properties

In November 2007, the Association received notices that the parking lot properties were scheduled to be sold at a Tax Lien Sheriff Sale on January 24, 2008. On November 13, 2007 and

in December, 2007, the Association met with HCC to discuss the impending sheriff sale and payment of taxes. (N.T. Volume I. p. 202, 218-19). In the meantime, Rufo was informed that the parking lot properties were going to sheriff sale because the property taxes were not paid. (N.T. Volume II p. 9, 17-18). Rufo became interested in the properties and contacted the Talon Group, a title company he frequently utilized when purchasing properties, for assistance in procuring the properties.[1] (N.T. Volume II p. 10, 18, 35).

In December 2007, the Talon Group ordered a title search on the properties. (N.T. Volume II p. 10). The title search procured did not evidence the Declaration. (N.T. Volume II p. 39). Additionally, the Talon Group also contacted Marie Willis, the President of HCC and requested a list of living HCC members. (N.T. Volume II p. 52). Willis complied with the request and provided the Talon Group with a list that included the names of Sadie Bell, Marie Willis, Juanita Perkins[2], Leola Wilson and Bernell Worrel[3]. (N.T. Volume II p. 55). The Talon Group prepared a document titled Unanimous Written Consent which required the signature of Sadie Bell[4], Marie Willis, Juanita Perkins, Leola Wilson and Bernell Worrel and empowered and authorized these individuals to sell the parking lot properties and provided Willis the power to execute all documents related to the sale. (N. T. Volume II p. 46,52; Exhibit P-19). At the time

[1] Rufo testified that prior to the parking lot properties he had never purchased properties via sheriff sale. (N.T. Volume II p. 11, 12).

[2] Juanita Perkins was vice president of HCC from 1979 to 2000. (N.T. Volume I. p. 172). At the time Perkins signed the Unanimous Consent, she thought the document had something to do with a transfer of power. (N.T. Volume I p. 184-185).

[3] Bernell Worrell was also a member of HCC. (N.T. Volume I. p. 189). She ceased being an active member between 1997 and 1998. (N.T. Volume I. p. 189-190). At the time Worrell signed the Unanimous Consent she did not read the document. (N.T. Volume I. p. 191-192). She also believed that Willis had the power of the HCC presidency at the time. (N.T. Volume I. p. 197).

[4] Sadie Bell was deceased at the time. (Exhibit P-17).

the Unanimous Consent was circulated for signature, HCC had not conducted any business since 2000 and the last HCC president elected was Marie Willis in 2003. (N.T. Volume I. p. 120-121).

On January 23, 2008, Rufo paid the outstanding tax balance on the properties, $22,008.75. (N.T. Volume II p. 9). In addition to paying the balance for the real estate taxes, Rufo also promised to pay $50,000.00 to the community as additional consideration for the parking lot properties. (N.T. Volume II p. 19-20). The $50,000.00 has never been paid. (N.T. Volume II p. 22).

After the real estate taxes were paid, the Talon Group learned that a Declaration was indexed on the parking lot properties. (N.T. Volume II p. 40-41). Upon receiving this information, the Talon Group contacted Rufo and informed him about the Declaration. (N.T. Volume II p. 15, 23, 42). Rufo instructed the Talon Group to contact his attorney. (N.T. Volume II p. 15, 23, 42). The Talon Group contacted Rufo's attorney. (N.T. Volume II p. 42, 66). After reviewing the pertinent documents, Rufo's attorney prepared a deed transferring the parking lot properties from HCC to T.R. Philadelphia, L.P. for $22,008.75. (N.T. Volume II p. 72). Additionally, the attorney prepared a transfer tax certificate indicating that in addition to the $22,008.75 consideration paid for the property taxes, additional compensation of $50,000.00 was noted on the transfer tax certificate. (Exhibit P-21). On February 7, 2008, a deed transferring the parking lot properties from HCC to TR-Philadelphia L.P. along with a transfer tax affidavit was filed with the Recorder of Deeds of Philadelphia County. (Exhibit P-20).

