FIRST DIVISION
September 21, 2015

No. 1-15-0015
2015 IL App (1st) 150015-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KONSTANTINOS D. ANTONIOU, Plaintiff-Appellant, v. HEARTLAND BANK AND TRUST COMPANY, an Illinois state bank, as successor assignee of WESTERN SPRINGS NATIONAL BANK AND TRUST, N.A., a failed banking association, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 14 CH 06223 Honorable Rodolfo Garcia, Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justice Cunningham concurred in the judgment; Justice Delort concurred in part and dissented in part.

ORDER

¶ 1 *Held:* Dismissal of the plaintiff's complaint under section 2-615 to quiet title was proper as the complaint was insufficiently pled and was also an improper collateral attack on a prior foreclosure suit over which the trial court had subject matter jurisdiction.

¶ 2 Plaintiff appeals the dismissal of his complaint to quiet title against Heartland Bank and Trust Company (Heartland), as successor assignee of Western Springs National Bank and Trust, N.A. (WSNB).

¶ 3 **Background**

¶ 4 Plaintiff sought mortgage refinancing from WSNB for real property located at 5521 Central Avenue, Western Springs, Illinois (the Property) and as a condition of refinancing, WSNB required that the Property be conveyed to a WSNB land trust (land trust) and mortgaged to WSNB.

¶ 5 On March 12, 2004, plaintiff and WSNB signed a Trust Agreement known as "Trust Number 4040" stating that "as trustee hereunder, [WSNB] is about to take legal and equitable title" to the Property and "[w]hen the trustee has taken title to the real estate *** the trustee will hold it for the uses and purposes and on the trusts herein stated." WSNB, acting as trustee of the land trust, executed several loan documents on March 12, 2004: a Promissory Note dated March 12, 2004 to lender WSNB in the amount of $303,000.00; an Assignment of Rents dated March 12, 2004, and a Mortgage dated March 12, 2004 to lender WSNB. On March 31, 2004, WSNB executed a Deed in Trust conveying the Property at issue into the land trust. As with any land trust, the trustee had full title to the Property, both legal and equitable. *Chicago Federal Savings & Loan Ass'n v. Cacciatore*, 33 Ill. App. 2d 131, 138-39 (1961). Plaintiff was the sole beneficiary of the land trust, and his interest was a personal property interest only. *Id.*

¶ 6 **Foreclosure Case Against Plaintiff and the Land Trust – 07 CH 16155**

¶ 7 On June 19, 2007 WSNB filed a complaint to foreclose mortgages against plaintiff and the land trust at issue. The lessee of the Property, Kevin Tierney, was not a named defendant in the foreclosure complaint. WSNB prevailed on its complaint and a judgment of foreclosure was

entered in its favor on October 8, 2008. WSNB bought the Property at a sheriff's sale and an order approving the sale as well as an order for possession and deed were entered on March 23, 2010. Plaintiff did not appeal.

¶ 8 **Actions Against Lessee – 07 CH16155 & 12 CH 5680**

¶ 9 Tierney was a lessee of plaintiff who moved into the Property on or about February 4, 2004. On March 31, 2010, Tierney recorded his lease. In April of 2010 after prevailing in the foreclosure case against plaintiff and the land trust, WSNB filed a supplemental petition for possession against Tierney. The trial court granted the supplemental petition in WSNB's favor and the decision was affirmed on appeal. Plaintiff Antoniou was not a party to this supplemental petition and did not join in Tierney's appeal. *Heartland Bank and Trust Co. v. Western Springs Nat'l Bank and Trust*, No. 1-11-0831 (Nov. 23, 2011) (summary order under Ill. S. Ct. R. 23(c)). In 2012, Tierney recorded a notice of exercise of option to purchase per a provision in his lease. In response, Heartland filed a declaratory action requesting that the court declare that Tierney had no interest in the Property. On December 27, 2012, the court held that Tierney had no interest in the Property. Tierney appealed the decision and that matter is pending on appeal in case No. 1-14-2517.

¶ 10 On April 8, 2011, WSNB failed financially, and the Federal Deposit Insurance Corporation (FDIC) was appointed receiver. Heartland acquired WSNB's interest in the Property from the FDIC.

