Commonwealth of Virginia

FIFTEENTH JUDICIAL CIRCUIT

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF FREDERICKSBURG

STEPHEN P. STAGEBERG

v. **#CL10-488**

PROPERTIES BY US, L.L.C., et al.

COUNSEL:

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and Sterling Mortgage Corporation

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Counsel for Gordon B. Gay, Trustee

LETTER OPINION BY JUDGE GORDON F. WILLIS

This cause came to be heard on April 30, 2012, upon the Amended Complaint of the plaintiff, Stephen P. Stageberg ("Stageberg") and Answers filed by defendants Gordon B. Gay, Trustee ("Gay"), Mortgage Electronic Registration Systems, Inc. ("MERS"), Bradford L. Hustead, Trustee ("Hustead"), Sterling Mortgage Corporation ("Sterling") and Corey Nejati and Robabeh Nejati ("the Nejatis").

Prior to the hearing, Stageberg non-suited Counts I, II, III and IV of the Amended Complaint against Properties By US, L.L.C. ("Properties By US") and Angstadt Properties, L.L.C., leaving as the sole remaining issue Count V, the quiet title action against the Nejatis, Hustead, Sterling, MERS, Gay and Properties By US. Following presentment of the evidence, the Court granted the parties leave to file briefs in lieu of closing argument and entered a Scheduling Order. Each party filed its brief in a timely manner.

FACTUAL FINDINGS

This action stems from a series of real estate transactions which began with Kristopher K. Angstadt ("Angstadt") purchasing the Whole Property[1] on January 25, 2005. (Jt. Ex. A). Angstadt caused a survey ("the Long Survey") to be done purporting to subdivide the Whole Property and put said Plat to record on April 15, 2008 without receiving appropriate approval from the City of Fredericksburg for said subdivision. (Jt. Ex. B). On the same date, Angstadt conveyed by deed a portion of the Whole Property to Properties By US, specifically referencing 901 Hanover Street ("the Hanover Portion") as shown on the Long Survey. (Jt. Ex. C). On April 30, 2008, Angstadt conveyed a portion of the Whole Property to Properties By US, specifically

[1] All that certain lot or parcel of land with all buildings and improvements thereon and all rights and privileges appurtenant thereto, at the northwest corner formed by the intersection of Littlepage and Hanover Streets, in the City of Fredericksburg, Virginia, beginning at a point 10 feet from the curb on Littlepage Street and running thence northerly along Littlepage Street a distance of 114.85 feet to a wood peg; thence westerly 40 feet; thence southerly 109.9 feet; thence along Hanover Street 30 feet to the point of the beginning.

referencing 802 and 804 Littlepage Street ("the Littlepage Portion") as shown on the Long Survey[2]. (Jt. Ex. D).

Properties By US conveyed the Littlepage Portion to the Nejatis on June 11, 2008. (Jt. Ex. E).[3] On June 13, 2008, the Nejatis executed two deeds of trust, one to Hustead as Trustee for the benefit of MERS and the second to Gay as Trustee for the benefit of Properties By US. (Jt. Ex. F & G). Subsequently, Properties By US conveyed the Hanover Portion to Stageberg on August 27, 2008. (Jt. Ex. J).[4] At the time he closed on the Hanover Portion, Stageberg mistakenly believed he was buying a separate buildable lot and entered into a contract with Properties By US to build a home on said property. (Jt. Ex. H). However, when Properties By US applied for a zoning variance to build the house, the Zoning Administrator for the City of Fredericksburg opined that the boundary line set forth in the Long Survey purporting to create the Littlepage Portion and Hanover Portion was illegally and improperly done without the approval of the City and thus there was never any valid subdivision of the Whole Property. The Zoning Administrator's determination was upheld on appeal. Stageberg pursued a claim against his title insurance company which claim was resolved by way of settlement. Per Christian Kaila, a real estate appraiser, neither the Littlepage Portion nor the Hanover Portion has any value separate from the other, but together, the Whole Property has an appraised value of $290,000.00.

