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NO. 4-11-0647

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE CITY OF SPRINGFIELD, an Illinois Municipal Corporation, Plaintiff-Appellant, v. GLENN GALLOWAY; ELLEN MARIE TANIS, n/k/a MARIE GALLOWAY MARVIN; ROSA LEE STEVENS; and UNKNOWN OWNERS, Defendants-Appellees.	))))))))	Appeal from Circuit Court of Sangamon County No. 08CH1156 Honorable Leo J. Zappa, Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justice Steigmann concurred in the judgment.
Justice Cook dissented.

ORDER

¶ 1 *Held:* Where the City received only a warranty deed from the life-estate holder, the City did not hold legal title to the property at issue.

¶ 2 Where the City's possession of the property met every element of the doctrine of adverse possession and defendants' claim equity prohibited the application of the doctrine was not supported by legal citation, the City held equitable title to the property by adverse possession.

¶ 3 Plaintiff, the City of Springfield (City), appeals the Sangamon County circuit court's April 2011 judgment, denying its motion for summary judgment and granting the summary-judgment motion of defendants, Glenn Galloway; Ellen Marie Tanis, now known as Marie Galloway Marvin; and Rosa Lee Stevens. Specifically, the April 2011 judgment required defendants to execute deeds transferring their interest in a 36.6-acre tract of land (Property) to the City with a reservation regarding the right to repurchase the Property that ran with the land.

¶ 4 On appeal, the City asserts the trial court erred by (1) failing to grant the City's summary-judgment motion, (2) granting defendants' summary-judgment motion, (3) ordering the right to repurchase ran with the land, and (4) ordering the right to repurchase to be enforceable by defendants' heirs, devisees, and assigns. We reverse and remand with directions.

¶ 5 I. BACKGROUND

¶ 6 The Property was originally part of a larger 42.6-acre tract of land owned in fee simple by Thomas A. Jones, defendants' great-grandfather. Jones died in May 1940, and in his will, Jones devised the 42.6-acre tract to his daughter, Annie J. Galloway, "for and during the term of her natural life with remainder to her son, GORDON GALLOWAY, for and during the term of his natural life with remainder to the heirs of said GORDON GALLOWAY." Defendants are the children and heirs of Gordon Galloway. In October 1973, Alice died, and Gordon became the life-estate holder of the 42.6-acre tract.

¶ 7 At some point, the City threatened Gordon with condemnation of the Property so it could obtain the Property for a public water supply known as the Lake Springfield II project. In a July 18, 1974, letter from Daniel L. Bramlet of City Water, Light & Power to Gordon's attorney, Bramlet noted a title company had informed him it was necessary to obtain the signatures of Gordon and his children and their spouses in transferring the Property. The letter proposed having Gordon and his wife, Pauline Galloway, sign a purchase agreement and to have the deed signed by all necessary parties. On August 6, 1974, Gordon and Pauline entered into a purchase agreement for the Property. Under the purchase agreement, Gordon and Pauline were to deliver a warranty deed conveying fee title to the City in exchange for $88,500. Paragraph seven of the agreement provided the following:

> "In the event that the Lake Springfield II project does not become a reality and the City of Springfield elects to dispose of this property, Seller shall have first option purchasing the subject property from the City at the herein disclosed purchase price of Eighty-Eight Thousand, Five Hundred Dollars ($88,500)."

The purchase agreement listed only Gordon and Pauline as sellers and was signed only by them and the City's mayor.

¶ 8 On September 3, 1974, the City issued four checks each in the amount of $22,125 to Gordon and defendants. On September 11, 1974, Gordon and Pauline executed a warranty deed conveying the Property to the City. No other deeds were filed, and defendants did not sign the deed executed by their parents. On April 30, 1976, Gordon, defendants, and defendants' spouses entered into a family settlement agreement, in which they acknowledged Gordon and defendants had sold the Property to the City and the proceeds from the sale were divided equally. In 1983, Gordon died, and Pauline died in December 2001.

¶ 9 On September 26, 2008, the City filed a complaint to quiet title to the Property, seeking to confirm title in the City alone and to enjoin defendants from asserting any estate, right, title, or interest in the Property adverse to the City. The trial court dismissed the complaint without prejudice, and the City filed a first-amended complaint. The court also dismissed the first-amended complaint without prejudice. In April 2009, the City filed its second-amended complaint. The second-amended complaint sought the same relief as the original and asserted the City has not completed the Lake Springfield II project but had not ruled out completing it in the future. It also alleged the parties to the purchase agreement intended defendants execute

deeds conveying their interest in the Property to the City. Since purchasing the property, the City had leased it to various entities for such things as storage, training, and farming. Moreover, the City had paid the real estate taxes for the Property since its purchase.

