

NOT TO BE PUBLISHED WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

JAMES LEE and NORTH SEA REALTY
DEVELOPMENT, LLC,

Plaintiffs,

v.

LYNDON CHIN, ET AL.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY

DOCKET NO. **BER-L-7867-19**

Civil Action

OPINION

Argued: September 21, 2020

Decided: October 9, 2020

HONORABLE ROBERT C. WILSON, J.S.C.

Aihong You, Esq. appearing on behalf of plaintiffs James Lee and North Sea Realty Development (from Law Office of Aihong You, PC)

Michael R. O'Donnell, Esq., Jorge Sanchez, Esq., and Anthony Lombardo, Esq. appearing on behalf of defendant 123 Dean Drive LLC (from Riker Danzig Scherer Hyland & Perretti, LLP)

PROCEDURAL HISTORY

THIS MATTER initially began on November 12, 2019, when the Plaintiff commenced this action and subsequently amended its Complaint on April 13, 2020. As against 123 Dean Drive, Plaintiffs allege claims seeking to quiet title to the Property, ejectment, and quia timet.

FACTUAL BACKGROUND

THIS MATTER arises out of a real estate transaction which resulted in Defendant 123 Dean Drive LLC's ownership of the property in question, and the Plaintiffs' belated assertion that the property transfer was improper. On February 11, 2004, North Sea Realty Development Corp. ("North Sea") acquired title to the subject property from James Lee and Tin Tian Hu. On November 15, 2013, North Sea executed a deed transferring this property to 1329 Pacific Street Realty, LLC ("1329 PSR") ("the 1329 PSR Deed"). The 1329 PSR Deed was recorded on

December 17, 2013 and specifically recited that 1329 PSR paid and North Sea received \$450,000.00.

On October 5, 2015, former-defendant U.S. Bank for Pro Cap 4 & Crdtrs (“Pro Cap”) purchased a tax sale certificate under number 2015-3 (the “Tax Lien”) in the amount of \$34,916.51 at a tax sale auction conducted by the Borough of Tenafly for unpaid 2014 real estate taxes. In addition, Pro Cap paid a premium in the sum of \$110,000 to the Borough of Tenafly to purchase that Tax Lien. On February 9, 2018, Pro Cap filed a Complaint in Foreclosure of Tax Lien in Bergen County Superior Court, Chancery Division (Docket Number: F-3006-18). The Foreclosure Complaint was recorded on February 14, 2018. Pro Cap moved to have the Property designated as abandoned, which was granted over 1329 PSR’s opposition. On June 19, 2018, Pro Cap assigned the Tax Lien to PC4 REO LLC (“PC4”). PC4, on July 26, 2018, obtained Final Judgment of the Tax Lien (the “Final Judgment”) thereby vesting title to the Property with PC4. The Final Judgment was duly recorded with the Bergen County Clerk on October 11, 2018.

Only then on January 24, 2019, did PC4 sell the Property to 123 Dean Drive LLC (“123 DD”) for the sum of \$1,400,000. The deed to the Property was recorded with the Bergen County Clerk on February 8, 2019.

For the reasons set forth below, the Defendant 123 Dean Drive LLC’s Motion to Dismiss is hereby **GRANTED**.

MOTION TO DISMISS STANDARD UNDER RULE 4:6-2(e)

On a motion to dismiss pursuant to R. 4:6-2(e), the Court must treat all factual allegations as true and must carefully examine those allegations “to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim. . . .” Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). After a thorough examination,

should the Court determine that such allegations fail to state a claim upon which relief can be granted, the Court must dismiss the claim. Id. It is simply not enough for a party to file mere conclusory allegations as the basis of its complaint. See Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 (App. Div. 2012); see also Camden Cty. Energy Recovery Assocs., L.P. v. New Jersey Dept. of Env'tl. Prot., 320 N.J. Super 59, 64 (App. Div. 1999), aff'd o.b. 170 N.J. 246 (2001) (“Discovery is intended to lead to facts supporting or opposing an asserted legal theory; it is not designed to lead to formulation of a legal theory.”).

