

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

(FILED: April 3, 2013)

USA RESIDENTIAL PROPERTIES :
LLC :
v. :
ANN MARIE C. DILIBERO A/K/A :
ANNMARIE C. DILIBERO A/K/A :
ANNMARIE DILIBERO, AND ALL :
OTHER OCCUPANTS :

C.A. No. KD 2013-0174

DECISION

RUBINE, J. Before the Court is a trespass and ejectment action by Plaintiff USA Residential Properties LLC to obtain possession of certain real property located at 9 Jencks Road, Foster, Rhode Island (the “Property”) from Defendant Ann Marie C. Dilibero. This matter is on appeal from a judgment for possession entered in Plaintiff’s favor in the District Court, and now it is presently before the Court for trial de novo. See G.L. 1956 § 9-12-10; see also Harris v. Turchetta, 622 A.2d 487, 490 (R.I. 1993). The following constitutes the Court’s findings of fact and conclusions of law following trial. Plaintiff claims that Defendant is a tenant by sufferance due to her residency at the Property following a foreclosure auction at which Plaintiff claims to have been the highest bidder and to have acquired title to the Property. Defendant, on the other hand, avers that Plaintiff, which was also the foreclosing mortgagee, did not comply with notice requirements as provided for by statute and by the terms of Defendant’s mortgage such that the foreclosure sale of Defendant’s Property was void, and therefore Defendant questions Plaintiff’s claim of title and standing to commence an eviction action.

Defendant further avers that, regardless of the validity of the foreclosure proceedings, Plaintiff did not hold title to the Property when Plaintiff commenced the eviction process by sending Defendant a notice of termination of tenancy by sufferance after the foreclosure auction. Finally, Defendant claims that the notice of termination of tenancy by sufferance was inadequate as a matter of law.

I

FACTS & TRAVEL

The record reflects the following undisputed facts as presented at trial de novo as well as through the jointly admitted exhibits, the authenticity of which are not disputed and each of which is found to be a full and accurate representation of that which it purports to be:

1. On January 31, 2007, Defendant executed a note (Note) in the amount of \$255,000 in favor of the original lender, New Century Mortgage Corporation (New Century). (Ex. C at 2.)
2. To secure the Note, Defendant contemporaneously executed a mortgage (Mortgage) on the Property. Id. at 1.
3. The Mortgage defines the lender as New Century, and it designates MERS as “mortgagee” and “nominee for Lender and Lender’s successors and assigns.” Id. at 1-2.
4. As recited in the affidavit of sale which accompanied the foreclosure deed, Defendant failed to make Mortgage payments when due which resulted in default under the terms of the corresponding mortgage note. (Ex. A.)
5. Plaintiff, as holder of the Mortgage by assignment from MERS, sold the Property at a foreclosure auction conducted on August 2, 2011. Id. Plaintiff prevailed as

the successful bidder at the foreclosure sale, purchasing the Property for \$210,000. Id.

6. Prior to the foreclosure auction, Plaintiff sent Defendant a Notice of Intent to Foreclose notifying Defendant that her Note was in default, as well as an acceleration notice and a Notice of Mortgage Foreclosure Sale. (Exs. D, D1, D2.)
7. On August 31, 2011, after the foreclosure sale Plaintiff sent Defendant a Notice of Termination of Tenancy by Sufferance. (Ex. B.)
8. On December 6, 2011, Plaintiff executed the foreclosure deed. (Ex. A.)

Thereafter, Plaintiff filed a complaint for eviction of tenancy at sufferance against Defendant and all other occupants in the Third Division District Court (“District Court”). Defendant filed a Motion to Dismiss or, alternatively, for Summary Judgment in the District Court and that Motion was denied. Judgment for possession entered in favor of Plaintiff. Defendant appealed the District Court judgment to the Superior Court seeking trial de novo.¹ At the trial de novo, the parties stipulated to certain facts and submitted several documents jointly as full exhibits. The Court has taken the matter under advisement for post-trial decision.

¹ Defendant also filed a declaratory judgment action, among other claims, against Plaintiff and two other parties concerning the Property in the United States District Court for the District of Rhode Island. See In re: Ann Marie Dilibero, No. 1:13-cv-00040-M-LDA, Compl., Jan. 18, 2013, ECF No. 1. That matter was joined with the Mortgage Foreclosure Master Docket in that court wherein a stay has been imposed on certain proceedings. See In re: Mortgage Foreclosure Master Docket, No. 1:11-mc-00088-M-LDA, Order, Aug. 16, 2011, ECF No. 1. However, the stay in Federal Court does not enjoin state court proceedings in an eviction action involving the same parties and property also involved in the federal court action. See Anti-Injunction Act, 28 U.S.C. § 2283; see also Younger v. Harris, 401 U.S. 37, 43-45 (1971).

