

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D24537
W/prt

_____AD3d_____

Submitted - September 14, 2009

MARK C. DILLON, J.P.
RANDALL T. ENG
ARIEL E. BELEN
L. PRISCILLA HALL, JJ.

2008-10189

DECISION & ORDER

Rita Mallick, respondent, v Napoleon Farfan,
et al., appellants, et al., defendants.

(Index No. 28585/04)

Nishani D. Naidoo, Bedford,, N.Y., for appellants.

Borchert, Genovesi, LaSpina & Landicino, P.C., Whitestone, N.Y. (Helmut Borchert
and Mark J. Krueger of counsel), for respondent.

In an action pursuant to RPAPL article 15 to determine claims to real property, the defendants Napoleon Farfan and Eduardo Rodriguez appeal from so much of an order of the Supreme Court, Queens County (Cullen, J.), entered October 29, 2008, as denied that branch of their motion which was for summary judgment declaring that their interests in the subject property are superior to those of the plaintiff and granted the plaintiff's cross motion for summary judgment declaring that she is the sole owner of the subject property in fee simple absolute.

ORDERED that the order is reversed, on the law, with costs, that branch of the appellants' motion which was for summary judgment declaring that their interests in the subject property are superior to those of the plaintiff is granted, the plaintiff's cross motion for summary judgment declaring that she is the owner of the subject property in fee simple absolute is denied, upon searching the record, summary judgment is awarded to the appellants declaring that the plaintiff is not the owner of the subject property in fee simple absolute, and the matter is remitted to the Supreme Court, Queens County, for the entry of an appropriate declaratory judgment.

"A person whose conveyance or encumbrance is recorded after the filing of [a] notice [of pendency] is bound by all proceedings taken in the action after such filing to the same extent as

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a party” (CPLR 6501). “The purpose of the notice of pendency is ‘to afford constructive notice from the time of the filing so that any person who records a conveyance or encumbrance after that time becomes bound by all of the proceedings taken in the action’” (2386 Creston Ave. Realty, LLC v M-P-M Mgt. Corp., 58 AD3d 158, 161, quoting *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v Solow Bldg. Corp.*, 52 AD2d 533, 534; see *Novastar Mtge. Inc. v Mendoza*, 26 AD3d 479, 480; *Matter of Jenkins v Stephenson*, 293 AD2d 612, 614; *Roth v Porush*, 281 AD2d 612, 614; *Green Point Sav. Bank v St. Hilaire*, 267 AD2d 203, 203; *American Auto Ins. Co. of St. Louis v Sansone*, 206 AD2d 445, 446; *Goldstein v Gold*, 106 AD2d 100, 102).

Here, the plaintiff did not record her deed to the subject property before the appellants filed a notice of pendency in a prior action for a judgment declaring that they are the owners of the property. The appellants ultimately obtained a judgment in the prior action declaring that they are the owners of the property. In any event, the plaintiff failed to establish that, at the time her deed was executed, she lacked knowledge that the appellants had an existing lien or interest in the property (see *Roth v Porush*, 281 AD2d at 614; *Goldstein v Gold*, 106 AD2d at 101-102). Therefore, the plaintiff is bound by the judgment obtained by the defendants in the prior action. Accordingly, the Supreme Court erred in granting the plaintiff’s cross motion for summary judgment declaring that she is the sole owner of the subject property in fee simple absolute and in denying that branch of the appellants’ motion which was for a judgment declaring that their interests in the property are superior to those of the plaintiff.

In view of our determination, we need not reach the parties’ remaining contentions.

Since this is a declaratory judgment action, the matter must be remitted to the Supreme Court, Queens County, for the entry of a judgment declaring that the interests of the defendants Napoleon Farfan and Eduardo Rodriguez in the subject property are superior to those of the plaintiff and that the plaintiff is not the sole owner of the subject property in fee simple absolute (see *Lanza v Wagner*, 11 NY2d 317, 334, *appeal dismissed* 371 US 74, *cert denied* 321 US 901).

DILLON, J.P., ENG, BELEN and HALL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court