Under the New Jersey Court Rules, a complaint may only be dismissed for failure to state a claim if, after an in-depth and liberal search of its allegations, a cause of action cannot be gleaned from even an obscure statement in the Complaint, particularly if additional discovery is permitted. R. 4:6-2(e); see Pressler, Current N.J. Court Rules, Comment 4.1.1. to Rule 4:6-2(e), at 1348 (2010) (citing Printing Mart, 116 N.J. at 746). Thus, a Court must give the non-moving party every inference in evaluating whether to dismiss a Complaint. See NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006); Banco Popular No. America v. Gandi, 184 N.J. 161, 165-66 (2005); Fazilat v. Feldstein, 180 N.J. 74, 78 (2004). The “test for determining the adequacy of a pleading [is] whether a cause of action is suggested by the facts.” Printing Mart, 116 N.J. at 746. However, “a court must dismiss the plaintiff’s complaint if it has failed to articulate a legal basis entitling plaintiff to relief.” Sickles v. Carbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).

RULES OF LAW AND DECISION

I. Plaintiffs’ Quiet Title Claim is Dismissed

Plaintiff’s quiet title claim cannot survive for jurisdictional reasons because Plaintiffs are not in possession of the Property. “Peaceable possession by the claimant is a jurisdictional prerequisite of an action to quiet title.” Friedman v. Monaco and Brown Corp., 258 N.J. Super

539, 542 (App. Div. 1992); Hyland v. Kirkman, 204 N.J. Super. 345, 370 (Ch. Div. 1985); N.J.S.A. § 2A:62-1 (providing that “[a]ny person *in the peaceable possession of lands*” may bring a quiet title action) (emphasis added).

Plaintiffs offer nothing to prove their requisite possession of the Property as required by law. In fact, Plaintiffs never allege they are currently in possession of the Property, and 123 Dean Drive LLC has been in possession of the Property to the exclusion of all others since January 24, 2019. Accordingly, Plaintiffs cannot establish the jurisdictional prerequisite of peaceable possession to maintain its quiet title claim, which is dismissed.

II. Plaintiffs’ Ejectment Claim is Dismissed

N.J.S.A. § 2A:35-1 et seq. governs a claim for ejectment. See Housing Authority of City of Newark v. West, 69 N.J. 293, 307 (1976) (“N.J.S.A. 2A:35-1 et seq., [is] our statutory substitute for the common law ejectment action”). In order to sustain an action in ejectment, the Plaintiff must either “trace his paper title back to someone who is shown to have been in possession of the [property], or failing in that, must trace his paper title back to the council of proprietors.” Wills v. Windish, 106 N.J. Eq. 449, 451 (Ch. Div. 1930). The title needed to support or defend against an ejectment action is “one which is a present, subsisting, operative legal title” and “[s]uch title must be valid and capable of enforcement by the party holding it[.]” Swift v. Rice, 98 N.J.L. 538, 539 (E. & A. 1923) (defendants’ claim that plaintiff’s deed was fraudulently obtained could not be raised in an ejectment action where plaintiff held a “record or paper title which purports to convey an absolute legal title in the plaintiff”); see also Wilke v. Geohrig, 24 N.J. Misc. 329 (Sup. Ct. 1946). Here, there is no allegation that 123 Dean Drive LLC does not have the proper paper title tracing back to a deed Plaintiff voluntarily gave to 1329 PSR or that the Final Judgment is invalid.

