2012 IL App (3d) 110141-U

Order filed April 19, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

CITY OF GALESBURG, KNOX COUNTY ILLINOIS, a municipal corporation,	)	Appeal from the Circuit Court of the 9th Judicial Circuit, Knox County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-11-0141
v.	)	Circuit No. 07-MR-32
	)	
	)	
POOJA, INC. ,	)	Honorable James B. Stewart,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices O'Brien and Carter concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court correctly held that: (1) the defendant was barred by the doctrine of estoppel from challenging the validity of a preannexation agreement executed by its predecessor in interest; and (2) no statutory deficiencies existed that would void the agreement.

¶ 2 The defendant, Pooja, Inc. (Pooja), appeals from an order of the circuit court of Knox County granting summary judgment to the plaintiff municipality, the City of Galesburg (City), and ordering Pooja to comply with a preannexation agreement executed by its predecessor in

interest to a specific parcel of real estate now owned by Pooja. The trial court found that Pooja was estopped from challenging the validity of the preannexation agreement executed by its predecessor in interest. On appeal, Pooja maintains that: (1) the court erred in finding that it was estopped from contesting the validity of the agreement; (2) the annexed property was not contiguous to the City, did not contain a proper highway boundary, and, thus, was not subject to annexation by the City; and (3) the City was not entitled to a judgment on its complaint because it had failed to give proper notice of the filing of the instant complaint to relevant taxing bodies.

¶ 3 FACTS

¶ 4 Pooja is the current owner of a parcel of unincorporated real estate located adjacent to the City, having purchased the subject property in June 2004. Previously, on October 2, 1996, the owners of the property at the time, Carl A. Carlson, Jr. (also known as Rob Carlson) and his wife, Diana Carlson, entered into a a preannexation agreement with the City. The agreement was signed by Diana Carlson, using the name "Rob Carlson" with the consent and direction of her husband. It is undisputed that Diana Carlson signed the agreement on behalf of her husband and that she did so with his knowledge and consent. Diana did not, however, sign the agreement in her own name.

¶ 5 At the time the agreement was executed, the subject property was outside the municipal limits of the City. Under the terms of the agreement, the City agreed to provide water service to the subject property at a specified cost, and the property owners agreed to seek annexation of the property to the City whenever the property became contiguous to the City's boundaries. The agreement was executed on behalf of the owners and their heirs and assigns.

¶ 6 On October 7, 1996, the city council unanimously approved the agreement. However, the record established that no notice of public hearing on the agreement had been published prior to the meeting. On October 9, 1996, the agreement was recorded in the office of the Knox County Recorder of Deeds. The record established that Pooja had actual knowledge of the agreement at the time it purchased the property.

¶ 7 The record further established that, pursuant to the terms of the preannexation agreement, the City provided, and the Carlsons paid for, water for the subject property. After Pooja acquired title to the property in 2004, it continued to pay the City for water from the date it took possession of the property. In April 2005, the City informed Pooja that the property was now contiguous with the municipal boundaries of the City and requested that Pooja comply with the agreement to annex the property. Pooja refused.

¶ 8 On March 28, 2007, the City filed a complaint seeking to compel Pooja to comply with the agreement regarding annexation of the subject property. The record established that the City did not serve notice of the complaint upon the other taxing bodies. By affidavit of Wayne Carl, the city engineer, the City maintained that the subject property was immediately adjacent to the municipal limits since April 21, 2005. By affidavit of Gloria Osborn, the director of finance for the City, the record established that Pooja had been paying for City water provided to the subject property since October 2003. The complaint was opposed by Pooja, which maintained that the agreement was void and unenforceable. The City moved for summary judgment, which the circuit court granted and ordered Pooja to comply with the terms and conditions of the preannexation agreement. Pooja appealed.

¶ 9 ANALYSIS

¶ 10 The appropriate standard of review of a trial court's granting summary judgment is *de novo*, and our role is to determine if the trial court properly decided that there were no material issues of fact and the judgment was correct as a matter of law. *Bickerman v. Wosik*, 245 Ill. App. 3d 436 (1993).

¶ 11 Pooja maintains that the preannexation agreement was defective as a matter of law in that it was not executed by all holders of title in the property. Pooja points out that Diana Carlson did not execute the agreement in her own name. Pooja then maintains that, in order for a contract to be enforced on the basis of a single signature, it must generally be signed by the party to be charged under the contract and then delivered to the nonsignatory party for acceptance by performance. See *Glabman v. Gouhall*, 81 Ill. App. 3d 966, 969 (1980).

¶ 12 We cannot reach Pooja's claim that the agreement was invalid until we first address the trial court's finding that Pooja was estopped from raising the claim. Normally, questions of estoppel are factual questions; however, summary judgment may be appropriate in such cases if the record establishes no genuine issue of material fact exists as to whether a party is estopped from challenging the validity of a contract. *Floresheim v. Travelers Indemnity Co. of Illinois*, 75 Ill. App. 3d 298, 307 (1979).

¶ 13 A successor in interest is bound by the acts of its predecessor with regard to annexation agreements. *Cummings v. City of Waterloo*, 289 Ill. App. 3d 474, 486 ((1997); *Village of Orland Park v. First Federal Savings & Loan Ass'n of Chicago*, 135 Ill. App. 3d 520, 526 (1985). Moreover, it is well settled that purchasers stand in the place of their grantor and, where a grantor has a right or obligation under an ordinance, the same rights and obligations exist in the

purchaser. *Harmon v. City of Peoria*, 373 Ill. 595, 604 (1940). Thus, if the Carlsons, as Pooja's predecessor in interest, would have been estopped from raising a challenge to the validity of the agreement or the ordinance giving effect to the agreement, Pooja would likewise be estopped from raising those same challenges.