II

STANDARD OF REVIEW

In a case tried to the Court upon stipulated facts, “the trial court does not play a fact-finding role, but is limited to ‘applying the law to the agreed-upon facts.’” Delbonis Sand & Gravel Co. v. Town of Richmond, 909 A.2d 922, 925 (R.I. 2006) (quoting Hagenberg v. Avedisian, 879 A.2d 436, 441 (R.I. 2005)). When a case is submitted to the Court for decision, the Court will consider any stipulated facts and the inferences to be drawn therefrom. 73 Am. Jur. 2d Stipulations § 17 (West 2012). “Valid stipulations are controlling and conclusive, and courts are bound to enforce such stipulations.” Burstein v. United States, 232 F.2d 19, 22 (8th Cir. 1956) (citing H. Hackfeld & Co. v. United States, 197 U.S. 442, 447 (1905)). Nevertheless, “[w]here . . . [there are] evidentiary facts stipulated, the court may, if more than one inference can be drawn from the facts, permissibly find the ultimate determinative facts from the evidence stipulated.” 73 Am. Jur. 2d Stipulations § 17 (West 2012).

III

ANALYSIS

A

Adequacy of Foreclosure Notices

Defendant argues that Plaintiff did not comply with foreclosure sale notice requirements as provided for by statute and by the terms of Defendant’s mortgage such that the foreclosure sale of Defendant’s Property was void. At trial, the parties submitted as full exhibits a certified copy of the foreclosure deed, as well as copies of three notices sent by Plaintiff to Defendant prior to the foreclosure sale.

Section 34-11-22 provides that, among other things, the foreclosing mortgagee must send the mortgagor written notice of the time and place of the foreclosure sale at least thirty days prior to the first publication of notice in the required public newspaper. Further, this notice must be sent to the mortgagor at his or her last known address by certified mail, return receipt requested. See Section 34-11-22. The Mortgage provides that, among other things, the mortgagee must send the mortgagor notice of default prior to acceleration of the amount due on the Note.² See Ex. C at 13. Additionally, according to the terms of the Mortgage, the notice should specify the following items: the type of default, the action required to cure default, a date thirty days or more from the date of the notice by which default must be cured, that failure to cure may result in acceleration, that mortgagor has the right to reinstate after acceleration, and that mortgagor has the right to bring court action to challenge the existence of default. See id.

This Court finds that the three notices sent by Plaintiff to Defendant prior to the foreclosure sale, which consisted of a Notice of Intent to Foreclose, an acceleration notice, and a Notice of Mortgage Foreclosure Sale, comply with all of the notice requirements as provided by statute and by the terms of Defendant's Mortgage. See Exs. D, D1, D2. Moreover, this Court finds that the affidavit of sale accompanying the foreclosure deed provides further evidence that Plaintiff satisfied all notice requirements prior to conducting the foreclosure sale. See Ex. A. Accordingly, the foreclosure sale is

² Defendant takes the position that the adequacy of the foreclosure notice must be judged both on the statutory requirements, and any additional notice requirements agreed to by the parties in the Mortgage. The Court agrees that notice must comply with both the statutory requirements, as well as requirements set forth in the mortgage instrument. See 55 Am. Jur. 2d Mortgages § 508, 511 & n.3 (2009) (citing persuasive authority therein) (a foreclosing mortgagee's failure to comply with certain notice requirements contained in the Mortgage and in the pertinent state statute will invalidate a foreclosure sale).

not void by reason of inadequate notice, given Plaintiff's compliance with the notice requirements provided by statute and the terms of the Mortgage.

B

When Title Passes After a Foreclosure Auction

Defendant further avers that, regardless of the adequacy of notice, Plaintiff did not acquire title to the Property at the foreclosure auction, and that full legal title did not pass to the Plaintiff until several months after the foreclosure auction when Plaintiff executed the foreclosure deed. Therefore, Defendant claims, Plaintiff did not have title to the property until after the eviction process was commenced, and therefore that Plaintiff inappropriately commenced eviction proceedings when Plaintiff sent Defendant the Notice of Termination of Tenancy by Sufferance before Plaintiff executed the foreclosure deed and held legal title to the Property.

In Rhode Island, the sale of mortgaged property at a foreclosure auction does not vest legal title in the purchaser until the foreclosure deed is executed and delivered. See Paliotta v. Celletti, 68 R.I. 500, 502-03, 30 A.2d 108, 110 (1943); see also Tripp v. Ide, 3 R.I. 51, 53 (1854). Therefore, where there is a lapse in time between the date of the foreclosure auction and the date of execution of the foreclosure deed, the purchaser at the foreclosure auction will not hold full legal title to the purchased property until the date when the foreclosure deed is executed. See Paliotta, 68 R.I. at 503, 30 A.2d at 110. Likewise, “[t]itle by deed passes only by delivery of the deed.” Id. “In the absence of proof to the contrary, delivery of a deed is presumed to have been on the date [of execution] of the deed.” Id.

