

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL ACTION

MELO ENTERPRISES, LLC,	:	
Plaintiff	:	
	:	
vs.	:	No. 11-1003
	:	
1400 MARKET STREET LLC, c/o	:	
ATLANTIC CENTRAL BANK,	:	
Defendant	:	
	:	
Anthony Roberti, Esquire		Counsel for Plaintiff
Scott M. Rothman, Esquire		Counsel for Defendant

Matika, J. - March , 2012

MEMORANDUM OPINION

This case involves the cross-filing of Motions for Judgment on the Pleadings on a claim by the Plaintiff, Melo Enterprises, LLC (hereinafter "Melo") for the return of \$25,000.00 in good faith down money deposited by Plaintiff for the purchase/sale of a parcel of real estate which was never consummated. The basis for this claim was an allegation that the Seller, Defendant herein, 1400 Market Street, LLC (hereinafter "1400") breached the Agreement of Sale when it could not produce good and marketable title to the subject property. 1400 refutes that claim and contends that title was in fact good and marketable and it was Melo who breached, resulting in a forfeiture of the

\$25,000.00. Their respective diverse positions set the stage for these cross-filings. For the reasons given herein, both motions will be denied.

FACTUAL BACKGROUND

The following facts, set forth in the Complaint, were admitted by the Defendant.

The property which is the subject of this action and the Agreement of Sale is described as Tax Parcels 67-51-A16.01, 67-51-A17, 67-51-A17.01, 67-51-A10 and 67-51-A20. These parcels are more commonly referred to collectively as 460 Maury Road, Jim Thorpe, PA.¹

The Defendant, 1400, obtained ownership of these parcels by virtue of a Deed from the Carbon County Sheriff dated November 30, 2009 and recorded on December 7, 2009 in Document Book 1810, Page 652.²

¹ Fox Funding, LLC became owners of these parcels from two separate deeds, one from Harry P. Roscoe and Catherine A. Roscoe, h/w and John M. Roscoe and Linda M. Roscoe, h/w, dated October 21, 2005 and recorded in Document Book 1385, Page 709 and also from Dennis M. Waselus and Elsie Waselus, h/w dated October 21, 2005 and recorded in Document Book 1385, Page 713.

² On the same date that Fox Funding, LLC obtained these parcels, a Mortgage was issued by Fox Funding PA, LLC to Town Bank. This Mortgage, while executed as Fox Funding PA, LLC and not Fox Funding, LLC used the descriptions of the subject parcels (owned by Fox Funding, LLC) as the collateral. Additionally, on October 21, 2005, a mortgage was issued by Fox Funding, LLC to Dennis and Elsie Waselus, which had the effect of encumbering the subject parcels. On January 2, 2009, Town Bank instituted a Complaint in Foreclosure against Fox Funding PA, LLC, which resulted in a judgment against Fox Funding PA, LLC in the amount of \$1,126,126.55. On November 4, 2009, Two River Community Bank, successor by merger to Town Bank, assigned the Fox Funding PA, LLC judgment to 1400, Defendant herein. The Deed from the Carbon

On August 11, 2012, 1400 executed an Agreement of Sale with Melo to sell the parcels in question. In doing so, Melo deposited with the listing agent, Mary Enck Real Estate, the sum of \$25,000.00. The Agreement of Sale provided for a closing to occur on or before October 22, 2010.³ This sale never occurred.

Melo's Complaint also contained numbered paragraphs (18, 19 and 20) related to certain language in the Agreement of Sale which deals with the conveyance of good and marketable title by the seller (1400) and in the event good and marketable title cannot be conveyed, what the responsibility of 1400 would be vis-a-vis Melo for certain fees, costs and expenses. These relevant facts are also not disputed by 1400 insofar as the Agreement of Sale speaking for itself on those points.

In support of its Complaint, Melo also avers the following, which are denied and disputed by 1400: 1) The existence of a Pennsylvania Department of Revenue lien against the subject property; 2) the Deed from the Sheriff of Carbon County to 1400 not conveying any title to the subject property; 3) the prior judgment & Writ of Execution upon which that Sheriff's Sale was based not being invalid; 4) The Mortgage upon which the prior judgment & Writ of Execution were issued being executed by an

County Sheriff to 1400, dated November 30, 2009 was as a result of 1400's bid for the property subject to the Sheriff Sale on November 6, 2009.

³ By agreement of the parties, the settlement date was extended to on or before December 31, 2010.

entity (Fox Funding PA, LLC), not the same as the entity (Fox Funding, LLC) that owned the subject property; 5) The real estate in question also being subjected to two (2) other mortgages;⁴ and 6) there existed corporate tax liens against Fox Funding, LLC. Items 2-6 above as stated in the Complaint filed by Melo, form the basis for it's argument that title to the subject property was not good and marketable and therefore, Melo is entitled to recover the \$25,000.00 down money. These facts are disputed by 1400 in its Answer & New Matter. This Court is now called upon to referee round one of this litigation.

