

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Mabel Floyd, Deceased
O.C. No. 783 DE of 2019
Control Nos. 193804

OPINION

Wells Fargo Bank, N.A. (“Wells Fargo”), filed a petition to obtain discovery in connection with a fraudulent transfer of Decedent’s property. Wells Fargo secured a mortgage on the property as security for a loan made to the perpetrator of the fraudulent transfer. For the reasons set forth below, the petition is denied and the mortgage is voided.

Factual and Procedural Background

Mabel Floyd (“Decedent”) died intestate on February 24, 2005. Almost a year and a half later, on July 31, 2006, Angel Wilson filed a petition for letters of administration for Decedent’s estate, identifying herself as Decedent’s only heir. The Philadelphia Register of Wills issued letters of administration for the Estate to Ms. Wilson.

Ms. Wilson’s petition for letters also referenced Decedent’s title to real property located at 6535 North 20th Street, Philadelphia, Pennsylvania 19138 (the “Property”). By deed dated June 1, 2006—two months before she was appointed administrator of the Estate—Ms. Wilson, as administrator, transferred the Property to herself, individually, for “no dollars” (the “Wilson Deed”).

On September 17, 2007, Ms. Wilson—in her individual capacity—executed a note in favor of Wells Fargo, memorializing Ms. Wilson’s obligation to repay a loan from Wells Fargo in the principal amount of \$52,000.00 (the “Wilson Note”). Ms. Wilson then executed a mortgage against the Property, and in favor of Wells Fargo, in order to secure repayment of the loan memorialized in the note (the “Mortgage”).

On March 20, 2019, the Philadelphia Register of Wills, upon petition, vacated the letters of administration it had issued Ms. Wilson. And on April 8, 2019, the Register of Wills appointed Adam Bernick (“Petitioner”) as successor administrator.

On July 3, 2019, Petitioner filed a petition requesting, among other things, the Court void the Wilson Deed and to quiet title to the Property by striking the Mortgage.

The Court issued a decree on July 9, 2019, declaring the Wilson Deed void and setting the transfer aside.

On November 6, 2019, Wells Fargo filed a petition to obtain discovery. The petition included several requests to subpoena documents and conduct depositions of various entities and persons connected with Ms. Wilson’s fraud.

Discussion

There is an important distinction to be made between transfers that are void and those that are merely voidable. Void transfers have no legal effect whatsoever; they are legal nullities from the start. BLACK’S LAW DICTIONARY 1573 (6th ed. 1990). Conversely, voidable transfers are valid until annulled. *Id.* at 1574. Thus, the distinction between void and voidable is a meaningful one where, as here, a third party comes seeking to undo an earlier transaction.

The Wilson Deed purports to be a transfer of the Property from Ms. Wilson, as administrator of the Estate, to herself, in her personal capacity. However, Ms. Wilson was not the administrator of the Estate at the time of transfer. In fact, Ms. Wilson was not appointed administrator until two months *after* the transfer occurred. As such, Ms. Wilson had no authority whatsoever to transfer the Property to herself, and whatever transfer occurred was effectuated by fraud. As a result, the Wilson Deed was voidable and properly declared void by this Court.

But where does this leave the Mortgage? Generally, deeds procured by fraud are voidable, not void. *E.g., Puharic v. Novy*, 176 A. 233, 235 (Pa. 1934) (“A deed procured by fraud is ordinarily held voidable merely; and title passes to the grantee subject to the grantor’s right to defeat it.” (quotations omitted)). But not all frauds are created equal. For instance, a forged deed is void *ab initio*. *See, e.g., Harris v. Harris*, 239 A.2d 783, 785 (Pa. 1968) (“[A] forged, fraudulent and spurious instrument is not binding on any person and is wholly inoperative to transfer any title or right to property whether the holder is an innocent or guilty purchaser.”); *Smith v. Markland*, 72 A. 1047, 1056 (Pa.1909) (“‘No man can be deprived of his property by a forged deed or mortgage, no matter what may be the bona fides of the party who claims under it.’ In the very nature of things there can be no other rule.”). Moreover, anything that flows from a void deed is itself also void. *See Harris*, 239 A.2d at 785.

