

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0309

September Term, 2015

SOONSUE KIM

v.

GOLDEN ASHLAND SERVICES, LLC

Graeff,
Friedman,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: March 18, 2016

*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 case arises from an action to foreclose the equity of redemption with respect to real property located at 2041-43 Edmondson Avenue, Baltimore, Maryland 21223 (the “Property”). Appellant, Soonsue Kim (“Kim”), was the owner of the Property. Appellee, Golden Ashland Services, LLC (“Golden Ashland”), purchased the Property at a tax sale on May 20, 2013 and requested a writ of possession. Kim filed a Motion to Stay Execution of Writ of Possession and a Motion for Leave to Pay Amounts Due into the Court in Advance of Filing Her Motion to Vacate Judgment Foreclosing Right of Redemption, both of which the circuit court denied. Kim presents the following question on appeal:

Given the fact that Appellee did not personally serve or properly subserve Soonsue Kim and given the fact that Appellee sent notice to a property in Baltimore County and advertised a property in Baltimore County, did the Circuit Court for Baltimore City have jurisdiction over Soonsue Kim at the time it issued a judgment foreclosing the right of redemption?

For the reasons set forth below, we vacate the judgment of the circuit court and remand for further proceedings.

BACKGROUND

On January 14, 2014, Golden Ashland filed suit to foreclose the equity of redemption for non-payment of taxes for the Property. Golden Ashland attempted service upon Kim by certified mail to 2041 Edmondson Ave., Baltimore, MD 21228, but the summons and complaint were returned marked “insufficient address.” Golden Ashland reported to the court that it served Kim by private process server at 2041 Edmondson Ave., Baltimore, MD 21228 by serving “Domingo Kim, spouse, co-occupant” and that further notice of the foreclosure action was issued by publication in a newspaper of general circulation in

Baltimore City once a week for three consecutive weeks. On February 4, 2014, the Sheriff posted notice on the Property. No responsive pleading to the complaint was filed. On May 29, 2014, the circuit court issued a judgment foreclosing the right of redemption for the Property.

On July 11, 2014 Soonsue Kim, representing herself, filed a petition to redeem the Property. The court denied Kim’s petition “on the grounds that Defendant has not met the condition precedent to vacating a judgment. Defendant does not state that the redemption amount has been paid.” Subsequently, the court issued a writ of possession.

On January 23, 2015, Soonsue Kim, represented by Attorney Peter Hwang, filed a “Motion for Leave to Pay Amounts Due to the Court Registry In Advance of Filing Her Motion to Vacate Judgment Foreclosing Right of Redemption.” Kim argued *inter alia* that she “was never served or otherwise provided adequate notice of these proceedings, raising jurisdictional defects, and Plaintiff has perpetrated an actual and constructive fraud upon this Court.” Kim attached a proposed Motion to Vacate Judgment to the Motion for Leave. Golden Ashland opposed Kim’s Motion for Leave, arguing that the judgment foreclosing the right of redemption was a “final and conclusive” order pursuant to Sections 14-844 and 14-845 of the Tax Property (“TP”) Article of the Maryland Code (1985, 2012 Repl. Vol, 2015 Supp.), which vested Golden Ashland with fee simple interest in the Property. On February 24, 2015, Kim moved to stay execution of the writ of possession and requested a hearing.

Prior to the court's ruling on Kim's motion for leave and motion to stay execution, Kim, represented by successor counsel, Attorney Herbert Burgunder III, filed a "Motion to Strike Judgment Foreclosing Right of Redemption Motion to Strike Deed." Golden Ashland opposed the motion. On March 26, 2015, the trial court, making no findings and holding no hearing, denied Kim's motion for leave and motion to stay execution. Kim noted an appeal.