To obtain relief in a quia timet, a plaintiff “must show a title to the relief free from all reasonable doubt[.]” Shotwell v. Shotwell, 24 N.J. Eq. 378, 387 (Ch. 1874); Estate of Gilbert Smith v. Cohen, 123 N.J. Eq. 419, 425-26 (1938). Plaintiffs cannot meet this standard as they cannot challenge the efficacy of the Final Judgment.

a. 123 Dean Drive is a Bona Fide Purchaser for Value without Notice

When one has acquired title to property and has paid valuable consideration therefore, “the purchaser is presumed to be a bona fide purchaser for value without notice until the contrary appears[.]” Reaves v. Egg Harbor, 277 N.J. Super. 360, 365-66 (Ch. Div. 1994) (quoting Venesky v. West Essex Bldg. Supply Co., 28 N.J. Super. 178, 187 (App. Div. 1953)). A bona fide purchaser for value takes title free and clear of outstanding interests. Id. One challenging the rights of a bona fide purchasers for value without notice bears the burden of showing that “title was acquired by the purchaser with notice of an outstanding equity or claim.” Reaves, 277 N.J. Super. at 366 (quoting Venesky, 28 N.J. Super. at 187).

Purchasers are chargeable only with what appears in the record—or a “reasonable” search of title. See Island Venture v. N.J. Dep’t of Env’tl. Prot., 359 N.J. Super. 391, 397 (App. Div. 2003) (noting that “the very purpose of the [Recording] Act is to protect those who have made a ‘reasonable search of the record title’” and “a bona fide purchaser is chargeable only with what appears in the record.”), aff’d, 179 N.J. 485. “A purchaser is not required to go back through his chain of title and inquire of each owner as to whether or not the premises are restricted.” Hammett v. Rosensohn, 46 N.J. Super. 527, 535 (App. Div. 1957).

Here, Plaintiffs’ amended complaint does not allege that 123 Dean Drive had or should have had notice of any alleged improper actions of 1329 PSR via a reasonable search of the title to the Property or otherwise. Further, 123 Dean Drive LLC acquired the Property from PC4 for substantial consideration, in the amount of \$1,400,000, and thus is presumed to be a bona fide

purchaser for value without notice, and taking title free of any claims or interest of Plaintiffs to the Property. See Venetsky, 28 N.J. Super at 187.

123 Dean Drive was entitled to rely on the record title to the Property which would only disclose that Lee transferred to North Sea, that North Sea transferred the Property to 1329 PSR, and that PC4 held title to the Property by virtue of the Final Judgment. There is nothing in those documents which gave any notice as to Plaintiffs' claims.

b. PC4 was a Bona Fide Purchaser for Value Without Notice and 123 Dean Drive Stands in Their Shoes as a Bona Fide Purchaser Without Notice

Plaintiff makes no allegation that 123 Dean Drive LLC's grantor, PC4, had any notice of Plaintiffs' claim to the Property. Thus, PC4, which paid \$144,916.51 to acquire a tax certificate, foreclose, and acquire the Property, is a bona fide purchaser for value without notice of the Plaintiffs' claims. Plaintiff voluntarily dismissed PC4 and its assignor Pro Cap from this matter, rather than waiting for the Court's decision on PC4's and Pro Cap's motions to dismiss asserting their status as bona fide purchasers for value without notice.

In the event that 123 Dean Drive LLC did have notice of any wrongdoing on behalf of 1329 PSR, 123 Dean Drive LLC would stand in the shoes of PC4, whose title to the property is free from any claims of Plaintiff. See Henninger v. Heald, 52 N.J. Eq. 431, 439 (Ch. 1894), aff'd, 53 N.J. Eq. 694 (E. & A. 1895); see also Eckman v. Beihl, 116 N.J.L 308, 319 (Sup. Ct. 1936) ("The title of a bona fide purchaser is transmittable to his vendee, regardless of the latter's knowledge of the facts. Any other rule would restrict the innocent purchaser to selling to such persons who had notice of the situation and would seriously affect the value of the title.").