DISCUSSION

Pa. Rule of Civil Procedure 1034 provides that after the pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for Judgment on the Pleadings. Pa. R.C.P. 1034(a). In ruling on a Motion for Judgment on the Pleadings, the Court should not look beyond the pleadings of the Complaint, any Answer and New Matter, any reply to New Matter and any document or exhibits properly attached to those pleadings. Such a motion shall only be granted when after a proper review of those pleadings, the pleadings demonstrate that there are no genuine issues of fact and that the moving

⁴ In addition to the Waselus mortgage, Fox Funding, LLC also issued Mortgages to Town Bank (a second mortgage) in the amount of \$225,000.00 on October 31, 2005 and a Mortgage to Joseph Sinisi in the amount of \$860,000.00 on December 8, 2009. Both mortgages had the effect, once recorded, of affecting the property owned by Fox Funding, LLC.

party is entitled to judgment as a matter of law. Bank of America N.A. v. Jagruti Corp., 2010 WL 6309974 (Pa. Com. PL. 2010); Integrated Project Services v. HMS Interiors, Inc., 931 A2d 724, 732 (Pa. Super. 2007). A Court should only grant a motion where the moving party's right to succeed is certain and the case is so free from doubt that the trial would clearly be a fruitless exercise. Holt v. Lenko, 791 A2d 1212, 1214 (Pa. Super. 2002).

In reviewing the pleadings, a Court must be mindful of the averments made by the moving party along with the responses to those averments in order to ascertain whether or not there remain genuine issues of material fact. In analyzing these pleadings, it is imperative to pay specific attention to the Answers of the non-moving party. Pa. R.C.P. 1029(6) states:

"Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. A general denial or demand for proof, except as provided in subsection (c) and (e)⁵ of this Rule shall have the effect of an admission."

Pa. R.C.P. 1029(c) reads as follows:

"A statement by a party that after reasonable investigation the party is without knowledge or information sufficient to form a belief as to the truth of the averment shall have the effect of a denial."

As indicated in the Court's recitation of the facts,

⁵ Subsection (e) applies only to those actions involving delay damages and is not applicable here.

certain averments of the Plaintiff were admitted by the Defendant, but certain others were denied. It is these denials to averments 10 and 22a-e which must be carefully scrutinized.

In its answers to averment 10 and 22e, 1400 indicates that it "is without sufficient information to admit or deny this allegation...". Pursuant to Pa. R.C.P. 1029(c), this is considered a denial, which raises the issue of whether or not this purported lien affected the marketability of the title to the subject property. However, the note in subsection (c) states: "Reliance on subsection (c) does not excuse a failure to admit or deny a factual allegation when it is clear that the pleader must know whether or not a particular allegation is true or false." Pa. R.C.P. 1029(c). See also Cercone v. Cercone, 386 A2d 1,4 (1978). In this case, it would appear that 1400 cannot hide behind a general denial ground in a lack of knowledge as to whether or not a corporate lien exists against it, if the facts as alleged by Melo can show that 1400 was aware of such lien. This Melo has not done, therefore, 1400's response of insufficient knowledge creates a genuine issue of material fact. Further, in response to averments 22a-d, 1400 provided specific answers defending its position vis-à-vis the marketability of the title. These defenses to the factual allegations create genuine issues of material fact which, at this stage of the litigation, require this Court to allow the

case to proceed to a fact-finder. Conversely, this logic applies to 1400's Motion for Judgment on the Pleadings in that 1400 is also not entitled to judgment as a matter of law based on these same genuine issues of material fact.

It is also worth noting that 1400 has, in its New Matter, asserted facts to defend the claim of the lack of marketability of the property which Melo has denied by virtue of not having sufficient knowledge of these factual allegations. All of these "factual inconsistencies" create genuine issues of material facts.

Melo has suggested, in support of its motion, that this Court "look beyond the pleadings" to a previous decision of Judge Nanovic in a related case⁶ to make a factual determination as to the marketability of the title of the subject property. We are constrained to accept this argument for several reasons. First and foremost, Pa. R.C.P. 1034(a) confines "the record" to the pleadings and documents/exhibits attached thereto. Secondly, there is nothing in our record to suggest that the factual scenario in the other case is factually similar to or dispositive of the factual averments and/or denials in our case, while not discounting the possibility that res judicata may someday come into play here with that case. Today is not the

⁶ Melo Enterprises, LLC v. Fox Funding, LLC & 1400 Market Street, LLC, Carbon County Docket #10-3538.

day, nor is a Motion for Judgment on the Pleadings the appropriate stage of the proceeding to raise it. To do so would not only assume facts not in the pleadings, but would accept them without giving the non-moving party an opportunity to defend against them.

CONCLUSION

At this early stage of this litigation, notwithstanding the respective arguments of both Melo and 1400 on their Motions for Judgment on the Pleadings, this Court believes there are genuine issues of material facts which prohibit us from granting either of these motions. Accordingly, both Motions for Judgment on the Pleadings are denied.

BY THE COURT:

Joseph J. Matika, Judge