MEMORANDUM

SUPREME COURT: QUEENS COUNTY
IAS PART 14

DIANE PINNOCK,
Plaintiff,

-against-

RACHAEL RUSH, et al.,
Defendants.

Index No.31350/10

By: ELLIOT, J.

Date: June 9, 2011

Motion Date: May 10, 2011

Motion Cal. No. 8

Motion Seq. No. 1

Self-represented plaintiff Diane Pinnock has brought what the court deems to be a motion for summary judgment on her cause of action for a judgment declaring that she has title to property known as 114-40 149th Street, Jamaica, New York (the subject property or the subject premises). Defendants Christopher Lewis and Tashia Mackall have cross moved for, inter alia, summary judgment dismissing the complaint against them. Defendant Rachael Rush has not appeared in this action.

This action concerns a dispute over title to the subject property. Plaintiff alleges that she received title to the subject property from Martha Adams Lewis Snelling (her aunt) by deed dated January 10, 1993, acknowledged before a notary on September 10, 2005 and/or November 9, 2005, and recorded on November 17, 2005.

The documentary evidence in this case, as thoroughly produced and reviewed by the attorney for the defendants, establishes the following:

1. By deed dated July 30, 1974 and recorded on August 1, 1974, Martha Adams Lewis Snelling as executrix of the Estate of Isaac Kendley conveyed the subject property to Martha Adams Lewis Snelling;

2. By deed dated December 1, 2002 and recorded on December 12, 2002, Snelling conveyed the subject property to Shara Gilliard;

3. By deed dated May 14, 2003 and recorded September 3, 2003, Gilliard transferred the subject property to Unlimited Homes, Inc.;

4. By deed dated January 29, 2004 and recorded August 26, 2004, Unlimited Homes, Inc., transferred the subject property to Roy H. Thomas. On January 29, 2004, Thomas gave a purchase money mortgage to New York Mortgage Bankers, Ltd., to secure a $293,395 loan, and the bank recorded the mortgage on August 26, 2004. The bank subsequently foreclosed on the mortgage (under Index No. 21703/04);

5. By deed dated July 15, 2005 and recorded October 25, 2005, Joseph Baum, Esq. (as referee), conveyed the subject property to REO Management 2004, Inc.;

6. By deed dated July 10, 2007 and recorded August 7, 2007, REO Management 2004, Inc., conveyed the subject property to JFB Properties, LLC;

7. By deed dated October 25, 2007 and recorded November 19, 2007, JFB Properties, LLC, conveyed the subject property to defendant Rachael Rush;

8. By deed dated June 10, 2010 and recorded June 29, 2010, Rachael Rush conveyed the subject property to defendants Christopher B. Lewis and Tashia A. Mackall. They gave a mortgage to New York Community Bank to secure a $236,811 loan, and the bank recorded the mortgage on June 29, 2010.

The deed from Snelling to plaintiff, dated January 10, 1993, bears the signature of Franklin Medley as a witness. The records maintained by the New York City Department of Finance, Office of the City Register, in the Automated City Register Information System (ACRIS) establish that plaintiff Pinnock did not record her deed from Snelling until November 17, 2005.

Insofar as the formalities of execution are concerned, the deed from Snelling to plaintiff, which was witnessed by Medley, was effective as of its date of execution, apparently January 10, 1993. Real Property Law § 243, "Grant of fee or freehold," provides: "A grant in fee or of a freehold estate, must be subscribed by the person from whom the estate or interest conveyed is intended to pass, or by his lawful agent thereunto authorized in writing. If not duly acknowledged before its delivery, according to the provisions of this chapter, *its execution and delivery must be attested by at least one witness*, or, if not so attested, it does not take effect as against a subsequent purchaser or incumbrancer until so acknowledged" (emphasis added) (*Wallace v Hosley*, 65 AD2d 851 [1978]; *see Rudge v Latapolski*, 13 Misc 3d 1246[A] [Sup Ct, Suffolk County 2006]). However, a deed that lacks an acknowledgment is unrecordable (*see Janian v Barnes,* 284 AD2d 717 [2001]).

