

De Paulis Holding Corp. v Vitale

2008 NY Slip Op 31234(U)

April 28, 2008

Supreme Court, Richmond County

Docket Number: 0100567/2006

Judge: Joseph J. Maltese

Republished from New York State Unified Court
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3**

Index No: 100567/06

DE PAULIS HOLDING CORP.,

Plaintiff,

-against-

**DECISION & ORDER
HON. JOSEPH J. MALTESE**

ALBERT VITALE,

Defendant.

The following papers numbered 1 to 3 were submitted on the motions the 16th day of November, 2007:
Pages Numbered

Notice of Motion for Summary Judgment
with Supporting Papers and Exhibits
(dated September 25, 2007).....1

Notice of Cross Motion and Opposition
to Defendant’s Underlying Motion
with Supporting Papers and Exhibits
(dated October 18, 2007).....2

Reply Affirmation
(dated November 8, 2007).....3

Upon the foregoing papers, the motion and cross motion are denied.

This is an action to quiet title to real property. Defendant moves for summary judgment dismissing the complaint. Plaintiff opposes and cross moves for summary judgment in his favor.

On February 6, 1985, plaintiff purchased two contiguous parcels of land on Staten Island, New York. The one-page deed that plaintiff obtained from the original grantor on February 6, 1985, purported to transfer title to the two lots, designated on the Richmond County Tax Map as Block 7464 Lot 74 and Block 7464 Lot 17, respectively. Plaintiff states that later that month he sold Lot 74 to the Russo’s (not parties to this action). In 1998, the Russo’s purported to sell the lot to defendant Vitale. Vitale now claims title to both lots pursuant to the metes and bounds description contained in the deed he obtained from the Russo’s.

Plaintiff commenced this action in 2006 seeking to quiet title and for judgment declaring that he is the lawful owner of Lot 17.

It is undisputed that the metes and bounds description of Lot 74 contained in the deed from plaintiff to the Russo's is incongruous with the description of Lot 74 contained in the February 6, 1985 deed. Plaintiff has not produced the contract, if any, between plaintiff and the Russo's upon which that deed was based.

Nonetheless, over the next fourteen years, both plaintiff and the Russo's treated the Lots as their separate, respective property. Plaintiff has continued to pay the taxes on Lot 17 to date, and the Russo's took no action to assert title to that Lot. Although it was improved realty in 1985, there is no evidence whether Lot 17 continues to be improved or whether it was occupied during this period.

Despite the alleged inaccuracies in the deed description, both plaintiff and John Russo, one of the grantees listed on the February 27, 1985 deed, aver that the parties to that deed intended only to transfer title to "Lot 74" as originally described in the February 6, 1985 deed.

On October 1, 1998, the Russo's and defendant entered into a contract for the purchase and sale of realty designated in the contract as "vacant land at Gaton Street, Staten Island, Block 7464, Lot 74".

On the same date, the Russo's executed a bargain and sale deed purporting to transfer title to that parcel. That deed contained language reading: "Being the same premises as conveyed to the grantees by deed in Reel 39 Page 3493."¹ The language is hand-written and appears to be initialed.

¹ That is, the February 27, 1985 deed.

In addition, on page 2 of the deed, the property is described as:

Section:
Block: 7464
Lot: 74 and 17
County or Town: Richmond
Premises: Vacant Land at Gatton Street,
Staten Island, New York

The "17" in the above excerpt is handwritten and is accompanied by unidentified initials.

Defendant also obtained a title insurance policy, effective October 1, 1998, which contains a description of the property consistent with the 1998 deed, but which identifies the property as:

Vacant Land
Staten Island, NY
Block: 7464 Lot: 74

DISCUSSION

It is undisputed that (1) the description contained in Schedule A to the contract, the 1998 deed and the title policy is the same as that in the February 27, 1985, deed from plaintiff to the Russo's; and (2) the description is incongruous with that contained in the February 6, 1985 deed from the original grantor to plaintiff; and (3) the description is inconsistent with the general description of Lot 74 contained in the Richmond County Tax Map.

Defendant asserts title to both Lots 74 and 17. On or about February 1, 2006, plaintiff commenced the instant action to quiet title to Lot 17, to which, it maintains, it has held title since February 6, 1985.

In moving for summary judgment, defendant-Vitale argues, in sum, that plaintiff cannot maintain this action because it had transferred the property to the Russo's on February 27, 1985, and defendant purchased that same property from the Russo's on October 1, 1998. Therefore, he argues, plaintiff has no claim to the property. In addition, he argues that plaintiff cannot assert any claim of mistake in the 1985 plaintiff-Russo deed against him because he was not a party to that transaction.

In opposition to defendant's motion and in support of its own cross motion for summary judgment, plaintiff argues that the Russo's could not transfer to defendant greater title than they themselves possessed on October 1, 1998, and that both plaintiff and the Russo's agree that the latter never acquired - nor did they intend to acquire - title to Lot 17.

The issue presented here is whether the title to property transferred to defendant, as described in the 1998 transfer instrument, may be challenged by plaintiff, the grantor's purported predecessor in title.

In general, because an interest in real property can neither be created nor divested by a parol declaration, parol admissions of a party's predecessor in title are not admissible to deprive the party of his title or interest (Richardson on Evidence, 10th ed. § 248).².

Nonetheless, it has long been the law that if, in the making of a contract, the parties agree upon the transfer of title to one tract of land, but by mistake the deed of conveyance describes another, a court of equity may decree reformation of the deed and enforce the true contract--unless the rights of an innocent purchaser have intervened (*Corbin on Contracts* § 604; see e.g. *Hart v Blabey*, 287 NY 257 [1942])). According to Professor Corbin, "the same result obtains if the parties orally agree upon the sale of Tract A, but by mistake in reducing it to writing the written contract describes Tract B" (or, in the instant case, Tracts A and B).

It cannot be gainsaid that a mistake - whether unilateral or mutual - as to the identity of the land is a material and vital one and that a deed may be reformed in equity when its terms are the result of such mistake. In a proper case neither the parol evidence rule nor the Statute of Frauds bars

²An exception to this general rule - not applicable here - occurs when words of general description are used, in which case oral evidence may be used to locate the premises intended to be conveyed. Here, however, the description is not general, but specific, setting forth the metes and bounds of the property to which defendant claims title.

evidence tending to show the mistake and to establish the real understanding of the parties. However, the party seeking such reformation must establish its claim by a preponderance of the evidence and subject to the equitable defenses of a bona fide purchaser.

Applying these principles to the pending applications for summary judgment, the existence of material questions of fact concerning both the purported material mistake of the parties to the 1985 and 1998 transfers and the status of defendant as a bona fide purchaser require denial of both motion and cross motion (*Volbrecht v Jacobsen*, 40 AD3d 1243 [3d Dept 2007]).

Accordingly, it is hereby:

ORDERED that the motion and cross motion are denied; and it is further

ORDERED, that counsel for each party shall appear before Justice Joseph Maltese at 355 Front Street, Staten Island, New York 10304 on **May 1, 2008** at **11:30 a.m.** for a final pre-trial conference.

ENTER,

Dated: April 28, 2008

JOSEPH J. MALTESE
Justice of the Supreme Court