

Canecchia v Richmond Assoc. NY LLC

2023 NY Slip Op 34864(U)

July 19, 2023

Supreme Court, Richmond County

Docket Number: Index No. 150613/2021

Judge: Charles M. Troia

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
DOREEN CANECCHIA,

Plaintiff,

-against-

RICHMOND ASSOCIATES NY LLC and
BANK OF AMERICA, N.A.,

Defendants.
-----X

IAS 1

Present:
Hon. Charles M. Troia

DECISION & ORDER

Index No. 150613/2021
Motion No. 004, 005

The following papers e-filed as Documents numbered "82" through "125" were marked fully submitted on the 19th day of May, 2023.

Upon the foregoing papers, the motion (Seq. No. 004) of defendant Richmond Associates NY LLC for summary judgment dismissing this action and cancelling the notice of pendency is denied, as is the cross motion (Seq. No.005) for summary judgment in favor of plaintiff Doreen Canecchia.

The parties appeared in this action and are presumably familiar with the long history of deed transfers and the underlying foreclosure proceedings involving a residential dwelling owned by the late Marie Petosa and located at 3096 Richmond Road, Staten Island, New York.

Plaintiff Diane Canecchia, the residuary legatee and Executrix of her mother Marie Petosa's estate, instituted this action on March 22, 2021, to quiet title pursuant to Article

15 of the RPAPL. Defendant Richmond Associates NY LLC presently holds title to the Richmond Road property. Bank of America, N.A. is named as the assignee of a mortgage encumbering the premises.

BACKGROUND

Marie Petosa (hereinafter, "Mrs. Petosa") and her husband, Adrian Petosa, jointly held title to their residence located at 3096 Richmond Road, Staten Island, New York. After Adrian's death in 2004, the elderly Mrs. Petosa experienced financial hardship and by 2007 she was at "imminent risk" of losing her home in foreclosure. She and her daughters Diane Canecchia and Corinne Petosa, responded to various solicitations from organizations seeking to assist homeowners with such matters. They accepted an offer from Revelations Consulting LLC. Mrs. Petosa was allegedly the victim of a deed-theft scheme orchestrated by, *inter alia*, Revelations, an organization assisting homeowners facing foreclosure, and other individuals, including its principal, Andrew Bartok, and a tax preparer, Alejandro Alonzo. It is alleged that Mrs. Petosa, with the advice of her daughters, Diane and Corinne, agreed to "temporarily" sell the premises to nonparty Maria Del Rio with the intention to re-purchase the residence at a later date. Corinne Petosa, as the named tenant, was granted an option to buy back the property for a set price of \$550,000.00, at any time during the twelve-month tenancy. The agreement was allegedly executed by Corinne and Del Rio.

In furtherance of the foregoing arrangement, Mrs. Petosa allegedly signed a deed at the closing on July 5, 2007, whereby she conveyed title to Del Rio, who encumbered the property with two mortgages given to Countrywide Home Loans, Inc. as security for loans in the amount of \$484,000.00 (the senior lien) and \$60,500.00 (the junior lien).

Mrs. Petosa's mortgage, which was in foreclosure at the time, was satisfied by the payment of \$420,896.93 from the proceeds of Del Rio's senior loan. Notably, the distribution of the balance of the proceeds is a seminal issue in the case. Several months after the closing, Del Rio failed to pay the loan installments.

As a result of the default, Bank of New York (the lender's successor-in-interest), commenced a foreclosure action against Del Rio on February 1, 2008, in Supreme Court, Richmond County, under Index No. 100478/2008. Marie Petosa (sued as "Jane Doe") interposed a *pro se* answer alleging that the deed she executed in favor of Del Rio was fraudulently obtained as part of a deed-theft scheme, and she is the rightful owner of the premises. The 2008 foreclosure action was not resolved on the merits. It was dismissed eight years later, on June 21, 2016, due to the plaintiff/mortgagee's failure to move for a default judgment against Del Rio within one year of her default in accordance with CPLR §3215(c).

Over three years later, on August 20, 2019, Del Rio executed a quitclaim deed transferring the property to TC Brokers LLC. A "Full Discharge" of the \$484,000.00 mortgage was recorded on September 24, 2020. The \$60,500.00 mortgage was not discharged and is the subject of this action to quiet title. On November 17, 2020, TC Brokers LLC conveyed the property to defendant Richmond Associates NY LLC (hereinafter, "Richmond").

