

**Baker v Beckford**

2021 NY Slip Op 31283(U)

April 9, 2021

Supreme Court, Kings County

Docket Number: 501985/19

Judge: Mark I. Partnow

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 43 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 9th of April, 2021

P R E S E N T:

HON. MARK I. PARTNOW,

Justice.

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MICHAEL BAKER, INDIVIDUALLY; and MICHAEL BAKER AS ANCILLARY EXECUTOR OF THE LAST WILL AND TESTAMENT OF GEORGE WILSON A/K/A GEORGE WILSON BAKER

Plaintiffs,

- against -

Index No. 501985/19

DWAYNE BECKFORD INDIVIDUALLY, DWAYNE AS AN AGENT OF BECKFORD 435 LIMITED; BECKFORD 435, LIMITED, A DOMESTIC CORPORATION; GOLDEN BRIDGE LLC, A FOREIGN LIMITED LIABILITY COMPANY; MAKA COMMUNICATIONS LLC, A DOMESTIC CORPORATION; BELINDA BRANDIMARTI AS MANAGING AGENT OF MAKA COMMUNICATIONS LLC; PROGRESSIVE HOMES AND DEVELOPMENT INC; GINA DICKS AS AN AGENT OF PROGRESSIVE HOMES AND DEVELOPMENT, INC.; GINA DICKS, INDIVIDUALLY, SERVICE ADVISORS, INC, A DOMESTIC CORPORATION; MAURICE DICKS, INDIVIDUALLY; MAURICE DICKS AS AN AGENT OF PROGRESSIVE HOMES AND DEVELOPMENT, TOORAK CAPITAL HOLDING LLC.; MAJOR DOE said name being fictitious and represents the name of the brother of Dwayne Beckford whose name is not known to plaintiffs at this time; JANE AND JOHN DOE 1-20, said names being fictitious and are intended to represent the names of other defendants whose names aren't known to Plaintiffs at this time.

Defendants.

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The following papers efiled papers read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/  
 Petition/Cross Motion and  
 Affidavits (Affirmations) Annexed \_\_\_\_\_

Opposing Affidavits (Affirmations) \_\_\_\_\_

Reply Affidavits (Affirmations) \_\_\_\_\_

\_\_\_\_\_ Affidavits (Affirmations) \_\_\_\_\_

\_\_\_\_\_ 57-78 \_\_\_\_\_

\_\_\_\_\_ 80 \_\_\_\_\_

\_\_\_\_\_ 83-89 \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_

Upon the foregoing papers, Defendants, Maka Communications LLC and Toorak Capitol Holdings, LLC motion (sequence 2) pursuant to CPLR 3212 to dismiss plaintiff's claims against the moving defendants is granted.

The instant action involves real property located at 435 Herzl Street, Brooklyn, New York, 11212. According to the summons and complaint, the premises was first purchased by plaintiff George Wilson (father) in 1963. Ultimately, Mr. Wilson passed away and plaintiff Michael Baker (son/plaintiff) was elected as Ancillary Executor of the last Will and Testament of George Wilson. At some point in 2018, the property was at risk of being sold because of numerous tax liens and plaintiff decided to seek assistance from his friend, defendant Dwayne Beckford. According to plaintiff, Dwayne Beckford and his brother, defendant Major Doe, facilitated a transaction that required plaintiff to transfer title to the premises to defendant Beckford 435 Limited. Plaintiff claims that the understanding was that the proceeds from the sale would be used to repair the premises, to pay off the taxes and plaintiff would be made a principal of Beckford 435 Limited.

Plaintiff claims that he was told that he would pay all out of pocket expenses associated with this transaction because he was going to be the principal of Beckford 435 Limited and sole owner of the subject property. At the closing held on June 14, 2018, plaintiff alleges he received a check in the amount of \$300,00.00 from Dwayne Beckford but was informed by his bank that the account did not have sufficient funds to cover the amount. Plaintiff inquired about the check and was informed by defendant Maurice Dicks, who prepared the contract of sale, that the \$300,000.00 was being held to ensure that the mortgage was paid each month as Dwayne Beckford was the personal guarantor for the loan and was concerned plaintiff would spend the money and not be able to pay the mortgage. Plaintiff was assured by the Beckford and Major that all steps to repair plaintiff's credit would be taken so he could refinance the loan within six months and relive Beckford from liability, and Beckford 435 Limited would transfer title back to plaintiff. Plaintiff thereafter made payments on the mortgage for six months and was informed in December 2018 that the loan was rescinded, and plaintiff lost the premises. Plaintiff thereafter hired counsel and commenced the instant suit on January 28, 2019.

By deed dated June 14, 2018, recorded August 7, 2018, plaintiff, Michael W. Baker, as Ancillary Executor of The Last Will and Testament of George Wilson a/k/a George Wilson Baker deeded the property to defendant Beckford 435. Beckford 435 executed a mortgage in favor of Golden Bridge LLC in the amount of \$400,000.00 (first mortgage). This first mortgage was assigned to Ice Lender Holdings LLC by assignment

dated December 28, 2018, and recorded on February 27, 2019. Defendant Maka Communications LLC took title to the subject property by deed dated December 31, 2018, and recorded in the Office of The City Register of the City of New York on January 30, 2019. On the same day, Maka executed a mortgage in favor of Ice Lender Holdings LLC in the amount of \$342,500.00 which was recorded on February 27, 2019 (second mortgage). Maka executed a Consolidation and Modification Agreement consolidating the first mortgage and second mortgage into a single lien in the amount of \$742,500 by agreement dated December 31, 2018, and recorded on February 27, 2019. On April 2, 2019, Ice Lender Holdings LLC assigned the first mortgage, second mortgage and Consolidated Mortgage to Toorak Capital Partners, LLC.

