

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0739

September Term, 2014

THANH HOANG, et ux.

v.

GARY A. ROSEN, et al.

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: November 12, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from the question of who owns 949 Selim Road in Silver Spring, Maryland, which is currently improved by a single bay auto repair shop. Appellants, Minh Vu Hoang and Thanh Hoang, think that they, in their individual capacities, own an interest in the property as the result of a deal with the Lee-Hsu Family Living Trust (the “Lee-Hsu Trust” or simply, the “Trust”). The appellee, Gary A. Rosen, is the Hoangs’ Chapter 7 bankruptcy trustee, as well as the bankruptcy trustee of a business that the Hoangs owned, Minbilt Realty. Rosen’s position is that the property was a part of Minbilt Realty’s bankruptcy estate, and title to the property should have passed to Minbilt Realty’s creditors in the bankruptcy. To the extent that title didn’t pass, Rosen argues, it was the result of a clerical mistake only.

We will not reach the merits of this dispute in this appeal for two procedural reasons. First, an interpleader is not the correct procedural vehicle for resolving a dispute of this nature. And second, the issue of the ownership of 949 Selim Road was previously finally decided in another litigation from which no appeal was taken. Given these insurmountable barriers to the Hoangs’ litigation objectives, dismissal of the interpleader was appropriate. And we affirm.

FACTUAL BACKGROUND

Minh Vu Hoang and Thanh Hoang are the owners of Minbilt Realty. In 1995, its creditors forced Minbilt Realty and the Hoangs, individually, into involuntary Chapter 7

bankruptcy.¹ Gary Rosen was appointed to serve as the bankruptcy trustee for each of the bankruptcy estates. Rosen discovered that the deed for 949 Selim Road, which he believed to be a part of Minbilt Realty's bankruptcy estate, was still in the name of a prior owner, 8030 Georgia Limited Partnership.

The recent history of title to the property is convoluted:

1. Proceedings to foreclosure on the property at 949 Selim Road, owned by 8030 Georgia Limited Partnership, are instituted in 1996;
2. Osher Inc., owned by Thanh Hoang, buys the property at the foreclosure sale;
3. At Osher Inc.'s request, the circuit court substitutes Lemin LLC as the purchaser of the property;
4. Lemin LLC backs out of the transaction and the circuit court substitutes the Lee-Hsu Family Living Trust as the purchaser in Lemin LLC's place;²
5. Osher Inc., the original purchaser, requests to substitute Minbilt Realty as the purchaser;
6. The circuit court enters an Order substituting Minbilt Realty as the purchaser and ordering the substitute trustees of 8030 Georgia Limited Partnership to convey title; and
7. The substitute trustees fail to execute a deed transferring the property. As a result, 8030 Georgia Limited remains the owner of record.

¹ In their brief, the Hoangs assert that they originally petitioned for Chapter 11 bankruptcy, which was then converted to Chapter 7 bankruptcy.

² The Hoangs also allege that around the same time, they formed agreements with Lee-Hsu by which they would receive 50% ownership of 949 Selim Road in exchange for managing, maintaining, and rehabilitating the property.

Under Rosen’s theory, Minbilt Realty was, by virtue of the circuit court’s Order described at step 6, the owner of the property, and he just needed to have title transferred to conform to that understanding. And, by so doing, Rosen would make the value of 949 Selim Road available to Minbilt Realty’s creditors. The Hoangs, by contrast, wanted to argue that the Lee-Hsu Trust retained title, either because (at step 5, above) Osher Inc. lacked the capacity to request the substitution of Minbilt Realty; or because (at steps 6 and 7, above) Minbilt Realty failed to close. Either way, the Hoangs wanted to argue that the Lee-Hsu Trust retained title and that their claims for ownership through the Trust, are personal and post-bankruptcy.

To effectuate his theory, in 2013 Rosen filed a motion in the Circuit Court for Montgomery County to reopen the original 1996 foreclosure case (the “foreclosure case”). The circuit court complied and ordered the case to be reopened. Rosen then filed a motion to compel the substitute trustees of 8030 Georgia Limited Partnership to transfer 949 Selim Road to Minbilt Realty to conform to his understanding that Minbilt Realty was the purchaser of the property. The Hoangs filed a motion to intervene in the reopened foreclosure case. Eventually, Judge Joseph A. Dugan, Jr. entered two orders in the foreclosure case. The first of Judge Dugan’s orders required the substitute trustees to prepare and execute a deed transferring 949 Selim Road to Minbilt Realty. The second of Judge Dugan’s orders denied the Hoangs’ motion to intervene because he determined that they had no personal interest in the property. No appeal was sought and that decision became final.