OPINION

Stageberg claims that as between each party and Properties By US, he holds legal title to the Hanover Portion and the Nejatis hold legal title to the Littlepage Portion; however, due to the invalidity of the attempted subdivision, there is no clear definite conveyance in severalty and thus as between Stageberg and the Nejatis, they own the Whole Property as tenants in common. The Nejatis and MERS disagree and claim that Stageberg owns an estate in severalty in the Hanover Portion and the Nejatis own an estate in severalty in the Littlepage Portion, or in the alternative, the Nejatis purchased the Whole Property from Properties By US on June 11, 2008 and there was nothing left for Properties By US to sell to Stageberg in August of 2008. The defendants also assert that this quiet title action is barred under the doctrine of election of remedies and further that Stageberg has an adequate remedy at law.

A Court in equity has inherent jurisdiction to quiet title to land and remove a cloud therefrom. Day, et als. v. Vaughn and Usilton, Inc. 193 Va. 168,171 (1951). In Day, a cloud on title was defined as "an outstanding claim or encumbrance which, if valid, would affect or impair

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[2] Angstadt's April 15 and April 30 deeds conveying these interests both specifically state: AND BEING PART of the same real estate conveyed to the Grantor herein by deed dated January 24, 2005, and duly recorded in the office of the Clerk of the Circuit Court of the City of Fredericksburg, Virginia, as Instrument #050000267.

[3] Said deed specifically states that the property conveyed is "AND BEING the same real estate conveyed to the Grantor herein by deed dated April 30, 2008, and duly recorded in the office of the Clerk of the Circuit Court of the City of Fredericksburg, Virginia as Instrument #080001079". Further, the deed notes: Reference is hereby made to the aforementioned deed, plat and other writings in the chain of title for a more particular description of the real estate herein conveyed.

[4] Said deed specifically states that the property conveyed is "AND BEING the same real estate conveyed to the Grantor herein by deed dated April 15, 2008 and duly recorded in the office of the Clerk of the Circuit Court of the City of Fredericksburg, Virginia, as Instrument #080000915". Further, the deed notes: Reference is hereby made to the aforementioned deed, plat and other writings in the chain of title for a more particular description of the real estate herein conveyed.

the title of the owner of a particular estate, and which apparently on its face has that effect, but which can be shown by extrinsic proof to be invalid or inapplicable to the estate in question." Id. at 172 citing, Gardner V. Buckeye Sav., ect., Co., 108 W.Va. 673, 152 S.E. 530, 78 A.L.R. 1, 5. "A cloud is said to be the semblance of a title, either legal or equitable, or a claim of an interest in lands, appearing in some legal form, but which is in fact unfounded, or which it would be inequitable to enforce." Id., citing Rigdon v. Shick, 127 Ill. 411, 19 N.E. 698, Anno. 78 A.L.R. 27. Here a cloud on title clearly exists where the parties mistakenly believed they were receiving marketable title to properly subdivided portions of the Whole Property, and now dispute who owns what title or interest to what portion of the Whole Property, and further dispute what portion or interest in the Whole Property secures the deeds of trust executed by the Nejatis.

First, it is clear from the June 11, 2008 deed and chain of title that Properties By US conveyed only a partial interest in the Whole Property to the Nejatis. Secondly, while §15.2-2254(3) and the corresponding City Code allow for the recordation of the instrument conveying such land and the transfer or passage of title between the parties to the instrument, it does not validate the attempted division line between the Hanover Portion and the Littlepage Portion as it relates to the interest of Stageberg and the Nejatis. In fact, this code section requires the parties to comply with the subdivision ordinance and makes it a continuing violation to use the property in violation of the subdivision ordinance. Under the statute neither party can sell their anticipated portion without complying with the subdivision ordinance. As determined by the Zoning Administrator, the boundary line between the Hanover Portion and the Littlepage Portion in the Long Survey was invalid and does not lawfully exist and the Whole Property remains undivided. Accordingly, no estate in severalty was created by the deeds conveying the Littlepage Portion or the Hanover Portion because the description in each fails to give a definite designation as to the boundary line as it requires some further action for said boundary line to become definite, that being the necessary and required approval of the City. At the very least, each party has an equitable interest in the Whole Property arising from the ongoing statutory requirement that they comply with the subdivision ordinance.