I. Procedural History

On February 25, 2008, the Association instituted suit against HCC, T.R. Philadelphia, L.P. and Marie Willis alleging claims for quiet title, fraud and fraudulent conveyance. On February 27, 2008, a lis pendens was filed against the properties. T.R. Philadelphia, L.P. filed a

counter claim against the Association for quiet title, unjust enrichment and commercial disparagement[5] and also filed a joinder complaint against Sampson and John Does 1-50 alleging unjust enrichment and defamation.[6]

On July 13-15, 2009, the court conducted a non jury trial. At the conclusion of the Association's case, the court granted Willis' motion for nonsuit and dismissed all claims against her. Additionally, the court granted Willis' and HCC's motion for nonsuit on the claim for fraudulent conveyance and dismissed the claim. (N. T. Volume II p. 181).

Discussion

I. The doctrine of laches does not apply to the facts at hand.

The equitable doctrine of laches bars relief when the complaining party is guilty of a lack of due diligence in failing to promptly institute the action to the prejudice of another. The question of laches is one of fact and is determined by examining the circumstances of each case. [7] Mere passage of time is insufficient to warrant the application of the doctrine. Instead, it must further appear that the opposing party has been injured or has been materially prejudiced because of the delay.[8] The prejudice required is established where, for example, witnesses die or become unavailable, records are lost or destroyed, and changes in position occur due to the anticipation that a party will not pursue a particular claim.[9] Where the time delay is grossly

[5] The claim for commercial disparagement was voluntarily withdrawn by praecipe on June 11, 2009 by T.R. Philadelphia.

[6] These claims are also dismissed since T.R. Philadelphia failed to present any evidence at trial to prove unjust enrichment and defamation.

[7] Sprague v. Casey, 520 Pa. 38, 550 A.2d 184 (1988).

[8] Williamstown Borough Authority v. Cooper, 591 A.2d 711(Pa. Super. 1991).

[9] Kay v. Kay, 460 Pa. 680, 685, 334 A.2d 585, 587 (1975); *see also* Alker v. Philadelphia National Bank, 372 Pa. 327, 93 A.2d 699 (1953).

unreasonable, the defendant's burden of proof may be proportionately eased and the "necessity for specifics regarding prejudice or injury becomes less crucial." [10]

The doctrine of laches however will not be imputed to one in peaceable possession of land, for delay in resorting to a court of equity to establish his right to the legal title. The possession is notice to all, of the possessor's equitable rights, and he need only assert them when he may find occasion to do so.[11] Peaceable possession of real estate is such as is acquiesced in by all other persons, including rival claimants, and not disturbed by a forcible attempt at ouster nor by adverse suits to recover the possession or the estate. [12]

After careful consideration of the case law and the record, the court finds that the doctrine of laches does not apply. The Association was in peaceable possession of the parking lots from the moment the Declaration was executed. The Association's possession was constant and continuous and was notice to all of its legal right to ownership. Indeed, HCC acquiesced in the Association's equitable ownership as evidenced by its failure to evict or eject the Association from the lots.

The only record evidence of threats to the Association's peaceable possession of the parking lots is the deed that was recorded in February 2008 which transferred legal title of the parking lot properties from HCC to T.R. Philadelphia, L.P. Although the record does contain evidence of attempts by the Association to obtain legal title to the properties, the Association's peaceable possession was never threatened by anyone claiming an adverse interest or by a rival

[10] Gabster v. Mesaros, 422 Pa. 116, 220 A.2d 639, 641 (1966) (delay of thirty years in instituting action grossly unreasonable so as to lessen defendant's burden of proving prejudice); Pennsylvania State Board of Medical Education & Licensure v. Shireson, 360 Pa. 129, 61 A.2d 343 (1948) (delay of thirty-four years in instituting decertification proceedings against licensed medical practitioner raised presumption of practitioner's innocence of charges).

[11] Stolarick v. Stolarick, 241 Pa. Super. 498, 363 A.2d 793(1976)(citations omitted).

[12] Black's Law Dictionary Sixth Edition.

claimant. Consequently, the court finds that there was no delay in bringing suit and laches does not apply.[13]

II. The Transfer of Title from HCC to T.R. Philadelphia is Void Ad Initio and the Property is transferred to the Association in accordance with the Declaration.