¶ 14 With this in mind, we turn to Pooja's challenge that the agreement was void due to a lack of a signature by Diane Carlson, one of the co-owners of the property at the time the agreement was executed. At issue is whether the Carlsons would have been estopped from raising this challenge in their own right. If the Carlsons would have been precluded from raising this challenge, Pooja, as their successor in interest would likewise be precluded from raising the same challenge. *Harmon*, 373 Ill. at 604.

¶ 15 The doctrine of equitable estoppel is defined as the effect of the voluntary conduct of a party whereby he or she is absolutely precluded, both at law and in equity, from asserting rights which might otherwise have existed as against another person who has, on good faith, relied upon such conduct and has been led thereby to change his position for the worse. *Northern Trust Co. v. Oxford Speaker Co.*, 109 Ill. App. 3d 433, 438-39 (1982). Moreover, a fraudulent intent is not necessary, so long as the position adopted by the party to be estopped reasonably motivates the other party to detrimentally rely upon the actions of the other party. *Shockley v. Ryder Truck Rental, Inc.*, 74 Ill. App. 3d 89, 92 (1978).

¶ 16 Here, Diane Carlson personally executed the agreement, albeit by signing her husband's name only and not her name as well. The record clearly established that the Carlsons desired City water for the subject property and the agreement was executed in order to induce the City to provide water to the property. The record likewise established that the City would only provide

water to the subject property if the owners agreed to the terms and conditions stated in the agreement. Moreover, only after the agreement was executed did the City allow the Carlsons to tap into the City's water main and receive water at the subject location. While the City received payment for the water, it is uncontroverted that, had the agreement not been executed on behalf of the property owners, the City would not have entered into the agreement and would not have provided water to the Carlsons's property. Thus, the requirement that the doctrine of estoppel applies where one party has reasonably relied to its detriment upon the representations of the other party has clearly been met in the instant matter. It is also uncontroverted that the Carlsons received a benefit from the agreement in that their property was supplied with City water, a benefit which they obviously sought when the agreement was executed.

¶ 17 Given the City's reliance upon the purported acceptance by Diane Carlson of the terms of the agreement by virtue of her signature on behalf of her husband, and the fact that the agreement clearly bestowed a benefit upon the Carlsons that they otherwise would not have received, the applicability of the doctrine of equitable estoppel would have precluded the Carlson's from asserting Diane's failure to execute the agreement in her own name as a defense to the agreement. We find, therefore, that the trial court was correct in finding that Pooja was likewise estopped from raising the same defense to the agreement.

¶ 18 Pooja next maintains that the annexation agreement is unenforceable because the city council meeting at which the agreement was accepted by the City was not held pursuant to proper notice. 65 ILCS 5/11-15.1 (West 2008). The City concedes that the meeting was not held with proper public notice; however, it maintains that Pooja is estopped from making this argument since the Carlsons would be estopped from making this same argument. We agree. Pooja cites

no authority, nor are we aware of any authority, which would allow a party to a preannexation agreement to void the agreement based upon public notice deficiencies. Moreover, the purpose of the statutory public notice requirements is to give notice of the annexation and zoning consequences to neighboring property owners, and it would be up to those parties to raise lack of public notice at the annexation proceeding. See *People ex rel. Klaeren v. Village of Lisle*, 316 Ill. App. 3d 770 (2000). Since the Carlsons would not be able to void the agreement based upon lack of notice, Pooja would likewise not be able to raise the same argument.

¶ 19 Pooja next maintains that the agreement is void because the parcel to be annexed is not contiguous to the current city boundaries as required under the Illinois Municipal Code. 65 ILCS 5/7-1-1 (West 2008). We find that the only evidence of record regarding this question is contained in the affidavit of the city engineer, Wayne Carl, who testified that the parcel is "adjacent" to the municipal boundaries. While "adjacent" may not be the same as "contiguous," absent any evidence to create a factual inference that the property was not contiguous, we find no genuine issue of material fact exists as to whether the parcel to be annexed is contiguous to the municipal limits.

¶ 20 Pooja next maintains that the City failed to give notice of the proceedings in the instant matter to the various taxing bodies as required under section 5/7-1-1 of the Municipal Code (65 ILCS 5/7-1-1 (West 2008)). While the City again admits that taxing bodies did not receive notice of its complaint in the instant matter, it maintains that such notice is not required since the complaint was not a statutory annexation proceeding but was merely a complaint for declaratory judgment to enforce the preannexation agreement. We note, however, that even if the statutory notice requirements were applicable to the instant matter, the statute provides that "[f]ailure to

give notice to the required election authorities or post office branches will not invalidate the annexation or disconnection." 65 ILCS 5/7-1-1 (West 2008). Therefore, failure to give notice to the taxing bodies would not permit Pooja to invalidate the agreement.

¶ 21 Pooja lastly maintains that the agreement is unenforceable due to a failure of the proposed annexed property to include "all of every highway within the annexed area." 65 ILCS 5/7-1-1 (West 2008). The City points out that, once a formal annexation petition is presented to the court, the highway at issue will be included in the annexed property. 65 ILCS 5/7-1-1 (West 2008) ("highways shall be considered to be annexed even though not included in the legal description set forth in the petition for annexation"). The City's position is correct. The fact that the legal description included in the annexation agreement may not include all highways purported to be within the annexed area does not void the agreement. The deficiency can be cured during the formal annexation proceedings and would not, therefore, void the agreement.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the circuit court of Knox County is affirmed.

¶ 24 Affirmed.