A tenancy in common may be created by a grant of an undivided part of one's land to a stranger. Minor on Real Property, (2nd Edition), Ribble Vol.1 §862 . If the words of severance, whatever they may be, fail to give such definite designation so that the boundary can be located, then a tenancy in common is created in all the land. See generally Hodges and Dejarnette v. Mable Thorton and Others, 138 Va. 112, 118-120 (1924). Thus the Nejatis became tenants in common of the Whole Property with Properties By US by virtue of the June 11, 2008 deed.

Where a tenant in common conveys his share to another, the share is undivided, and the fact that he describes it by metes and bounds, or otherwise, in his conveyance, does not create in the grantee another or different interest from that which he himself possesses and nothing but an undivided interest passes by such deed. Minor on Real Property, (2nd Edition) Ribble Vol. 1 §869. Accordingly, upon Properties By US conveying its' remaining interest in the Whole Property to Stageberg in August of 2008, Stageberg and the Nejatis became tenants in common of the Whole Property.

Tenants in common are presumed to have equal ownership in the absence of proof to the contrary. See Smith v. Alderson, 116 Va. 986, 989 (1914) and Jarrett v. Johnson, 11Gratt. 52 Va.

327, 333 (1854). This presumption may be refuted with evidence establishing a contrary division of the ownership. Brantley v. Karas, 220 Va. 489 (1979). Both the Nejatis and Stageberg received from Properties By US something different than what they mistakenly believed they were buying and did not expect to become co-tenants of the Whole Property. Weighing the equities between the parties, the Court adopts the position of Stageberg that their separate ownership interest in the Whole Property is based upon their respective percentage of the total purchase price of the Whole Property. The Nejatis paid $300,000 for their portion of the Whole Property so they have a 71.43% interest and Stageberg paid $120,000 for his portion of the Whole Property and has a 28.57% interest.(See Jt. Ex. E & J). The Nejatis could not place a deed of trust upon more than their interest of the Whole Property, thus the deeds of trust to Hustead and Gay only encumber the Nejati's interest in the Whole Property and not any interest of Stageberg.

The defendants claim that this action is barred by the doctrine of election of remedies and further that Stageberg has an adequate remedy at law. The Court disagrees.

The doctrine of election of remedies is an affirmative defense and must be plead by the party asserting it. 99 ALR 2d 1317 Sec. 2. None of the defendants plead such an affirmative defense and thus cannot now rely upon said defense. Even if properly plead, the Court finds that the defendants have failed in meeting their burden that such a defense applies in this case. A party is not estopped to maintain a second suit under the doctrine of election of remedies unless the two suits have substantially the same aim and scope and the remedy sought is substantially the same in each. The only evidence presented was that Stageberg pursued a claim against his title insurance company and that said claim was resolved by way of settlement. No evidence concerning the nature or scope of the claim or settlement was presented and thus the Court cannot find that this quiet title action is barred by the doctrine of election of remedies.

As to the assertion that Stageberg has an adequate remedy at law, the Court finds that no such adequate remedy exists. The rule that a court of equity has no jurisdiction to relieve a party who has a remedy at law only applies to cases in which the legal remedy lies against the same person from whom the relief in equity is sought. See Jackson's Adm'x v. Turner, 32 Va. (5 Leigh) 119 (1834). This quiet title action is distinct as to Stageberg, the Nejatis, the Trustees and the deed of trust beneficiaries and there is no other adequate remedy at law which would resolve the parties' disputed title and interest in the Whole Property. The defendants cite Stageberg's action against his title insurance company as somehow evidence that he has an adequate remedy at law, but without setting forth how said claim against his title company may have resolved this dispute between these parties over their title and interest in the Whole Property.