¶ 11 **Plaintiff's Complaint to Quiet Title**

¶ 12 On April 10, 2014, plaintiff Antoniou filed this complaint to quiet title against Heartland (quiet title complaint) alleging that the court presiding over the foreclosure of the Property lacked subject matter jurisdiction. Plaintiff argues that the foreclosure court lacked subject matter

jurisdiction because the mortgage itself was void as WSNB executed the mortgage before all of the following: a) Trust Agreement #4040 was effective and operative; b) the trust had a *res*; c) the trustee was installed; and d) the prospective trustee, the land trust, had any authority or power to act for the trust and convey trust property. In sum, plaintiff complains that the loan documents, including the mortgage, were executed by WSNB on March 12, 2004, which was prior to the execution of the Deed in Trust dated March 31, 2004.

¶ 13 Heartland filed a motion to dismiss plaintiff's quiet title complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code). 735 ILCS 2-615 (West 2012). After a hearing, the trial court granted the motion and dismissed plaintiff's quiet title complaint with prejudice. Plaintiff now appeals.

¶ 14 **ANALYSIS**

¶ 15 On appeal, plaintiff argues that he can challenge the circuit court's subject matter jurisdiction over a prior mortgage foreclosure action in this separate action to quiet title. Plaintiff contends that the circuit court lacked subject matter jurisdiction in the original foreclosure, rendering the orders entered in the foreclosure case void.

¶ 16 Heartland responds that the circuit court did not err in dismissing plaintiff's quiet title complaint as legally insufficient for the following reason: the circuit court presiding over the foreclosure case had subject matter jurisdiction as the circuit courts have the inherent power to hear and determine mortgage foreclosure cases. Therefore, defendant argues, the plaintiff's complaint to quiet title is an improper collateral attack on the final judgment of foreclosure. Heartland further argues that the validity of WSNB's mortgage is not an element of the court's subject matter jurisdiction but rather, an element of WSNB's standing in the foreclosure action, and plaintiff waived any challenge to standing by not raising it in the foreclosure action.

Defendant contends that, even if plaintiff could collaterally attack the circuit court's foreclosure orders for lack of subject matter jurisdiction, the mortgage became valid once the land trust acquired title to the property pursuant to the "after-acquired title" doctrine.[1] Finally, defendant seeks sanctions against plaintiff and his attorney.

¶ 17 Our review of a trial court's dismissal of a cause of action as legally insufficient pursuant to section 2-615 of the Code is *de novo. Ringgold Capital IV, LLC v. Finley*, 2013 IL App (1st) 121702, ¶ 11. In considering a motion to dismiss, the trial court must accept as true all facts well pleaded as well as reasonable inferences which can be drawn from those facts. *Schnidt v. Henehan*, 140 Ill. App. 3d 798, 803 (1986). A court may take judicial notice of public court records where the records will aid in the efficient disposition of a case. *Village of Riverwoods v. BG Ltd. Partnership*, 276 Ill. App. 3d 720, 724 (1995). Whether subject matter jurisdiction exists is also a legal question which we review *de novo*. *In re Luis*, 239 Ill. 2d 295, 299 (2010).

¶ 18 A *prima facie* case to quiet title requires that the party bringing the action must (1) possess good or true title to the property and (2) that title, whether legal or equitable, must be superior to other claimants. *Dudley v. Neteler*, 392 Ill. App. 3d 140, 143 (2009). In other words, an action to quiet title may be maintained only by a party who holds either legal or equitable title to the property that is superior to any alleged cloud or claim. *Reynolds v. Burns*, 20 Ill. 2d 179,

[1] The "after-acquired title doctrine" states that "[i]f any person shall sell and convey to another, by deed or conveyance, purporting to convey an estate in fee simple absolute, in any tract of land or real estate, lying and being in this state, not then being possessed of the legal estate or interest therein at the time of the sale and conveyance, but after such sale and conveyance the vendor shall become possessed of and confirmed in the legal estate to the land or real estate so sold and conveyed, it shall be taken and held to be in trust and for the use of the grantee or vendee; and the conveyance aforesaid shall be held and taken, *and shall be as valid as if the grantor or vendor had the legal estate or interest, at the time of said sale or conveyance*." (Emphasis added.) 735 ILCS 5/7 (2012).

193 (1960). Plaintiff need not establish a perfect title to prevail. *Dudley*, 392 Ill. App. 3d at 143. Here, plaintiff's quiet title complaint does not sufficiently allege good or true title to the Property.