In February of 2014, however, before the conclusion of the foreclosure case, the Hoangs filed a separate complaint for interpleader in the Circuit Court for Montgomery County (the “interpleader case”). In the interpleader case, the Hoangs alleged that they and Rosen, in his capacity as bankruptcy trustee for Minbilt Realty, had competing interests in 949 Selim Road, and that, therefore, the court should order the substitute trustees to deposit the deed to the property in the court’s registry and then allow the Hoangs and Rosen to litigate their respective claims for ownership of the property.³ Rosen filed a motion to dismiss the interpleader case for failure to state a claim. At the hearing on Rosen’s motion to dismiss the interpleader case, before Judge Joseph M. Quirk, Rosen presented the two orders signed by Judge Dugan in the foreclosure case.⁴ After considering Judge Dugan’s orders, Judge Quirk dismissed the Hoangs’ complaint for interpleader. The trial court also denied the Hoangs’ motion for a new trial. The Hoangs then noted a timely appeal of Judge Quirk’s decisions.

ANALYSIS

I. Allegations of Error Related to the Foreclosure Case

The Hoangs raise numerous allegations of error related to the proceedings in the foreclosure case. These allegations include: (1) that Rosen did not serve the Hoangs with the motion to reopen the foreclosure case; (2) that Rosen concealed evidence from the court

³ The Hoangs also alleged that Rosen failed to properly pay taxes on 949 Selim Road and requested that the court order him to pay the back taxes on the property.

⁴ Neither of these orders has been made a part of the record on appeal.

in the foreclosure case; and (3) that Rosen’s motion to reopen the foreclosure case came outside of the statute of limitations. We cannot and do not address these arguments as this is not an appeal from the foreclosure case. The foreclosure case was a separate and distinct matter which is now final. This appeal is from the dismissal of the interpleader case, only. Any arguments related to the foreclosure action are misplaced and can’t and won’t be considered.

II. Allegations of Error Related to the Interpleader Case

We also cannot reach the merits of the Hoangs’ arguments regarding the interpleader case because, as we described above, there are two insurmountable procedural bars.

First, the Hoangs have used interpleader in an inappropriate factual context for which it was not designed. An interpleader action is “a procedural device [that] enables a person holding money or property, ... conceded to belong in whole or in part to another, to join in a single suit two or more persons asserting mutually exclusive claims to the fund.” John A. Lynch & Richard W. Bourne, *Modern Maryland Civil Procedure* 4-68 (2nd ed. 2004) (quoting 3A *Moore’s Fed. Prac.* § 22.02). “The purpose of an interpleader action is to protect a stakeholder who is threatened with double vexation in respect to one liability.” *Faulkner v. American Cas. Co. of Reading, Pa.*, 85 Md. App. 595, 623 (1991) (citation omitted). In the most basic sense, an interpleader action is properly brought by an “interpleader plaintiff” who has possession of something that at least two other parties claim as their own. The “interpleader plaintiff” doesn’t want both of those parties to be

able to sue individually, so she brings the interpleader action so that all claims can be decided at one time.

As must be obvious, the Hoangs do not have possession of the property, and they cannot claim that the interpleader defendants (Rosen and the substitute trustees) have conflicting claims to the property. Rather, it is one of the interpleader defendants, the substitute trustees, who (at least at the time it was filed) had possession of the property. The Hoangs were, in essence, attempting to force the substitute trustees to bring an interpleader claim. Whether this defect is characterized as a lack of standing (as Rosen characterizes it) or simply as a misuse of the interpleader procedure, the Hoangs lacked the right to institute an interpleader in this factual situation.

Second, and even more critically, the dispute about ownership of the property at 949 Selim Road was already resolved in the foreclosure action. Judge Dugan's orders conclusively determined that Minbilt Realty was the proper owner and caused title to be transferred to reflect that determination. Whether characterized as rendering the interpleader action moot or as having a *res judicata* effect on the interpleader action, the effect is the same: the judicial system has already conclusively determined that Minbilt Realty owns the property and that neither the Lee-Tsu Trust nor the Hoangs do.⁵

⁵ In the absence of briefing on the issue by the parties, we decline to determine which doctrine more properly characterizes the situation.

Having determined that the Hoangs attempted to bring an interpleader action without authority to do so, and that the prior resolution of the foreclosure case terminated the controversy, we affirm the judgment of the circuit court.⁶

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

⁶ The Hoangs also complain that Judge Quirk’s consideration of the two foreclosure case orders converted Rosen’s motion to dismiss into a motion for summary judgment without affording them the required opportunity to respond as is required by Rule 2-322(c). This is incorrect. When a document, such as the prior orders, “merely supplements the allegations of the complaint, and the document is *not controverted*, consideration of the document does not convert the motion into one for summary judgment.” *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 175 (2015) (emphasis added). Here, the two foreclosure case orders were not controverted and supplemented Rosen’s contentions regarding the foreclosure case. Therefore, the trial court’s consideration of the two orders did not convert the motion to dismiss into a motion for summary judgment.