¶ 10 After the trial court denied defendants' motion to dismiss the second-amended complaint, defendants filed an answer to the second-amended complaint and raised an affirmative defense and a counterclaim. In their affirmative defense, defendants asserted that, if they are to give a deed to the City based on the City's payment to them, then equity requires the deed to contain the option noted in paragraph seven of the purchase agreement. The counterclaim asserted the City should have to commence condemnation proceedings against defendants to acquire fee simple title to the Property.

¶ 11 In January 2011, the City filed its summary-judgment motion, alleging it held both legal and equitable title. The motion also argued the right of first refusal contained in paragraph seven of the purchase agreement was personal in nature and did not pass to defendants upon Gordon's and Pauline's deaths. Defendants filed a response to the City's summary-judgment motion and a cross-motion for summary judgment. In defendants' summary-judgment motion, they again asserted equity requires any deed from them to the City must contain the option noted in paragraph seven of the purchase agreement. Defendants also argued paragraph seven ran with the land and was not personal.

¶ 12 In March 2011, the trial court held a hearing on the cross-motions for summary judgment and took the matter under advisement. On April 12, 2011, the court entered a written order denying the City's motion and granting defendants'. The order required defendants to deliver deeds to the City with the following reservation:

"The Grantor RESERVES for himself, his heirs, devisees and assigns, and by acceptance of this Deed the Grantee GRANTS, a first and absolute right to repurchase the subject Real Estate from the City of Springfield, Illinois, at the purchase price of $88,500, (reduced proportionately for the interest herein conveyed) upon the same terms as the first 4 paragraphs of the Purchase Agreement between the City and Gordon Galloway dated August 6, 1974, within thirty (30) days of the happening of the following two events:

(1) That the Lake Springfield II Project does not become reality; and

(2) That the City of Springfield elects to dispose of the property."

The order also provided the right to repurchase shall run with the land and awarded defendants costs and reasonable attorney fees.

¶ 13 On May 12, 2011, the City filed a motion to reconsider. After a June 22, 2011, hearing, the trial court granted the motion to reconsider as to the attorney fees and vacated the portion of the April 2011 order awarding attorney fees. The court otherwise denied the City's motion.

¶ 14 On July 22, 2011, the City filed a timely notice of appeal in compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008), seeking review of the trial court's granting defendants' motion for summary judgment and denying its motion. We note that, while the

denial of a summary-judgment motion is ordinarily not alone a final and appealable order, we can review such an order if the appeal from that order is brought in conjunction with the appeal from the order granting a cross-motion for summary judgment on the same matter. *Fremont Casualty Insurance Co. v. Ace-Chicago Great Dane Corp.*, 317 Ill. App. 3d 67, 72-73, 739 N.E.2d 85, 89 (2000). Accordingly, we have jurisdiction of this cause under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 15 II. ANALYSIS

¶ 16 In this case, plaintiff appeals the trial court's rulings on cross-motions for summary judgment. A grant of summary judgment is only appropriate when the pleadings, depositions, admissions, and affidavits demonstrate no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010); *Williams v. Manchester*, 228 Ill. 2d 404, 417, 888 N.E.2d 1, 8-9 (2008). " 'As in this case, where the parties file cross-motions for summary judgment, they invite the court to decide the issues presented as a matter of law.' " *A.B.A.T.E. of Illinois, Inc. v. Giannoulias*, 401 Ill. App. 3d 326, 330, 929 N.E.2d 1188, 1192 (2010) (quoting *Liberty Mutual Fire Insurance Co. v. St. Paul Fire & Marine Insurance Co.*, 363 Ill. App. 3d 335, 339, 842 N.E.2d 170, 173 (2005)). We review *de novo* the trial court's ruling on a motion for summary judgment. See *Williams*, 228 Ill. 2d at 417, 888 N.E.2d at 9.

¶ 17 The City first asserts the trial court erred by denying its summary-judgment motion. In its summary-judgment motion, the City argued it held both legal and equitable title to the Property.

¶ 18 A. Legal Title

¶ 19 The City asserts it has legal title to the Property based on the warranty deed from Gordon and Pauline, the purchase agreement, and family-settlement agreement.