¶ 19 In its order granting a judgment of foreclosure, the circuit court found that the mortgage constituted a "valid lien upon the real estate which is prior, paramount and superior to the rights and interests of all other parties and non-record claimants in and to the property" and that "the rights and interests of all other parties and non-record claimants are subject, subordinate and inferior to the rights of [WSNB]." According to the Illinois Mortgage Foreclosure Law, "the interest in the mortgaged real estate of (i) all persons made a party in such foreclosure and *** shall be terminated by the judicial sale of the real estate, pursuant to a judgment of foreclosure, provided the sale is confirmed in accordance with this Article." 735 ILCS 5/15-1404 (West 2012). Plaintiff never challenged the validity of the mortgage in the original foreclosure action nor did he appeal the original foreclosure action.

¶ 20 Plaintiff now attempts to collaterally attack the judgment of foreclosure and subsequent order approving the sale because those orders were entered in a case over which the trial court had subject matter jurisdiction in direct opposition to *Malone v. Cosentino*, 99 Ill. 2d 29, 32 (1983), which noted that a judgment rendered by a court having jurisdiction over the parties and subject matter "is not open to contradiction or impeachment of its validity, verity, or binding effect, by parties or privies, in any collateral action or proceeding."

¶ 21 Despite arguably having no interest in the Property after the sale was confirmed, plaintiff contends he has sufficiently alleged an interest in the Property in this suit to quiet title because the orders entered by the circuit court in the original mortgage foreclosure action are void for lack of subject matter jurisdiction. Plaintiff claims that the timing of the execution of loan documents from the land trust divested the circuit court of jurisdiction because the documents

were executed before the deed in trust was executed and effective. For the following reasons, the circuit court had subject matter jurisdiction over the foreclosure case and therefore, plaintiff cannot sufficiently allege any interest in the Property in this suit to quiet title.

¶ 22 Subject matter jurisdiction refers to the "power of a court to hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A.*, 199 Ill. 2d 325, 334 (2002). Subject matter jurisdiction is conferred entirely by the state constitution and extends to all "justiciable matters." Ill. Const. 1970, art. VI, § 9. A justiciable matter is one that is "definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota*, 199 Ill. 2d at 335. "A judgment entered without subject matter jurisdiction is void and may be attacked at any time, either directly or collaterally." *Zaferopulos v. City of Chicago*, 206 Ill. App. 3d 904, 908 (1990).

¶ 23 In a collateral attack, plaintiff also contends that WSNB disregarded its own Trust Agreement terms and Illinois land trust law by signing the mortgage before it had any trustee authority to do so. Heartland claims that even assuming that Trust Number 4040 did not yet have title to the property at the time it conveyed the mortgage to WSNB, the mortgage became valid once Trust Number 4040 subsequently acquired title. This "after-acquired-title" doctrine is codified in section 7 of the Illinois Conveyances Act (765 ILCS 5/7 (West 2012)).

¶ 24 In this case, plaintiff claims that WSNB signed the mortgage before it had any trustee authority, and that section 7 of the Illinois Conveyances Act cannot remedy WSNB's "ultra vires" signing of the mortgage. Plaintiff's argument is not supported by citation to any appropriate legal authority. As a matter of fact, this is truly a scenario anticipated by the "after-acquired-title" doctrine as codified in section 7 of the Illinois Conveyances Act, and the doctrine

cures any defect in the transaction here. In *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, this court provided careful analysis of the issue of out-of-order deeds. In *Tompkins State Bank v. Niles*, 127 Ill. 2d 209, 218 (1989), our supreme court held that the after-acquired-title doctrine applied to mortgages. As a result, we affirm the trial court's dismissal as to plaintiff's suit to quiet title for failure to state a claim.

¶ 25 **Sanctions**

¶ 26 Heartland requests sanctions pursuant to Supreme Court Rule 375(b) against plaintiff and his attorney. Plaintiff ignores the request in his Reply and fails to respond to defendant's request for sanctions. The rule governing the imposition of sanctions for frivolous appeals, in pertinent part, states:

> "If, after consideration of an appeal or other action pursued in a reviewing court, it is determined that the appeal or other action itself is frivolous, or that an appeal or other action was not taken in good faith, for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or the manner of prosecuting or defending the appeal or other action is for such purpose, an appropriate sanction may be imposed upon any party or the attorney or attorneys of the party or parties. An appeal or other action will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. An appeal or other action will be deemed to have been taken or prosecuted for an improper purpose where the primary purpose of the appeal or other action is to delay, harass, or cause needless expense."

Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). In determining whether an appeal is frivolous, we use an objective standard: the appeal is frivolous "if it would not have been brought in good faith by a

reasonable, prudent attorney." *Penn v. Gerig*, 334 Ill. App. 3d 345, 356 (2002) (citing *Dreisilker Electric Motors, Inc. v. Rainbow Electric Co.,* 203 Ill. App. 3d 304, 312 (1990)).

¶ 27 There is no basis for the plaintiff's quiet title complaint and the appeal. Nothing that plaintiff has included in his briefs on appeal presents an arguable, good-faith basis for the extension, modification, or reversal of existing law. Indeed, many portions of the plaintiff's briefs merely provide general principles of law which are inapplicable to the issue at hand. For example, plaintiff writes that lack of standing is waivable whereas lack of subject matter jurisdiction is not waivable. See Opening Brief, pgs. 17-18; 24-25. But plaintiff fails to present a valid argument for the proposition he asks this court to endorse: that an invalid mortgage is a challenge to subject matter jurisdiction. As a result, plaintiff and his attorney have caused both the circuit court and the appellate court to expend judicial resources in responding to the meritless arguments. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 92. To make matters worse, plaintiff has inexplicably failed to respond to defendant's motion for sanctions.

¶ 28 As discussed above, plaintiff had no interest in the Property after the judgment of foreclosure and confirmation of sale in March of 2010. 735 ILCS 5/15-1504 (West 2012). As plaintiff himself states in his opening brief, the order for possession and deed "was a final order as to Antoniou and the Property." Plaintiff did not appeal that final order. Four years later, plaintiff brought this quiet title complaint alleging "interest" in the Property and he now appeals the dismissal of that complaint.

¶ 29 Despite these multiple shortcomings, we ultimately decline to impose sanctions. We cannot conclude from the record that plaintiff's suit to quiet title and the appeal were prosecuted for an improper purpose as in *Bank of America, N.A. v. Basile*, 2014 Il App (3d) 130204, *Id.* ¶¶

14, 25, 30, 36 (imposing sanctions on the defendants because the defendants created much confusion about the procedural posture of the case and they "simply wanted to remain in possession of the property, for as long as they possibly could, without having to pay."). Rather, we find the quiet title complaint and this appeal were a belated, unsuccessful, and meritless attempt to raise a challenge to the judgment of foreclosure. We strongly caution against similar conduct in the future.

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 31 Affirmed.

¶ 32 JUSTICE DELORT, concurring in part and dissenting in part:

¶ 33 I concur in the majority opinion in full, with the exception of the portion denying sanctions (¶ 29). I would instead issue a rule to show cause why we should not impose appropriate sanctions under Ill. Sup. Ct. R. 375(b), because this appeal "was not taken in good faith, [and] for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

¶ 34 The underlying legal premise of this appeal is absurd. The appellant, a property owner, had every opportunity to litigate his "the mortgage was invalid" defense in the foreclosure case. He did not do so, but instead surfaced years later, claiming the alleged irregularity in the mortgage renders the prior case, which he lost, completely "void." If this were the case, every defendant who failed or neglected to present a defense could come back at any time and undo the first case on the basis that it was void. It most assuredly does *not* create a jurisdictional defect. The ways to rectify an omitted defense are with a motion to vacate or a section 2-1401 petition, not a second lawsuit. About the only reason a judgment can truly be void is for lack of valid service on a party. See, *e. g.*, *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 45.

¶ 35 Additionally, there is hardly a better example of "needless increase" in litigation than that presented here. The same undisputably delinquent loan has now generated three circuit court cases and four separate appeals. All four of the appeals have been prosecuted by the same attorney, who is simultaneously representing both a landlord and a tenant – two parties who, by definition, have opposing interests but are somehow acting in tandem. This representational practice rests on the most tenuous ethical grounds and has arisen in numerous foreclosure appeals. In those cases, it was clear to us that the tenant was not seeking relief in good faith, but was being used as a tool to further the landlord's interest in keeping the property as long as possible by artificially prolonging the litigation. See *U.S. Bank National Ass'n v. Luckett*, 2013 IL App (1st) 113678, ¶ 32 (tenant was a relative of the landlord); *Northbrook Bank & Trust Co. v. 300 Level, Inc.*, 2015 IL App (1st) 142288, ¶¶ 10-11 (tenant had actually relinquished its possessory interest by an agreed court order years earlier and had apparently never moved in the property).

¶ 36 Because I believe that merely "cautioning" the appellant is an insufficient remedy, I must respectfully dissent from the portion of the order denying sanctions.