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.[14] "It is well settled that purchasers . . . of real estate are affected not only by matters of which they had actual knowledge and by what appeared in the office of the recorder of deeds and in the various courts of record whose territorial jurisdiction embraced the land in dispute, but as well 'by what they could have learned by inquiry of the person in possession and of others who, they had reason to believe, knew of facts which might affect the title.'" [15] Therefore, a grantee can lose his status as bona fide purchaser by such knowledge, even if the knowledge is constructive or implied as a matter of law. If a grantee is not a bona fide purchaser, he takes his title subject to any adverse interest thus discovered or discoverable.[16]

In the case at bar, T.R. Philadelphia, L.P. is not a bona fide purchaser for value. The record evidence demonstrates that Rufo had actual and constructive knowledge of the Association's interest in the property as far back as 1996 and 1997. Sunny Payne, an Association member, testified that she informed Rufo that he could not park his equipment on

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[13] This court finds that the exception noted in Richards v. Elwell, 48 Pa. 361, 366-67 is dictum and is not applicable to the facts at hand.

[14] Roberts v. Estate of Pursley, 718 A.2d 837, 841 (Pa. Super. 1998).

[15] Sidle v. Kaufman, 345 Pa. 549, 557, 29 A.2d 77, 82 (1942) (*quoting* Salvation Army Inc. v. Lawson, 143 A. 113, 114 (1928), and cited by Roberts v. Estate of Pursley, 718 A.2d 837, 843 (Pa. Super. 1998)).

[16] Carnegie Natural Gas Co. v. Braddock, 597 A.2d 285 (Pa. Commw. Ct. 1991).

the parking lot properties because the lots belonged to the Association. (N.T. Volume II p. 26, 205). Payne also testified that on one occasion Rufo referred inquiries to Payne regarding parking on the parking lot properties. (N.T. Volume II p. 105-106). Rufo's testimony also demonstrates that he knew the parking lot properties were being used, maintained and regulated. (N.T. Volume II 28). As a developer and owner of properties in the area, one could reasonably conclude that he possessed knowledge that it was the Association that was using, maintaining and regulating the properties. Moreover, the testimony from the Talon Group demonstrates that Rufo was made aware that a Declaration existed and that it was indexed against the properties.[17] Based on the forgoing, the court finds that Rufo was not a bona fide purchaser of value and the transfer from HCC to T.R. Philadelphia, L.P. is void *ab initio*. [18] Consequently title to the parking lot properties reverts to HCC.

The Declaration of Rights and Easements executed by HCC created a planned community with parking for the benefit of the community. HCC agreed to convey the parking lot properties to the Association in the Declaration of Rights and Easements indexed on the properties upon the conveyance of the first home. The first conveyance occurred in 1983. The Association members have used the parking lot properties continuously since that time. The Association has controlled and maintained the properties continuously and without assistance from HCC. The Association regulated the parking lots through the issuance of permits and contracting a towing company to tow illegally parked cars without any interference or direction from HCC. The Association is the equitable owner of the property and legal title of the parking lot properties is transferred to the Association in accordance with the Declaration of Rights and Easements.

[17] Additionally, the attorney and the Talon Group's knowledge of Declaration is also imputed to Rufo since an agency relationship existed between them.

[18] Since the court finds that T.R. Philadelphia, L.P. was not a bona fide purchaser for value, the court need not address whether the HCC bylaws were followed.

III. The Association has been unjustly enriched by T.R. Philadelphia, L.P.

Unjust enrichment applies when one party confers a benefit on another party and the other party accepts and retains that benefit under the circumstances where it would be unjust for that party to retain the benefit without payment of value.[19] To avoid unjust enrichment, the law permits the party who has conferred the benefit to recover the reasonable value of the benefit. Through this action, he is restored to status quo, i.e., he is placed in the position he would have been in if there had been no unjust enrichment.[20]

As the equitable owners of the parking lot properties and as the constant and uninterrupted users of the parking lot properties, the Association was responsible for any obligations attributed to the properties including real estate taxes. As the record demonstrates, the parking lot properties were scheduled for a tax sale for a failure to pay real estate taxes. Defendant T.R. Philadelphia, L.P. paid the outstanding taxes. Since this court finds that T.R. Philadelphia, L.P. is not a bona fide purchaser of value, the Association has been unjustly enriched by defendant T.R. Philadelphia payment of the real estate taxes.

