

No. 1-12-0744

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LLC 1 403103023 and LLC 1 403103023, BD,)
)
) Appeal from
) Plaintiffs-Appellants,) the Circuit Court
) of Cook County
)
) v.)
) No. 11 CH 28512
)
) U.S. BANK, N.A.,)
)
) Defendant-Appellee.) Honorable
) LeRoy K. Martin,
) Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Quinn and Simon concurred in the judgment.

ORDER

Held: Suit to quiet title properly dismissed where LLCs' purported deeds were recorded after the lis pendens on the property was recorded, and therefore LLCs would have been bound by the foreclosure judgment in favor of U.S. Bank.

¶ 1 LLC 1 403103023 and LLC 1 403103023 BD (LLCs) filed a quiet-title claim against U.S. Bank, N.A. (U.S. Bank). U.S. Bank filed a section 2-619.1 motion to dismiss the claim on the bases that (1) a lis pendens notice had been recorded prior to any purported transfer to the LLCs,

(2) affirmative matter disproved the LLCs' assertion that their predecessors-in-interest owned the property at the time the foreclosure proceedings were initiated, and (3) the LLCs failed to plead the elements required for a suit to quiet title. The trial court granted U.S. Bank's motion and dismissed the quiet title claim with prejudice. The LLCs now appeal.

¶ 2

I. BACKGROUND

¶ 3 On August 11, 2011, the LLCs filed a "Complaint to Quiet Title" of the subject property, located at 210 Cottonwood Road, Northbrook, Illinois, against U.S. Bank. In the complaint, the LLCs alleged that U.S. Bank was the grantee in a deed recorded in Cook County that arose from a foreclosure. The LLCs alleged that at the time of the foreclosure, Dragan Dobobrov was not the title holder of the subject property, but rather that a "combination of Branco Dobobrov and Bosko Dobobrov were the title holders and they have deeded their interest to [the LLCs]." The LLCs requested that title be vested in either of them or the two of them together. Attached to the complaint was a quit claim deed of the subject property from the grantor, Bosko Dobobrov, to LLC 1 403103023BD, which had been executed on May 29, 2009. Also attached to the complaint was another quit claim deed of the subject property from Branco Dobobrov, the grantor, to LLC 1 403103023, which had been executed on May 29, 2009.

¶ 4 On October 21, 2011, U.S. Bank filed a section 2-619.1 motion to dismiss. U.S. Bank alleged that public records indicated that the LLCs' predecessors were not Branco Dobobrov and Bosko Dobobrov, but rather Dragan Dobobrov. U.S. Bank argued that Dragan Dobobrov owned the property on July 2, 2008, when a notice of foreclosure (lis pendens) was recorded with respect to the mortgage foreclosure lawsuit that had been filed on July 1, 2008. U.S. Bank

contended that the LLCs' quit claim deeds were not recorded until May 29, 2009, well after the lis pendens was recorded, and also that Dragan, not Bosko and Branco, owned the subject property at the time of the foreclosure. U.S. Bank argued that public records clearly established that the LLCs did not have title to the subject property, and since an action to quiet title can only be maintained by a party who holds legal or equitable title to the property that is superior to the alleged claim, the LLCs could not maintain their suit to quiet title.

¶ 5 U.S. Bank additionally alleged that even assuming the LLCs somehow had an interest in the property, the complaint should nevertheless be dismissed because the LLCs are bound by the foreclosure proceeding and the judicial sale deed issued and recorded, because their deeds were recorded after the lis pendens was recorded. U.S. Bank contended that the LLCs' complaint should also be dismissed pursuant to section 2-615 of the Code for making conclusory allegations, unsupported by facts.

¶ 6 Attached to U.S. Bank's section 2-619.1 motion to dismiss were several public records, which established that in 1999, Eileen Kranz deeded the subject property to Bosko Dobobrov by warranty deed. In 2002, Bosko deeded the subject property to Bosko and Branco by quit claim deed. In 2003, Bosko and Branco deeded the subject property to Branco by quit claim deed. In 2005, Branco deeded the subject property to Dragon Dobobrov by warranty deed. In 2006, Dragon Dobobrov deeded the property to "Dragan" Dobobrov by quit claim deed. The lis pendens, was recorded on July 2, 2008, indicating that a foreclosure action against Dragan Dobobrov had been filed on July 1, 2008, by U.S. Bank.

¶ 7 The LLCs responded to U.S. Bank's motion to dismiss, contending that the LLCs

obtained their title from "Branco and/or Bosko Dobobrov" and that they are not bound by the judicial deed because neither Bosko nor Branco were named in the foreclosure case.

¶ 8 U.S. Bank, in its reply in support of its section 2-619.1 motion to dismiss, maintained that because the LLCs recorded their deeds more than 10 months after the lis pendens was recorded, they are bound by the foreclosure proceedings, as if they had been a party to the foreclosure lawsuit.

¶ 9 A hearing was purportedly held on U.S. Bank's motion to dismiss, but no hearing transcript appears in the record. On February 9, 2012, the trial court entered an order granting U.S. Bank's motion to dismiss the LLCs' claim to quiet title, on the grounds that the LLCs' deeds were recorded after the lis pendens was recorded and the LLCs were therefore bound by all orders entered in the foreclosure proceeding. The LLCs' complaint was dismissed with prejudice. The LLCs now appeal.