Thus, because PC4 is presumed to be a bona fide purchaser for value without notice of Plaintiffs' claims, and Plaintiffs have not asserted to the contrary, 123 Dean Drive LLC's title to

the property is free of plaintiffs' claims regardless of whether 123 Dean Drive LLC had notice. Therefore, Plaintiffs' ejectment claim must be dismissed.

c. Plaintiffs' Claim that 123 Dean Drive May Have Participated in Fraud is Without Merit

Plaintiffs' argument that 123 Dean Drive LLC may still be liable to the Plaintiffs, if somehow 123 Dean Drive LLC had actual knowledge of the fraudulent nature of the deeds and nevertheless cooperated with 1329 PSR in consummating the transfer of the fraudulently obtained properties, is without merit. To withstand a motion to dismiss, speculative and conclusory allegations are insufficient. Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 (App. Div. 2012); see also Camden Cty. Energy Recovery Assocs., L.P. v. New Jersey Dept. of Env'tl. Prot., 320 N.J. Super. 59, 64 (App. Div. 1999), Aff'd o.b. 170 N.J. 246 (2001) ("Discovery is intended to lead to facts supporting or opposing an asserted legal theory; it is not designed to lead to formulation of a legal theory.").

Plaintiff's First Amended Verified Complaint makes no allegations that 123 Dean Drive LLC knew of or participated in any nefarious conduct with any of the other defendants. Plaintiffs only alleged that they were not paid the entirety of the consideration they were entitled to, and that the property was later transferred to 123 Dean Drive LLC. In fact, 123 Dean Drive LLC was formed in 2018, and Plaintiffs executed the 1329 PSR Deed in 2013. Plaintiffs have also failed to allege that 123 Dean Drive LLC made any misrepresentations to them or that it owed them a duty to speak, or even that plaintiffs and 123 Dean Drive LLC had any interactions or communications. Without such claims in Plaintiffs Counsel's Certification, there is no more than an unsupported legal conclusion that cannot stand a motion to dismiss. See Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997) (to plead a fraud claim, a plaintiff must assert: "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by

the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages.”). Thus, because Plaintiffs’ allegations do not “set forth with specificity, nor do they constitute as pleaded, satisfaction of the elements of legal or equitable fraud[,]” Plaintiffs claim must be dismissed. Levinson v. D’Alfonso & Stein, 320 N.J. Super. 312, 315 (App. Div. 1999).

III. Plaintiff’s Claim is an Improper Collateral Attack on the Foreclosure Action

By challenging 123 Dean Drive LLC’s title to the Property, Plaintiffs are challenging the title 123 Dean Drive LLC acquired from PC4 and the Final Judgment from which it derives. Given this Court’s finding that 123 Dean Drive LLC is a bona fide purchaser, any such challenge to the Final Judgment is untimely and improper. See Hyland v. Kirkman, 204 N.J. Super. 345 (Ch. Div. 1985) (“The court is satisfied that notwithstanding the striking of every single basis of title from [fraudulent tax foreclosures, parties were] bona fide purchaser[s] for value without notice and [their] title [...] cannot be disturbed.” And “the parties had no actual or constructive knowledge of fraud [...] There is no allegation that they knew of or participated in any of the [...] machination.”).

IV. Plaintiff Cannot Assert an Unjust Enrichment Claim

Plaintiffs apparently seek to assert an unjust enrichment claim although failed to plead to such in their Complaint. Unjust enrichment doctrine requires that plaintiff show that it expected remuneration from the defendant at the time it performed or conferred a benefit on defendant and that the failure of remuneration enriched defendant beyond its contractual rights. VRG Corp. v. GKN Realty Corp., 135 N.J. 539, 554 (1994); See Callano v. Oakwood Park Homes Corp., 91 N.J. Super. 105, 108 (App. Div. 1996) (“A plaintiff is not entitled to employ the legal fiction of quasi-contract to ‘substitute on promisor or debtor for another.’”). Here, 123 Dean Drive has no dealings with Plaintiff, and none are alleged. To the extent that Plaintiff is harmed by other

parties, it should seek remedy from those parties. Plaintiffs unjust enrichment claim is dismissed.

CONCLUSION

For the aforementioned reasons, Defendant 123 Dean Drive LLC's Motion to Dismiss is **GRANTED.**