

Circuit Court for Cecil County
Case No. 07-C-13-001300

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1418, September Term, 2017

LAWRENCE R. CARVER, JR.

v.

RBS CITIZENS, N.A.

No. 780, September Term, 2018

SECURITY TITLE GUARANTEE
CORPORATION OF BALTIMORE

v.

LAWRENCE R. CARVER, JR., ET AL.

Berger,
Nazarian,
Beachley,

JJ.

Opinion by Berger, J.

Filed: September 27, 2019

*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.

These consolidated appeals arise out of an action filed in the Circuit Court for Cecil County by Lawrence R. Carver, Jr. and Nancy M. Carver against RBS Citizens, N.A. (“RBS”) and Security Title Guarantee Corporation of Baltimore (“Security Title”). The Carvers alleged claims of misrepresentation, fraud, constructive fraud, and conspiracy as a result of Security Title -- without the Carvers’ knowledge -- re-recording a deed of trust that overstated the number of acres subject to the original deed of trust. Following a bench trial, the circuit court ruled in favor of the Carvers on their constructive fraud claim and ordered Security Title to pay \$6,726 in damages.

On appeal, Lawrence Carver poses a single question, which we set forth *verbatim*.¹

Did the trial court err in calculating damages owed to Plaintiffs?

In addition, Security Title presents the following three questions, which we set forth *verbatim*.

1. Did the trial court err when it held Security Title Guarantee Corporation of Baltimore guilty of constructive fraud?
2. Did the trial court err when it found that the Plaintiffs proved any damages with sufficient certainty?
3. Did the trial court err when it failed to find RBS Citizens Bank liable to Security Title under its third party claim?

For the reasons explained herein, we reverse the judgment entered by the circuit court on the Carvers’ constructive fraud claim.

¹ Nancy Carver is not a party to Mr. Carver’s appeal.

FACTS AND PROCEEDINGS

In August 1998, the Carvers purchased three plots of land in Cecil County, Maryland: a 41.072-acre plot, a 6.486-acre plot, and a 50.321-acre plot. To obtain the money to purchase the properties, the Carvers executed multiple deeds of trust with Central Maryland Farm Credit, ACA (“CMFC”). As a result of a subsequent subdivision, the 41.072-acre plot was converted into two smaller plots: a property with 3.505 acres and a property with 37.567 acres. We will refer to the 3.505-acre plot as “Property A,” the 37.567-acre plot as “Property B,” the 6.486-acre plot as “Property C,” and the 50.321-acre plot as “Property D.”

In 2005, the Carvers initiated discussions with another mortgage lender, RBS, in an attempt to refinance the CMFC loans. RBS agreed and extended a \$576,000 loan to the Carvers. In exchange, the Carvers executed a deed of trust and granted RBS a lien. The deed of trust identified the secured property as “BEING PART OF ... 41.072 ACRES OF LAND” with a “TOTAL [of] 3.505” acres. Only Lawrence Carver was listed as a borrower. Security Title acted as RBS’s title examiner and issued RBS a title insurance policy. Thereafter, the Carvers obtained four additional loans from Christiana Bank & Trust (“Christiana Bank”). In return, Christiana Bank received security interests in Properties A, B, C, and D. Christiana Bank subsequently assigned the mortgages to Penn Lenders, LLC.

Eventually, the Carvers defaulted on their loan with RBS. As a result, on September 19, 2010, substitute trustees for RBS initiated foreclosure proceedings. During the foreclosure process, the substitute trustees notified Security Title that RBS could not

proceed with the foreclosure process because the deed of trust contained “conflicting information.” The substitute trustees asked Security Title to clarify the number of acres subject to the deed of trust because the document described the encumbered property as being part of 41.072 acres, but separately identified the encumbered property as a 3.505-acre plot. The substitute trustees further asked why Nancy Carver was not listed as a borrower.

Following discussions with the substitute trustees, on July 22, 2010, Security Title re-recorded the deed of trust without notifying the Carvers. In the re-recorded deed of trust, Security Title identified Properties A, B, C, and D as collateral, and removed the notation that the deed of trust covered only Property A. In addition, Security Title listed Nancy Carver as a borrower.

The Carvers did not discover the re-recorded deed of trust until entering into negotiations to sell Properties A, B, C, and D to an individual named Thomas Fore. While conducting due diligence, Mr. Fore and Penn Lenders discovered that the re-recorded deed of trust clouded the title of Properties B, C, and D.² Ultimately, Mr. Fore declined to purchase the properties because he was not sure whether RBS had enforceable liens on Properties B, C, and D.

Thereafter, the Carvers defaulted on their mortgages held by Penn Lenders. Because of the cloud on title associated with the re-recorded deed of trust, Penn Lenders sought a declaratory judgment in the Circuit Court for Cecil County that RBS’s re-recorded

² Penn Lenders was involved in the negotiations because Mr. Fore was offering to assume its mortgages.

deed of trust was void. On October 21, 2011, the circuit court declared that the re-recorded deed of trust was void and that the original deed of trust did not encumber Properties B, C, or D.