Absent forgery, a mortgagee is entitled to rely on the strength of a mortgagor’s title—i.e., title that is valid at the time the mortgage is secured, even though the transaction may be rescinded later. *See generally Kepler v. Kepler*, 199 A. 198, 202 (Pa. 1938) (“An innocent mortgagee for value is not bound by secret liens or equities even though the mortgagor’s title was obtained by fraud.”). So long as the mortgagee has no actual or constructive notice of the claims of third parties, the mortgagee is protected. *See Sidle v. Kaufman*, 29 A.2d 77, 82 (Pa. 1942) (“It is well settled that purchasers and mortgagees 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 . . .*” (emphasis added) (citations and quotations omitted)); *see also* BLACK’S LAW DICTIONARY 314

(6th ed. 1990) (defining “constructive notice” as “[s]uch notice as is implied or imputed by law”).

For example, in *Haggerty v. Moyerman*, defendant obtained title to two properties through fraudulent misrepresentations. 184 A. 654, 655 (Pa. 1936). While possessing title to the properties, defendant obtained mortgages against both properties. *Id.* The original transfers were later rescinded based on fraud. *Id.* Nevertheless, the Supreme Court of Pennsylvania held that “[a]lthough the levy and sale were a fraud on plaintiff’s rights, it does not necessarily follow that plaintiff is entitled to satisfaction on the mortgage held by defendant.” *Id.* at 656. The mortgagee, who had no notice the title had been obtained by fraud, had relied on defendant’s title when granting the mortgage and was entitled to maintain its mortgages on both properties even though the original transfer was voided. *Id.*

Here, the Wilson Deed, as discussed above, is a fraudulent instrument, but it is not a forgery. Thus, pursuant to *Haggerty* and its kin, it would appear Wells Fargo was entitled to rely on Ms. Wilson’s title to the Property even though it was procured by fraud. Yet Wells Fargo can only claim protection against Ms. Wilson’s fraud if it had no notice of it, but it did. Whether Wells Fargo had *actual* notice of Ms. Wilson’s fraud is unclear, but it certainly had *constructive* notice.

Had Wells Fargo taken reasonable investigative measures before executing the Mortgage, it would have noticed the blatant discrepancy between the date on the Wilson Deed and the date on Ms. Wilson’s letters of administration. The fact Ms. Wilson deeded the Property to herself two months before her appointment as administrator should have alerted Wells Fargo the transfer was fraudulent. Moreover, assuming Ms. Wilson had deeded the Property to herself after her appointment as administrator, a personal representative can only purchase a decedent’s property

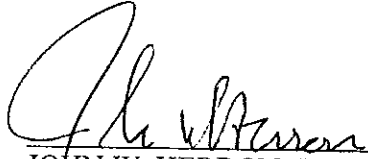
with court approval. 20 Pa. C.S. § 3356. If Wells Fargo had bothered to ask Ms. Wilson to produce a court order evidencing court approval of the purchase, it would have discovered no such approval had been granted. Sirens coming from the offices of Wells Fargo should have been audible for miles had it exercised reasonable care in probing, even slightly, into the facts affecting Ms. Wilson's title to the Property. Such care could have prevented the present dilemma, but Wells Fargo opted for nine stitches instead of one.

The Estate is an innocent victim in all this and was completely ignorant of Ms. Wilson's escapades. It would be highly inequitable to have the Property—the Estate's sole asset—encumbered by a mortgage whose origins are clouded by fraud. To hold otherwise would rob the Estate of relief from the void Wilson Deed and reward Wells Fargo despite its constructive notice of Ms. Wilson's fraud. After all, he whose neglect makes the injury possible must bear the responsibility. Between the Estate and Wells Fargo, that responsibility falls on the latter.

Conclusion

For the foregoing reasons, the Court properly voided the Wilson Deed and now voids the Mortgage. Wells Fargo's petition to obtain discovery is denied as such discovery is unnecessary in light of the foregoing discussion. As for the Wilson Note, it does not implicate the Estate as it was executed by Ms. Wilson in her individual capacity. Should Wells Fargo feel the need to pursue further legal proceedings on that front, it may avail itself of the Civil Trial Division of the Court of Common Pleas of Philadelphia.

BY THE COURT:



JOHN W. HERRON, J.

Dated this 17th day of December 2019

Adam S. Bernick, Esquire
Grant G. Berger, Esquire