¶ 10 II. ANALYSIS

¶ 11 On appeal, the LLCs contend that the foreclosure action did not transfer title to U.S. Bank because Dragan Dobobrov did not have title to the property when it was foreclosed. The LLCs contend that instead, Branco and Bosko Dobobrov held title at the time of the foreclosure, which was subsequently transferred to the LLCs. The LLCs therefore contend that title should be quieted in their favor, as they have superior interests over U.S. Bank.

¶ 12 *Standard of Review*

¶ 13 Section 2-619.1 of the Code of Civil Procedure (Code), permits a party to combine a section 2-619 motion to dismiss based upon certain defects or defenses, with a section 2-615

motion to dismiss based upon a plaintiff's substantially insufficient pleadings. 735 ILCS 5/2-619.1 (West 2010). It is proper for a court when ruling on a motion to dismiss under either section 2-615 or section 2-619 to accept all well-pleaded facts in the complaint as true and to draw all reasonable inferences from those facts in favor of the nonmoving party. *Edelman, Combs and Latturner v. Hinshaw and Culbertson*, 338 Ill. App. 3d 156, 164 (2003). Our review is *de novo* for motions to dismiss brought under both section 2-615 and 2-619. *Id.*

¶ 14 While U.S. Bank's combined motion was based on two grounds, under both section 2-619 and section 2-615, the trial court dismissed the LLCs' complaint with prejudice based on U.S. Bank's section 2-619 ground alleging that the LLCs' deeds were recorded after the lis pendens was recorded, and that the LLCs were therefore bound by all orders entered in the foreclosure proceeding. Section 2-619 provides for involuntary dismissal based upon certain defects or defenses. *Id.* Section 2-619(a)(9) provides for involuntary dismissal of a cause of action where the claim asserted is barred by other affirmative matter avoiding the legal effect or defeating the claim. 735 ILCS 5/2-619(a)(9) (West 2010). A court may take judicial notice of facts when addressing a section 2-619 motion to dismiss. *Village of Riverwoods v. BG Ltd. Partnership*, 276 Ill. App. 3d 720, 724 (1995). "Judicial notice is proper where the document in question is part of the public record and where such notice will aid in the disposition of a case." *Id.*

¶ 15 *Dismissal of Quiet Title Claim*

¶ 16 Turning to the merits, we must now determine whether the trial court properly dismissed the LLCs' quiet title claim against U.S. Bank with prejudice pursuant to section 2-619, on the grounds that the LLCs' deeds were recorded after the lis pendens was recorded, and that the LLCs

were therefore bound by all orders entered in the foreclosure proceeding.

¶ 17 "Lis pendens" means a pending suit. *Admiral Builders Corp. V. Robert Hall Village*, 101 Ill. App. 3d 132, 135 (1981). Under the common law doctrine, and as originally codified by Illinois statute in 1917, anyone who purchased or otherwise acquired an interest in property involved in litigation took such interest subject to the outcome of the litigation as if he had been a party thereto from the outset. *Id.* at 135-36. The mere filing of a complaint affecting or involving real property served as constructive notice to any subsequent purchaser that such property was subject to pending litigation. *Id.* at 136. In 1963, the Illinois legislature acted to relieve the burden placed on third-party purchasers and amended the 1917 statute to provide that the lis pendens doctrine would not take effect until notice of a pending lawsuit was filed with the office of the recorder of deeds in the county where the real estate was located. *Id.*

¶ 18 "One purpose of lis pendens is the avoidance of endless litigation of property rights precipitated by transfers of interest." *Admiral Builders*, 101 Ill. App. 3d at 136. "This end is achieved by conclusively binding one who obtains an interest in the property during the pendency of a suit affecting it to the result of that litigation as if he had been a party from the outset." *Id.* "In this respect the filing of lis pendens notice is designed to protect a plaintiff from third persons who might acquire, during the pendency of litigation, interest in the subject matter of the litigation such as would preclude the court from granting the plaintiff the requested relief." *Id.* Additionally, the doctrine protects purchasers by giving them notice that the land which they are buying might be affected by a judgment later entered in a pending action, "by which they would be bound." *Id.* at 137.

¶ 19 In the case at bar, there is no dispute that a lis pendens, giving notice of a foreclosure action on the subject property, was recorded on July 2, 2008. There is also no dispute that a transfer of title by quit claim deed was executed on May 29, 2009, from Branco and Bosko Dubobrov to the LLCs. U.S. Bank maintains that Branco and Bosko did not have authority to transfer title at that time since any interest they had in the property had been transferred to Dragon Dobobrov in 2006, and that the LLCs therefore did not have standing to bring a quiet title claim in this case. Regardless of whether Branco and Bosko had an interest in the property at the time the foreclosure proceedings began, or whether the LLCs lacked standing to bring the quiet title action, the lis pendens on the subject property was recorded on July 2, 2008, more than 10 months before the purported transfer of property to the LLCs. Accordingly, even if the LLCs properly acquired interest in the property at that time, they were on notice from the lis pendens that the land in which they were acquiring interest in might be affected by a judgment in the pending action, "by which they would be bound." *Admiral Builders*, 101 Ill. App. 3d at 137. The LLCs, had they actually acquired interest by the May 2009 quit claim deeds, would be bound by the foreclosure judgment "as if they had been [parties] thereto from the outset." *Id.* at 135. We therefore find that the LLCs are bound by the judgment in the foreclosure action, and that the suit to quiet title was properly dismissed by the trial court.

¶ 20

III. CONCLUSION

¶ 21 The judgment of the circuit court of Cook County is affirmed.

¶ 22 Affirmed.