The Association has been enriched in the amount equal to the outstanding real estate taxes which T.R. Philadelphia paid to the City of Philadelphia. The Philadelphia Real Estate Transfer Tax Certification demonstrates and the testimony supports that T.R. Philadelphia, L.P. paid $22,008.75. Additionally, T.R. Philadelphia, L.P. may have incurred a transfer tax related to the transfer. The record however fails to confirm if in fact a transfer tax was paid. The record also fails to confirm if any payments have been made by T.R. Philadelphia, L.P. on current real estate taxes from the date of the deed transfer until today. Defendant T.R. Philadelphia is granted ten days (10) from the issuance of this trial opinion to provide proof that in fact the transfer tax was

[19] Northeast Fence & Iron Works, Inc. v. Murphy Quigley Co., Inc., 933 A.2d 664, 668 (Pa. Super. 2007).

[20] Temple Univ. Hosp., Inc. v. Healthcare Mgmt. Alternatives, Inc., 832 A.2d 501 (Pa. Super. 2003).

paid and if any current real estate taxes have been paid since the transfer. The court also finds that T.R. Philadelphia, L.P. is due interest, (6% per annum), based on its lost use in the amount of the money T.R. Philadelphia expended on back, current and transfer taxes if any related to the parking lots. [21]

Conclusion

Based on the forgoing, the court finds in favor of Hawthorne Homeowners Association on its claim for quiet title and against defendants T.R. Philadelphia, L.P and Hawthorne Community Council. The court finds in favor of defendants T.R. Philadelphia, L.P. and Hawthorne Community Council on the claim for fraud and against plaintiff Hawthorne Homeowners Association. The court further finds in favor of T.R. Philadelphia, L.P. on the claim for unjust enrichment and against Hawthorne Homeowners Association. All claims against additional defendant Maurice Sampson are dismissed. The claim against Hawthorne Homeowners Association for defamation is dismissed. An order consistent with this Opinion is attached.

BY THE COURT,

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ARNOLD L. NEW, J.

[21] In addition to the quiet title claim, the Association also alleged a claim for fraud against defendant T.R. Philadelphia. The Association alleged that T.R. Philadelphia knew of the unfinished transaction between the Association and HCC and acted improperly to pay the taxes and transfer ownership of the properties. The court finds that the Association has failed to produce any evidence of fraud and therefore the claim is dismissed.

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HAWTHORNE HOMEOWNERS ASSOCIATION, INC.,	:	February Term 2008
Plaintiff,	:	No. 3237
v.	:	
HAWTHORNE COMMUNITY COUNCIL, INC., MARIE WILLIS and T.R. PHILADELPHIA, L.P.,	:	COMMERCE PROGRAM
Defendants,	:	
v.	:	
MAURICE M. SAMPSON and JOHN DOES 1-50,	:	
Third-Party Defendants.	:	

ORDER

AND NOW, this 24th day of September 2009, after a non jury trial the court makes the following findings:

1. The court finds in favor of plaintiff Hawthorne Homeowners Association, Inc. on the claim for quiet title and against defendants Hawthorne Community Council and T.R. Philadelphia, L.P.
2. The court finds in favor of defendants Hawthorne Community Council and T.R. Philadelphia, L.P. and against plaintiff Hawthorne Homeowners Association on plaintiff's claim for fraud.
3. The court further finds in favor of defendant T.R. Philadelphia, L.P. on the claim for unjust enrichment in the amount of $22,008.75, plus the transfer tax if paid any upon proof shown within ten (10) days from the date of this order and any amount paid toward current real estate taxes since the transfer dated February 7, 2008 upon proof shown within (10) days from the date of this order. Interest on the total amount at six percent (6%) per annum is also due.

4. The claim for commercial disparagement against Hawthorne Homeowners Association has been voluntarily withdrawn and is therefore dismissed.
5. All claims filed by T.R. Philadelphia, L.P. against Maurice Sampson are dismissed.

In accordance with these findings and the attached trial opinion, it is **ORDERED AND DECREED** that the deed dated February 7, 1008 to 1118-28 Bainbridge Street, Philadelphia, Pa. is invalid. It is further **ORDERED AND DECREED** that the Recorder of Deed is directed to file a deed for 1118-28 Bainbridge Street, Philadelphia, Pa. transferring title from Hawthorne Community Council to Hawthorne Homeowners Association upon payment of damages by Hawthorne Homeowners Association to T. R. Philadelphia, L.P. on the claim for unjust enrichment.

BY THE COURT,

ARNOLD L. NEW, J.