In support of the instant motion, moving defendants submit an affidavit from Jack Oved, Vice President of Ice Lender Holdings LLC. Mr. Oved states that Ice is a bona fide encumbrancer of the subject property for value. He avers that Ice conducted a thorough investigation in connection with the purchase and lien history of the subject property before tendering a new mortgage and Consolidation Agreement. He contends that a review of the public documents did not give Ice any actual or constructive knowledge of any defect in the chain of title. He concludes that Ice had no notice of any unusual or suspicious facts of the transfer that would have caused Ice to make further inquiries of the seller or other parties. Additionally, moving defendants submit an affidavit from Oniel Alexander, owner of Maka Communications LLC.

In opposition, plaintiff opposes the instant motion contending that there are triable issues of fact relative to moving defendants' claim as bona fide purchasers for value. First, plaintiff contends that his presence on the premises gave moving defendants actual notice of his possessory interest in the property. Additionally, plaintiff argues that moving defendants had constructive notice of his interest in the subject property as evidenced by the filing of his Notice of Pendency. Plaintiff's affidavit states that he has lived at the subject property since 1963 and that while plaintiff sold the premises to Beckford 435 LTD, he maintained an actual, open, and visible occupation of the subject premises. Plaintiff avers that his utility bills, bank statements and state issued identification card evince that he resides at the subject property. Furthermore, plaintiff alleges that he has been collecting rental payments from the other tenants at the subject property since July 18, 2018. Plaintiff also claims that moving defendant Maka was aware that plaintiff still resided at the subject premises when it acquired the property from Beckford 435 LTD.

In its reply, defendants submit affidavits from Stephen J Tyde, Jr., Principal and Head of Special Servicing for Toorak and Oniel Alexander, owner of Maka. Tyde avers that Toorak conducts its own due diligence prior to loan acquisition or organization and also relies upon the assignor's, Ice Lender Holdings, LLC., due diligence. He further states that Toorak does not require a property owner to provide the name of current leased tenants and thus Toorak was unaware of the existence of plaintiff at the time it acquired the subject loan. Alexander avers that he did not have any knowledge of even the

existence of plaintiff prior to the instant suit, let alone knowledge that plaintiff resided in the subject property at the time of the conveyance. He states that he was told that unnamed tenants resided at the property and paid rent in the amount of \$1,800.00 per month. Lastly, Alexander avers that Maka did not have any actual or constructive knowledge of any defect in the chain of title.

Real Property Law § 266 protects the title of a bona fide purchaser for value who lacked knowledge of an alleged fraud (*Irwin v. Regal 22 Corp.*, 175 AD3d 671, 671-672 [2d Dept 2019]). A bona fide purchaser for value has been described as one which purchased property for valuable consideration” and with no knowledge of an alleged prior fraud by the seller (*id.*; quoting *Emerson Hills Realty v. Mirabella*, 220 AD2d 717 [2d Dept 1995]). The term has also been defined as one who purchases real property in good faith, for valuable consideration, without actual or record notice of another party's adverse interests in the property and is the first to record the deed or conveyance (*id.*; quoting *Panther Mtn. Water Park, Inc. v. County of Essex*, 40 AD3d 1336 [3d Dept 2007]).

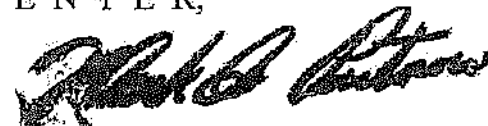
“An error in indexing a notice of pendency prevents a record of that instrument from constituting constructive notice from the time that the notice of pendency is filed through the period that the indexing error remains uncorrected” [(*Del Pozo v. Impressive Homes, Inc.*, 95 AD3d 1267, 1268 [2d Dept 2012]). “While a subsequent conveyance or encumbrance that is recorded after the filing of the notice of pendency is bound by all proceedings taken in an action, the notice of pendency must be indexed in a block index

in order for the notice of pendency to afford constructive notice of the instrument” (*id.*; see also CPLR 6501)).

Here, Maka made a prima facie showing that it was a bona fide purchaser for value by submitting evidentiary proof that it purchased the subject premises from Beckford 435, Limited, for the sum of \$700,000.00 without actual notice of the plaintiff’s alleged interest in the premises, or knowledge of facts that would lead a reasonably prudent purchaser to make inquiry (*139 Lefferts, LLC v. Melendez*, 156 AD3d 666, 666 [2d Dept 2017]). Additionally, the Court finds that the Toorak is a bona fide encumbrancer of the premises as an assignee stands in the shoes of the assignor and the assignee did not know of facts that would require it to make inquiries as to an alleged fraud (*PennyMac Corp. v. Dean-Phillips*, 189 AD3d 1603, 1604 [2d Dept 2020]). Lastly, since Maka’s deed was recorded on January 30, 2019, the instant notice of pendency did not give Maka constructive notice. According to NYSCEF, the notice of pendency was received on February 3, 2019, four days after Maka recorded its deed. In opposition, plaintiff fails to raise a triable issue of fact. Accordingly, it is hereby:

ORDERED, that defendants, Maka and Toorak’s motion (sequence 2) for summary judgment is granted and the instant action is dismissed as against the moving defendants.

E N T E R,



J. S. C.