Instead of foreclosing on the Carvers' properties, Penn Lenders permitted the Carvers to enter into a forbearance agreement. Under the terms of the forbearance agreement, the Carvers were obligated to pay Penn Lenders \$1,500 in legal fees, satisfy all property taxes, make monthly payments of \$1,000, and additionally make a "balloon payment" of \$271,117.³

On July 19, 2013, in the Circuit Court for Cecil County, the Carvers filed a complaint against RBS and Security Title, alleging claims of misrepresentation, fraud, constructive fraud, and conspiracy. In short, the Carvers alleged that the re-recording of the deed of trust prevented them from selling the properties. Security Title and RBS then filed claims for contribution and indemnification against each other.

In April 2017 and June 2017, the circuit court conducted a bench trial. Before the trial concluded, the Carvers and RBS filed a joint motion dismissing the claims made against RBS. The case continued with the Carvers' claims against Security Title. On August 23, 2017, the circuit court issued its Opinion and Order. The circuit court ruled in favor of Security Title on the claims of misrepresentation, fraud, and conspiracy, but ruled in favor of the Carvers on their constructive fraud claim. In the opinion, the circuit court reasoned that Security Title was liable for constructive fraud because "[t]itle examiners

³ The parties amended the agreement twice to increase the balloon payment and the amount due each month.

owe a duty to use a reasonable degree of skill and diligence in supplying information to their customers and to others[.]” The circuit court then awarded the Carvers \$6,726 in damages. The court did not address Security Title’s contribution or indemnification claims made against RBS.

On September 14, 2017, Security Title filed a “Motion [] to Revise or so as to Dispose of an Unresolved Issue.” In the motion, Security Title requested that the circuit court rule on the cross-complaint against RBS. On September 22, 2017 -- while Security Title’s motion was pending -- Mr. Carver noted an appeal of the circuit court’s judgment. On May 18, 2018, the circuit court denied Security Title’s motion and concluded that its Opinion and Order constituted a final judgment. Security Title then filed its notice of appeal.

On July 23, 2018 -- after the parties submitted their briefs -- this Court dismissed Mr. Carver’s appeal as a premature appeal from a non-final judgment pursuant to Maryland Rule 8-602. Thereafter, the Court of Appeals vacated this Court’s dismissal and remanded the case to this Court to treat Mr. Carver’s appeal as timely. *Carver v. RBS Citizens, N.A.*, 462 Md. 626 (2019). We then consolidated both appeals *sua sponte*.

STANDARD OF REVIEW

Both Mr. Carver and Security Title appeal from the circuit court’s entry of judgment following the bench trial. “When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence.” Md. Rule 8-131(c). “It is well-established that we review the trial court’s factual findings for clear error and its legal conclusions *de novo*.” *Romero v. Perez*, 463 Md. 182, 196 (2019) (citation

omitted). “Findings are not clearly erroneous if any competent material evidence exists in support of the trial court’s factual findings.” *Nathans Assocs. v. Mayor of Ocean City*, 239 Md. App. 638, 646 (2018) (citations and quotations omitted).

DISCUSSION

In these consolidated appeals, both Mr. Carver and Security Title take issue with the circuit court’s award of damages. Mr. Carver argues that he should have been awarded more money. Conversely, Security Title contends that the Carvers failed to plead a cognizable claim for constructive fraud because they did not establish the existence of a confidential relationship. We will initially address Security Title’s appellate claim.

The Court of Appeals has defined constructive fraud as a “breach of a legal or equitable duty which, irrespective of the moral guilt of the fraud feisor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests.” *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 421-22 (2006) (citations, quotations, and italics omitted). To plead a cause of action for constructive fraud, the person who alleges to have been defrauded must demonstrate the existence of a confidential relationship. *Chassels v. Krepps*, 235 Md. App. 1, 16 (2017) (“The prerequisite both to a claim for constructive fraud and the imposition of a constructive trust is a confidential relationship”) (citing *Midler v. Shapiro*, 33 Md. App. 264, 268 (1976)), *cert. denied*, 457 Md. 677 (2018).

“For constructive fraud’s purposes, a plaintiff and a defendant are in a confidential relationship where the defendant has gained the plaintiff’s confidence and purports to act or advise with the plaintiff’s interest in mind. Accordingly, a plaintiff and a defendant are

in a confidential relationship only if the plaintiff depends on the defendant.” *Thompson v. UBS Fin. Servs., Inc.*, 443 Md. 47, 70 (2015) (citations, quotations, and brackets omitted), *aff’g* 217 Md. App. 500 (2014). “Confidential relationships must be established by clear and convincing evidence.” *Chassels*, 235 Md. App. at 17 (citing *UBS Fin. Servs., Inc. v. Thompson*, 217 Md. App. 500, 517 (2014)).