Plaintiff asserts two causes of action against Richmond and Bank of America, the current holder of the mortgage and note. Ms. Canecchia seeks an order declaring three deeds in Richmond's chain of title void. She alleges that the transfer of title from her

mother to Del Rio was fraudulent and the product of a forgery which rendered Del Rio's deed and the subsequent deeds void *ab initio*.

Presently before the Court is the motion of defendant Richmond for summary judgment dismissing the complaint and cancelling the notice of pendency. Plaintiff cross moves for summary judgment pursuant to RPAPL §1504, vacating Del Rio's deed and the subsequent deeds in Richmond's chain of title; cancelling the lien of record; and restoring title to plaintiff as heir of Mrs. Petosa's estate.

In support of the motion for summary judgment, Richmond maintains that the deed from Petosa to Del Rio was executed by Petosa and duly acknowledged; and there is no evidence that her signature was forged. Defendant alleges it undisputed that Mrs. Petosa intended to convey the premises to prevent losing her residence. In fact, Del Rio paid off Mrs. Petosa's mortgage and various judgment liens against the property to effectuate the sale. Richmond contends this demonstrates that De Rio's deed to the premises is not void *ab initio* or fraudulent. That being the case, defendant argues that the subsequent deeds in its chain of title were not rendered void, as plaintiff contends.

In support of plaintiff's cross motion for summary judgment, she maintains that the deed was void from its inception, as a matter of law, because it was recorded with the forged signature of Del Rio on the transfer document which is part of the deed as the law requires. Plaintiff relies on the Court of Appeals decision in *Faison v. Lewis* (25 NY 3d 220 [2015]) which purportedly compels the legal conclusion that Del Rio's deed is void *ab initio* rather than voidable, and the transaction is exempt from a statute of limitations defense. For these reasons, Ms. Canecchia contends that the subsequent conveyance of title to the premises must be set aside.

DISCUSSION

A deed that contains a forged signature is void *ab initio* and does not transfer title. It is distinguished from a deed where the signature and authority for conveyance are acquired by fraudulent means (*see Faison v. Lewis*, 25 NY3d 229, 225 [2015]). “In such latter cases, the deed is voidable until set aside, which has the effect of transferring title to the fraudulent grantee and may encumber the property to a party who becomes a purchase in good faith” (*see Faison v. Lewis*, 25 NY3d at 225). On the other hand, “[a] purchaser who takes title through a forged deed cannot be a bona fide purchaser, even if the purchaser did not have knowledge of the forgery” (*Faison v. Lewis*, 25 NY3d 229, 225 [2015]).

“It is similarly true that no property shall be encumbered including by a mortgagee, in reliance on a forged deed.... A deed based on forgery or obtained by false pretenses is void *ab initio*, and a mortgage based on such deed is likewise invalid” (*Faison v. Lewis*, 25 NY3d at 225-226).

In this case, conflicting evidence is submitted as to whether Mrs. Petosa’s signature was forged and whether the parties’ alleged arrangement involved fraud. Ms. Canecchia testified at her deposition that she did not witness the transaction and lacks “firsthand knowledge” of what occurred at the closing; Corrine accompanied her mother but was not permitted to observe the transaction; and Ms. Del Rio attests that Petosa was not present at the closing. Furthermore, the affidavits of Ms. Canecchia, Ms. Del Rio, Mr. Alonzo and Joel Sofer (on behalf of Richmond), present differing accounts of the events that are alleged to be fraudulent.

In view of the conflicting evidence, triable issues of fact are raised which preclude a finding, as a matter of law, that the Del Rio deed was either void *ab initio* or voidable, and that Richmond was a bona fide purchaser. Moreover, the foregoing affidavits require the Court to determine matters of credibility. It is not the Court’s function to assess credibility or draw

inferences on a summary judgment motion (*see S.J. Capelin Assoc., Inc. v. Globe Mfg. Corp.*, 34 NY2d 338, 341 [1974]; *Santiago v. Joyce*, 127 AD3d 954, 954 [2d 2015]; *Nicklas v. Tedlen Realty Corp.*, 305 AD2 385, 386 [2d Dept 2003]; *see also Zuckerman v. City of New York*, 49 NY2d 557 [1980]). The motion and cross motion must be denied.

Accordingly, it is

ORDERED, the motion of defendant Richmond Associates NY LLC for summary judgment dismissing this action and cancelling the notice of pendency is denied; and it is further

ORDERED, the cross motion of plaintiff Doreen Canecchio for summary judgment is denied: and it is further

ORDERED, the Clerk shall mark his records accordingly.

E N T E R,

Dated: July 19, 2023


A. J. S. C.

Hon. Charles M. Troia
Acting Supreme Court Justice