CONCLUSION

Accordingly, the Court finds that Stageberg has carried his burden showing that a cloud exists as to his title and interest in the Whole Property; that Stageberg and the Nejatis own the Whole Property as tenants in common; that Stageberg's undivided interest in the Whole Property is 28.57% and Nejatis' undivided interest in the Whole Property is 71.43%; and that the two deeds of trust conveyed by the Nejatis are liens only against the Najatis' interest in the Whole Property and do not encumber Stageberg's interest.

Mr. Billingsley will please draft and circulate a sketch order consistent with the Court's ruling and present it to the Court for entry on or before June 26, 2012 at 9:00 am.

Gordon F. Willis, Judge

Date: June 7, 2012

Original to File
Copies to Counsel

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF FREDERICKSBURG

STEPHEN P. STAGEBERG
Plaintiff

v. **Case# CL10-488**

PROPERTIES BY US, L.L.C.

Et als,
Defendants

FINAL ORDER

THIS MATTER CAME TO BE HEARD ON April 30, 2012 upon the Amended Complaint filed and served herein by Plaintiff Stephen P. Stageberg, the Answers thereto filed and served by defendants Gordon B. Gay Trustee, Mortgage Electronic Registration Systems, Inc., Bradford L. Hustead, Trustee, Sterling Mortgage Corporation and Corey Nejati and Robabeh Nejati, the evidence and testimony and argument of counsel presented at trial and the briefs filed by counsel.

IT APPEARING TO THE COURT that, based upon the Factual Findings and Opinion of the Court as set out in the Court's Letter Opinion dated June 7, 2012 which is attached to this Final Order and incorporated herein by reference, Plaintiff has carried his burden showing that a cloud exists as to his title and interest in the Whole Property; that Plaintiff Stageberg and Defendants Nejati own the Whole Property as tenants in common; that Plaintiff Stageberg's undivided interest in the Whole property is 28.57% and that Defendants Nejati's undivided interest in the Whole Property is 71.43%; and, that the two deeds of trust conveyed by the Defendants Nejati are liens only against the Nejatis' interest in the Whole Property and do not encumber Plaintiff Stageberg's interest.

IT IS HEREBY ORDERED THAT Plaintiff Stephen P. Stageberg and Defendants Corey Nejati and Robabeh Nejati own the following described real property as tenants in common:

All that certain lot or parcel of land with all buildings and improvements thereon and all rights and privileges appurtenant thereto, at the northwest corner formed by the intersection of Littlepage and Hanover Streets, in the City of Fredericksburg, Virginia, beginning at a point 10 feet from the curb on Hanover Street and 8 feet from the curb on Littlepage Street and running thence northerly along Littlepage Street a distance of 114.85 feet to a wood peg; thence westerly 40 feet; thence southerly 109.9 feet; thence along Hanover Street 30 feet to the point of beginning.

Being the same real property conveyed to Kristopher K. Angstadt from Piedmont Select Properties, LLC by Deed dated the 24th day of January 2005 and recorded in the Office of the Clerk of this Court as Instrument number 050000267.

IT IS HEREBY FURTHER ORDERED THAT Plaintiff Stephen P. Stageberg owns a 28.57% undivided interest in the above described real property and that Defendants Corey Nejati and Robabeh Nejati own a 71.43% undivided interest.

IT IS HEREBY ALSO ORDERED THAT the liens of that certain deed of trust executed on June 13, 2008, and recorded as aforesaid as Instrument number 080001436 in the Office of the Clerk of this Court and of that certain deed of trust dated June 13, 2008 and recorded as aforesaid as Instrument number 080001437, are liens against the interest of Defendants Nejati in the above described real property only and do not encumber the interest of Plaintiff Stephen P. Stageberg therein.