Although Rhode Island has adopted the title theory of mortgages, wherein a mortgagee is considered the holder of title to the mortgaged property “subject to defeasance upon payment of the debt,” (140 Reservoir Ave. Assocs. v. Sepe Invs., LLC, 941 A.2d 805, 811 (R.I. 2007) (internal quotation marks omitted)), our Supreme Court has also recognized that the title theory is a legal fiction manufactured to facilitate decision making. See Block Island Land Trust v. Washington Trust Co., 713 A.2d 199, 201 (R.I. 1998). In this regard, a mortgagee may hold legal title under the legal fiction created by the title theory of mortgages, but this does not mean that full legal title may vest in the foreclosing mortgagee before the execution of a foreclosure deed. Compare Paliotta, 68 R.I. at 503, 30 A.2d at 110 (“a sale at auction of mortgaged real estate, without delivery of a deed, does not vest the legal title in the purchaser”), with 140 Reservoir Ave. Assocs., 941 A.2d at 811 (“Rhode Island is a title-theory state, in which a mortgagee not only obtains a lien upon the real estate by virtue of the grant of the mortgage deed but also obtains legal title to the property subject to defeasance upon payment of the debt.”) (internal quotation marks omitted).

During the trial, reference was made to both the Bankruptcy Code—specifically 11 U.S.C. § 1322(c)(1) (2010)—and a bankruptcy court case from the District of Rhode Island, In re Medaglia, 402 B.R. 530 (Bankr. D.R.I. 2009). However, although these sources of authority address the issue of when mortgaged property is sold at a foreclosure sale, they do not resolve the issue of when full legal title vests in a purchaser of mortgaged property during the foreclosure process. See 11 U.S.C. § 1322(c)(1); In re Medaglia, 402 B.R. at 531-34 (discussing the majority and minority views concerning when a foreclosure sale is completed cutting off a debtor’s right to cure under 11 U.S.C.

§ 1322(c)(1)). The In re Medaglia court found that under Rhode Island law a mortgagor's right of redemption is cut off after the foreclosure sale, which it interpreted as "a single, discrete event, and not merely a step in a process culminating in the recordation and delivery of a deed." 402 B.R. at 533. While the analysis from In re Medaglia may be helpful in a bankruptcy case that implicates 11 U.S.C. § 1322(c)(1), this Court does not find the analysis entirely apposite to the issue in this case of when full legal title vests in a purchaser of mortgaged property during the foreclosure process.

In this matter, Plaintiff prevailed as the successful bidder at the foreclosure auction on Defendant's Property, which was held on August 2, 2011. See Ex. A. Shortly thereafter, Plaintiff sent Defendant a Notice of Termination of Tenancy by Sufferance on August 31, 2011. See Ex. B. However, Plaintiff did not execute the foreclosure deed, and therefore legal title did not vest in Plaintiff until December 6, 2011.³ See Ex. A. The only evidence before this Court of delivery of the deed is the date of execution of the foreclosure deed, which was December 6, 2011. See Paliotta, 68 R.I. at 503, 30 A.2d at 110. This Court finds that legal title to the subject Property did not vest in Plaintiff until December 6, 2011, the date on which the foreclosure deed was executed and delivered to Plaintiff. Thus, Plaintiff inappropriately commenced eviction proceedings against Defendant before Plaintiff held legal title to the premises on which it sought to pursue an eviction.

Given that this Court has found that Plaintiff did not hold title to the Property at the time that Plaintiff commenced the eviction process by sending Defendant the Notice

³ Even though the affidavit of sale accompanying the foreclosure deed was executed on August 17, 2011, there is no support for the proposition that an affidavit may act as the functional equivalent of a deed to transfer and vest legal title in a purchaser of real property.

of Termination of Tenancy by Sufferance, this Court need not address Defendant's additional argument concerning the adequacy of the Notice.

IV

CONCLUSION

In sum, this Court finds that Plaintiff did not hold title to the Property at the time that Plaintiff sent Defendant the Notice of Termination of Tenancy by Sufferance. Plaintiff therefore lacked standing to initiate eviction proceedings before it acquired title, and therefore, Plaintiff's complaint for eviction must be denied and dismissed. The Court will enter judgment for the Defendant consistent with this Decision.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: USA Residential Properties LLC v. Ann Marie C. Dilibero A/K/A Annmarie C. Dilibero A/K/A Annmarie Dilibero, and All Other Occupants

CASE NO: KD 2013-0174

COURT: Kent County Superior Court

DATE DECISION FILED: April 3, 2013

JUSTICE/MAGISTRATE: Rubine, J.

ATTORNEYS:

For Plaintiff: Paul G. Manning, Esq.

For Defendant: John B. Ennis, Esq.