Assuming, arguendo, that the witnessed deed from Snelling to the plaintiff dated January 10, 1993 effectively conveyed title to her, the defendants, nevertheless, have a valid defense to her claim based on the provisions of the Recording Act. The Legislature enacted Real Property Law Art. 9, known as the Recording Act, for the purposes of: (1) protecting the rights of innocent purchasers who acquire an interest in property without knowledge of prior conveyances and encumbrances and (2) establishing a public record which gives potential purchasers actual or constructive notice of previous conveyances and encumbrances that might affect their interests and uses (*see Witter v Taggart* 78 NY2d 234 [1991]).

"The New York Recording Act (Real Property Law § 290 et seq.) protects a good faith purchaser for value from a prior unrecorded interest in real property provided, inter alia, that the subsequent purchaser's interest is the first to be duly recorded" (*Transland Assets, Inc. v Davis*, 29 AD3d 679 [2006]; *see Sprint Equities (N.Y.), Inc. v Sylvester*, 71 AD3d 664 [2010]). Real Property Law § 291 provides, in relevant part: "Every such conveyance not so recorded is void as against any person who subsequently purchases . . . the same real property . . . in good faith and for a valuable consideration, from the same vendor or assignor, his distributees or devisees . . ."

"A bona fide purchaser for value who acquires good title by virtue of the provisions of the Real Property Law relating to recording can confer good title on a third party . . . " (92 NY Jur 2d, Records and Recording § 122; *see Wood v Chapin*, 13 NY 509 [1856]; *Olsen v Kleinhenz*, 86 NYS2d 178 [Sup Ct, Kings County 1948]). The rationale for this rule

is that the innocent purchaser, having a right to hold and enjoy, must also have the right to freely sell (*see O'Neill v Lola Realty Corp*., 264 AD 60 [1942]).

The party claiming the benefit of the Recording Act has the burden of proof (*see Nethaway v Bosch*, 199 AD2d 654 [1993]). In the case at bar, defendants Lewis and Mackall sufficiently carried their burden.

"[A] a conveyance made for a valuable consideration is presumed to be bona fide within the Recording Acts" (*Covey v Niagara, Lockport & Ontario Power Co.,* 286 AD 341, 345 [1955]; *see* 92 NY Jur 2d, Records and Recording § 121; *see also Ochenkowski v Dunaj*, 232 AD 441 [1931]). In the case at bar, documentary evidence in the record shows that real estate transfer taxes were paid on the conveyances to Unlimited Homes, Inc., Roy H. Thomas, REO Management 2004, Inc., JFB Properties, LLC, Rachel Rush, and the defendants, which is proof that the transfers were not gratuitous, but were made for valuable consideration (*see Furlong v Storch*, 132 AD2d 866 [1987]). The presumption of good faith arises from the payment of valuable consideration (*see Covey v Niagara, Lockport & Ontario Power Co.*, *supra*), and the plaintiff submitted no proof to the contrary raising a triable issue of fact.

Although the plaintiff recorded her deed from Snelling on November 17, 2005, which was prior to the recording of the defendants' deed from Rachel Rush on June 29, 2010, Unlimited Homes, Inc., Roy H. Thomas, and REO Management 2004, Inc., recorded their deeds to the subject property even before the plaintiff did. Defendant Lewis and defendant

Mackall come within the protection of the Recording Act through Unlimited Homes, Inc., Roy H. Thomas, and REO Management 2004, Inc. (*see Wood v Chapin*, *supra*), and, thus, the defendants' claim to title is superior to that of the plaintiff.

The plaintiff's arguments have no merit.

Accordingly, the plaintiff's motion for summary judgment on her complaint is denied. Defendants' cross motion is granted in its entirety.

Settle Order/Judgment making the appropriate declarations.

J.S.C.