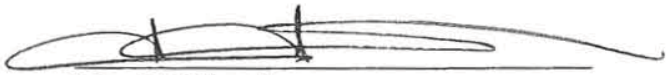
IT IS ADDITIONALLY ORDERED THAT the Clerk of this Court record a copy of this Final Order among the land records of this Court indexing Stephen P. Stageberg as grantor and grantee and Corey Nejati and Robabeh Nejati as grantors and grantees.

Nothing further remaining to be done, this matter is Ordered removed from the Court's docket.

Enter: July 13, 2012

Judge

I ask for this:



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Va. Bar # 29961
Counsel for plaintiff Stephen P. Stageberg

Seen and objected to for the reasons stated by counsel at the hearing on April 30, 2012 and the post-trial brief in opposition of counsel for the Nejatis, which are both incorporated by reference as if fully rewritten herein:

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Compton & Duling, L.C.
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703-583-6066 fax
Va. State bar # 73645
Counsel for Corey Nejati and Robabeh Nejati

Seen and objected to for the reasons stated in Mortgage Electronic Registration System Inc.'s ("MERS") Memorandum of Points and Authorities in Opposition to Quiet Title and pursuant to the reasons and arguments made by counsel for MERS at the April 30, 2012 trial of this matter:

Mark Shuford (VSB# 31075) Matthew B. Chmiel (VSB # 65334)
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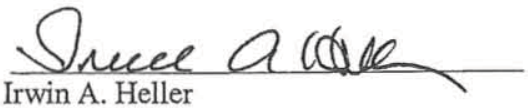
Richmond, Va. 23219
804-771-5791
804-771-5777 (fax)
Counsel for Mortgage Electronic Registration Systems, Inc.

Seen and objected to _____:



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Counsel for Bradford L. Hustead, Trustee and Sterling Mortgage Corporation

Seen and _____:

_____

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Assignments of Error

1. The Fredericksburg City Circuit Court erred when it held that Staageberg's purchase of the Hanover Street parcel resulted in a tenancy in common with the Nejatis as either the unapproved subdivision of the Whole Property described in the Long Survey had no effect whatsoever on the Whole Property and the Nejatis purchased one single undivided parcel of land from Properties By Us, which would mean that Staageberg now owns nothing at all, or the unapproved subdivision of the Whole Property noted in the Long Survey served to denote the specific metes-and-bounds by which the property interests of the Nejatis and Staageberg were divided, and Staageberg can own no more than the empty, undeveloped land he purchased from Properties By Us.
2. The Circuit Court erred when it held that Staageberg obtained a percentage ownership interest in the physical building and improvements on the Nejatis' parcel, as Staageberg bought and paid for only undeveloped dirt when he purchased from Properties By Us.
3. The Circuit Court also erred when it held that Virginia Code § 15.2-2254, prohibiting the sale of unapproved subdivided parcels, constitutes a restraint on the alienation of real property; specifically, the Circuit Court erred when it found that the conveyance to the Nejatis by Properties By Us, and the separate and later-in-time conveyance to Staageberg by Properties By Us, served only to create an "undivided" interest in a single parcel, which the Court then inexplicably divided into arbitrary "percentage" ownership interests by assigning a percentage calculation based upon the purchase prices paid by each party, thus granting Staageberg a windfall ownership interest in the improvements located on the Nejatis' parcel, for which improvements Staageberg paid nothing.
4. The trial court erred in ruling that the words of severance in the deed descriptions and Long Survey failed to give "such definite designation so that the boundary can be located." The boundary between the Hanover and Littlepage Properties was designated on the recorded plat survey and also described in each of the deeds to the Nejatis and Staageberg, and the trial court was incorrect to hold that the deeds "require some further action for said boundary line to become definite, that being the necessary and required approval of the City."