¶ 20 The undisputed facts show Gordon only inherited a life-estate in the Property. "It is basic property law that a life estate holder cannot convey a greater interest in the property than is possessed by the life estate holder." *Jones v. Hendricks*, 103 Ill. App. 3d 1071, 1073, 431 N.E.2d 1361, 1363 (1982). Thus, while the City is correct it received fee simple color of title to the Property under the warranty deed (see *Belunski v. Oakes*, 6 Ill. 2d 176, 178, 128 N.E.2d 689, 690 (1955)), the actual legal interest the City received under the deed was a life estate. The City seems to confuse legal title and color of title, and thus we note those two terms are not the same. See *Dotson ex rel. Dotson v. Former Shareholders of Abraham Lincoln Land & Cattle Co.*, 332 Ill. App. 3d 846, 855, 773 N.E.2d 792, 801 (2002) (noting presumptions exist in favor of the legal titleholder but not holder of mere color of title); see also *Lewis v. Pleasants*, 143 Ill. 271, 286, 30 N.E. 323, 328 (1892) (explaining color of title). The City appears to argue the purchase agreement and family-settlement agreement show they, in fact, received fee simple legal title to the Property. However, the City cites no legal authority demonstrating legal title to real property can be established by those types of documents. Those documents merely show the parties intended the City to receive fee simple title to the property, not that they did, in fact, receive such legal title. Accordingly, the City failed to show it had legal fee simple title to the Property.

¶ 21 B. Equitable Title

¶ 22 The City also asserts it has equitable title of the Property under the doctrine of adverse possession. Under Illinois law, a municipality may acquire title by adverse possession. See *Miner v. Yantis*, 410 Ill. 401, 405, 102 N.E.2d 524, 526 (1951); *Drainage District # 1 v.*

Village of Green Valley, 69 Ill. App. 3d 330, 335, 387 N.E.2d 422, 426 (1979).

¶ 23 To establish title by adverse possession under the 20-year statute (735 ILCS 5/13-101 (West 2008)), the party asserting adverse possession must establish possession of the property for the entire statutory period and that possession must have been "(1) continuous; (2) hostile or adverse; (3) actual; (4) open, notorious, and exclusive; and (5) under claim of title inconsistent with that of the true owner." *Gacki v. Bartels*, 369 Ill. App. 3d 284, 292, 859 N.E.2d 1178, 1186 (2006). "All presumptions are in favor of the title owner, and the party claiming title by adverse possession must prove each element by clear and unequivocal evidence." *Knauf v. Ryan*, 338 Ill. App. 3d 265, 269, 788 N.E.2d 805, 808 (2003). The undisputed facts show the City had been openly acting as the owner of this property since the warranty deed was executed, including leasing the Property to third parties. Citing *Leonard v. Leonard*, 369 Ill. 572, 576, 17 N.E.2d 553, 555 (1938), defendants assert the City cannot establish the hostility-adversity element because the possession must be hostile at its inception. However, with life estates conveyed under facts similar to this one, our supreme court has held continued possession after the death of the person holding the life estate is adverse to the remaindermen. *Gibbs v. Gerdes*, 291 Ill. 490, 497-98, 126 N.E. 155, 157 (1920). Specifically, the supreme court has noted the following:

> " 'When a person enters under a deed from the person who holds the life estate, which on its face conveys an estate in fee, and when the grantor intends to convey the fee and the grantee supposes he is getting a conveyance of the fee, the person entering under such deed holds, in fact, adversely to all the world; but he cannot avail

> himself of the rights of an adverse possession, under the statute, as against the remainder-man, during the life of the owner of the life estate, but immediately upon the death of the person holding the life estate such possession, if continued, becomes adverse to the remainder-man.' " *Gibbs*, 291 Ill. at 497-98, 126 N.E. at 157 (quoting *Weigel v. Green*, 218 Ill. 227, 236, 75 N. E. 913, 916-17 (1905)).

In this case, Gordon, the life-estate holder, passed away in 1983, and the City continued to exercise control over the Property. During the 20 years after their father's death, defendants never asserted any rights or claims to the Property. Under the undisputed facts, the City proved all of the elements of adverse possession.