DISCUSSION

TP §14-845 (a) permits reopening of judgments in tax foreclosure proceedings in limited circumstances:

A court in the State may not reopen a judgment rendered in a tax sale foreclosure proceeding except on the ground of lack of jurisdiction or fraud in the conduct of the proceedings to foreclose, however, no reopening of any judgment on the ground of constructive fraud in the conduct of the proceedings to foreclose shall be entertained by any court unless application to reopen judgment rendered is filed within 1 year from the date of the judgment.

"Failure of procedural due process deprives the court of jurisdiction and so gives grounds to reopen the judgment under TP 14-845." *Voltolina v. Property Homes, LLC*, 198 Md. App. 590, 599 (2011).

Kim's challenges to the judgment based on lack of jurisdiction and fraud were timely, as they were raised within one year of the date of the judgment. Kim contends that Golden Ashland's attempts at service were ineffective because the notice of the action to foreclose was mailed to the address of 2041-2043 Edmondson Avenue in Baltimore *County* and the Property is located in Baltimore *City*. The newspaper publication of the notice improperly

listed the address as 2041-2043 Edmondson Avenue in Catonsville, which is located in Baltimore County, not Baltimore City. Kim claims that Golden Ashland’s attempted service at the Property address in Baltimore City likewise failed because the Property was not her “dwelling house or usual place of abode” as required by Md. Rule 2-121(a)(2), and her husband did not accept service at that address, as reported to the court by Golden Ashland. In support of her arguments, Kim submitted her own affidavit and an affidavit of the tenant of the Property who claimed to have accepted service.

Kim maintains that Golden Ashland’s failure to send notice to her current address, 3351 Greenmount Avenue, Baltimore, Maryland 21218, constituted constructive fraud. Kim contends that her current address was available from the intake sheet recorded with the deed for the Property as well as the Baltimore City tax records, and Golden Ashland failed to make diligent efforts to serve notice to her current address.

Golden Ashland responds that it properly named and served all Defendants in compliance with TP § 14-839. Golden Ashland “pursued multiple avenues to ensure service on [Kim],” including sending notice by certified registered mail to the address listed on record in the tax rolls of the collector obtained from the State Department of Assessment and Taxation (SDAT) records; personal service on an individual at the Property who identified himself as Domingo Kim, spouse of Soonsue Kim; publication in a newspaper of general circulation in Baltimore City once a week for three consecutive weeks; and by Sheriff posting of notice on the Property.

The trial court did not resolve the question of whether Golden Ashland’s service upon Kim of the notice of the action to foreclose was sufficient. “[T]he constitutionality of a particular notice mechanism is not to be judged by its actual success—whether an individual or group is in fact notified—but turns instead on whether the chosen method is ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *Golden Sands Club Condominium, Inc. v. Waller*, 313 Md. 484, 500 (1988)(internal citations omitted).

Kim’s allegations that Golden Ashland failed to send her notice or failed to make a good faith effort to send notice, if proven, constitutes constructive fraud and warrants the reopening of the judgment. *See Seidel v. Panella*, 81 Md. App. 124, 132 (1989), *cert. denied*, 319 Md. 72 (1990). Constructive fraud involves the breach of a legal or equitable duty, and does not require dishonesty or an actual intent to deceive. *Id.* at 131 (1989). Here, the allegations of constructive fraud were not considered by the trial court.

Despite Kim’s request, the court did not hold a hearing on her motions prior to ruling.

Maryland Rule 2-311(f) provides:

A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall so request in the motion or response under the heading “Request for Hearing.” Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but it may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

The judgment foreclosing the right of redemption was dispositive of Kim's defenses. A hearing was therefore warranted.

In sum, the issues raised by the parties on appeal were not decided by the trial court. The matter is remanded to the trial court for further proceedings. *See Seidel*, 81 Md. App. at 132; *Arnold v. Carafides*, 282 Md. 375, 384 (1978).

**JUDGMENT VACATED; CASE
REMANDED TO THE CIRCUIT COURT
FOR BALTIMORE CITY FOR FURTHER
PROCEEDINGS CONSISTENT WITH THIS
OPINION.
COSTS TO BE PAID BY THE APPELLEE.**