In this case, the Carvers failed to establish the existence of a confidential relationship. Indeed, the Carvers did not present any evidence to demonstrate that they had any type of relationship with Security Title. Rather, Mr. Carver asserts in his brief that “[c]onstructive fraud can occur regardless of whether the parties hold a confidential relationship.” Mr. Carver cites *Jannenga v. Johnson*, 243 Md. 1 (1966), in support of his contention that a claim for constructive fraud need not involve a confidential relationship.

In *Jannenga*, a property was sold at a tax sale after the county treasurer was notified of a tax deficiency. 243 Md. at 3. After the sale, it was discovered that the previous owner, Anna Jawitz, had paid her taxes, but the town clerk failed to notify the county treasurer of the payment. *Id.* Thereafter, the purchaser filed a petition to foreclose Jawitz’s equity of redemption. *Id.* The purchaser, however, failed to provide Jawitz -- who was not a resident of Maryland -- with notice of the petition even though Jawitz’s mailing address appeared in the tax records. *Id.* at 3-4. On October 9, 1964, the Circuit Court for Prince George’s County granted the purchaser’s petition and foreclosed Jawitz’s right to redeem the property. *Id.* at 4.

Upon learning of the order four months later, Jawitz initiated an action to vacate the order and set aside the deed pursuant to a provision of the Maryland Code, which provided

that a tax sale may be reopened in the event of fraud.⁴ *Id.* The trial court found in favor of Jawitz and vacated the order. *Id.* On appeal, the Court of Appeals held that the purchaser's failure to comply with the requirements of former Maryland Rule 105 constituted constructive fraud. *Id.* at 5. The Court explained:

The law declares this failure to comply with the requirements of Maryland Rule 105 to be fraudulent because of its tendency to deceive those who might otherwise not be notified of proceedings to foreclose their property rights except by the essentially pro forma means of publication.

Id. Accordingly, the Court affirmed the trial court's decision to set aside the deed.

In our view, Mr. Carver's reliance on *Jannenga* is misplaced. In *Jannenga*, the Court held that a tax sale may be set aside when the purchaser fails to comply with notice requirements. Mr. Carver is not attempting to set aside a sale of property due to notice deficiencies. Nevertheless, Mr. Carver argues that the Court of Appeals' 1966 opinion is identical because, like Jawitz and the tax-sale purchaser, Mr. Carver had no relationship with Security Title. Mr. Carver asserts that a property owner may bring a tort claim for damages based on constructive fraud where, as here, a title examiner with no relationship to the owner files an inaccurate deed of trust. We disagree.

Indeed, Mr. Carver has not presented us with any legal authority to support such a proposition. Although title examiners and mortgagees have an obligation to file accurate liens, “[m]ere non-compliance with a legal duty is not necessarily constructive fraud[.]” *Chassels, supra*, 235 Md. App. at 16. Critically, to prevail under a theory of constructive

⁴ That provision of the Code has since been re-promulgated. *See* Md. Code (1985, 2012 Repl. Vol.), § 14-845 of the Tax - Property Article.

fraud in tort law, the plaintiff must demonstrate the existence of a confidential relationship. *Thompson, supra*, 443 Md. at 73 (“Petitioners failed to establish a claim against Witherspoon for constructive fraud, as Petitioners failed to establish that the parties were in a confidential relationship”); *Chassels, supra*, 235 Md. App. at 16 (holding that evidence of a confidential relationship is a “prerequisite” to a claim for constructive fraud).

This is not to say that title examiners and mortgagees may file inaccurate liens without incurring any liability. Indeed, under certain circumstances, individuals who file inaccurate liens may be held criminally liable. *See* Md. Code (2013, 2018 Suppl.), § 3-808 of the Criminal Law Article. Moreover, plaintiffs may bring negligence claims against title examiners even in the absence of a confidential relationship. *See 100 Inv. Ltd. P’ship v. Columbia Town Ctr. Title Co.*, 430 Md. 197, 230-31 (2013). The damages suffered by the Carvers are not -- as a matter of law -- the result of constructive fraud. We, therefore, reverse the circuit court’s award of damages and remand for entry of judgment in favor of Security Title.⁵

**JUDGMENT OF THE CIRCUIT COURT
FOR CECIL COUNTY REVERSED. CASE
REMANDED TO THAT COURT FOR
ENTRY OF JUDGMENT IN FAVOR OF
SECURITY TITLE GUARANTEE
CORPORATION OF BALTIMORE. COSTS
TO BE PAID BY LAWRENCE R. CARVER,
JR. AND NANCY M. CARVER.**

⁵ In light of our holding that the Carvers failed to plead a claim for constructive fraud, we need not consider Mr. Carver’s argument that the circuit court should have awarded more damages.