¶ 24 However, defendants argue the City cannot defeat its contractual obligation under the doctrine of adverse possession. Yet, defendants fail to explain how the City owes them a contract obligation. They do not argue an actual contract existed between them and the City or that, for example, they too were "sellers" in the purchase agreement as shown by extrinsic evidence under a latent-ambiguity argument. Without citation to legal authority, defendants simply assert equity demands they have the right to enforce paragraph seven of the purchase agreement because if they had signed a written contract, it would have been the same as their father's. Moreover, without citation to any facts, defendants suggest the lack of deeds from them is the City's fault. However, the undisputed facts show the City completed the contract with Gordon and Pauline and also paid defendants for their interests. No evidence shows the City failed to complete a contract. To the contrary, it was defendants who failed to complete any

contract that may have existed as they failed to convey their remainder interests to the City. The City no longer needs defendants to complete their part of any contract because it has obtained equitable title under the doctrine of adverse possession. Additionally, we note defendants do not assert their equity argument creates a genuine issue of material fact. For the aforementioned reasons, we find defendants' equity argument does not defeat the City's establishment of adverse possession.

¶ 25 Accordingly, the City established equitable title to the Property under the doctrine of adverse possession, and the trial court erred by denying the City's motion for summary judgment and granting defendants'. Since we have found the City is entitled to legal title to defendants' remainder interest in the Property under the doctrine of adverse possession and not under any agreement, we need not address the City's remaining arguments regarding paragraph seven of the purchase agreement.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we reverse the Sangamon County circuit court's judgment and remand the cause for the court to enter an order, granting the City's summary-judgment motion and denying defendants'.

¶ 28 Reversed and remanded with directions.

¶ 29 JUSTICE COOK, dissenting:

¶ 30 The trial court's order accurately sets out the facts of this case. Gordon L. Galloway held a life estate in the real estate in question, and his children, the defendants herein, held the remainder. On August 6, 1974, Gordon entered into a purchase agreement with the City of Springfield. The purchase agreement, in the event that the City elected to dispose of the property, gave seller the first option of purchasing the property, for the purchase agreement price of $88,500. The parties intended that the children would execute deeds conveying their remainder interest, but no such deeds have been recorded. The City, recognizing the children's interest, paid one-quarter of the cash purchase price to each of the children.

¶ 31 In 2007, one of the children, Marie, made an inquiry with the City's Office of Public Utilities as to their option rights. As a result, the City filed an action to quiet title on the basis that it holds legal title based on the transaction in 1974, as well as equitable title under the doctrine of adverse possession. The children have offered to execute deeds conveying their remainder interest, in accordance with the purchase agreement. The trial court found that offer to be proper, "and the City's compliance therewith would be in fulfillment of the full consideration to be paid by the City for the land under said Purchase Agreement." The trial court also found that the "children, as remaindermen, are entitled to the Paragraph 7 additional repurchase consideration to the same extent as their father the life tenant."

¶ 32 The majority cites *Gibbs v. Gerdes* for the proposition that "continued possession after the death of the person holding the life estate is adverse to the remaindermen." *Supra*, ¶ 23. *Gibbs*, however, was a case where the remaindermen were not involved in the conveyance, and had an absolute right to the property upon the death of the life tenant. In the present case, the

remaindermen were involved in the conveyance. In the present case, it was intended that the remaindermen convey their right to the property, retaining only a first option to purchase. The City's possession of the real estate, after the death of the life tenant, was not adverse to the rights of the children—it was in compliance with the agreement between the parties. The City's possession would become adverse only if it failed to honor the option to purchase. The majority's decision allows the City to ignore its obligations, specifically set out, in the purchase agreement it entered into.

¶ 33 The majority states that "it was defendants who failed to complete any contract that may have existed as they failed to convey their remainder interests to the City." Supra, ¶ 24. In real estate transactions, however, it is usually the buyer who reviews the deeds and insures that everything necessary has been done to protect the title. The trial court found that the City knew of the children's interest before closing. The City chose for the Galloways to sign the purchase agreement on behalf of their children. Daniel L. Bramlet, Assistant Supervisor of the Land Management and Real Estate, Department of City, Water, Light and Power, wrote the following letter, dated July 18, 1974, to sellers' attorney:

> "Dear Ed:
>
> Lincoln Land Title and Abstract Company has informed us that it is necessary to obtain the signatures of Mr. Galloway and his children and their spouses. In order to expedite this transaction, I think it would suffice if Mr. and Mrs. Galloway would sign the Purchase Agreement and before closing this transaction, the Deed could be signed by all the necessary parties. If

this is satisfactory with you, please have Mr. and Mrs. Galloway sign the enclosed Purchase Agreement and we will present it to the City Council next week."

¶ 34 We should affirm the trial court's judgment.