Circuit Court for Baltimore City
Case No. 24-C-17-004049

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2169

September Term, 2017

JACOB FRAIDIN

v.

2635 N. CALVERT STREET, LLC

Kehoe,
Arthur,
Reed,

JJ.

Opinion by Arthur, J.

Filed: January 8, 2019

A property was sold at a tax sale, and a court entered a judgment foreclosing rights of redemption. Many years later, when a subsequent owner was about to resell the property, a former owner questioned the validity of the tax sale and claimed to retain an interest in the property.

The Circuit Court for Baltimore City entered summary judgment against the former owner, declaring that he had no interest in the property. He appealed. We affirm.

BACKGROUND

In 1994 Jacob Fraidin and William Helman acquired a rental property at 2635 North Calvert Street in Baltimore City (the "property") as tenants in common. According to Fraidin, Helman had the responsibility of paying the real estate taxes on the property.

For some reason not disclosed by the record, the taxes were not paid. As a consequence, Baltimore City sold the property to American Bankers Capital, Inc., at a tax sale in 1998.

In 2000 American Bankers Capital commenced a proceeding in the Circuit Court for Baltimore City to foreclose rights of redemption in the property: *American Bankers Capital, Inc. v. Geneva T. Lucas, et al.*, Case No. 24-C-00-002096. Fraidin and Helman were among the named defendants.

On December 27, 2001, the circuit court entered a judgment foreclosing rights of redemption in the property. In that document, the court found that all known defendants had been personally served or were given notice in accordance with the relevant provisions of the Tax-Property Article of the Annotated Code of Maryland. The court also found that all known defendants had been notified of the proceeding in accordance

with an order of publication. The judgment granted American Bankers Capital "an absolute and indefeasible fee simple title," in the property, "free and clear of all alienation and descents of the property occurring before the date of the judgment."

On March 28, 2002, American Bankers Capital assigned all of its right, title and interest in the property to Helman. In accordance with the assignment, the Director of Finance of Baltimore City executed a deed to Helman on May 24, 2002. The deed was recorded in the land records of Baltimore City on July 7, 2002. On April 4, 2005, Helman conveyed the property to 2635 N. Calvert Street LLC by a confirmatory deed that appears to have been recorded on August 22, 2006. Helman is the LLC's managing member.

On August 4, 2017, 2635 N. Calvert filed a complaint for a declaratory judgment against Fraidin in the Circuit Court for Baltimore City. The complaint alleged that 2635 N. Calvert had contracted to sell the property, but that Fraidin had interfered with the sale by asserting that he still has an ownership interest. The complaint requested a declaration that 2635 N. Calvert is the sole fee simple owner of the property and that Fraidin has no interest in it. Shortly thereafter, 2635 N. Calvert moved for summary judgment.

Representing himself, Fraidin answered the complaint and opposed the motion for summary judgment. After a hearing at which Fraidin was represented by counsel, the circuit court granted the motion for summary judgment and declared that 2635 N. Calvert was the sole fee simple owner of the property. Fraidin noted a timely appeal.

QUESTIONS PRESENTED

Fraidin presents one question, which we have reworded for clarity and concision: Did the circuit court err in granting the motion for summary judgment?

For the reasons discussed below, we conclude that the court did not err. Thus we shall affirm.

ANALYSIS

When a party moves for summary judgment, the court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f).

The issue of whether a trial court properly granted summary judgment is a question of law. *Butler v. S & S P'ship*, 435 Md. 635, 665 (2013) (citation omitted). In an appeal from the grant of summary judgment, this Court conducts a *de novo* review to determine whether the circuit court's conclusions were legally correct. *See D'Aoust v. Diamond*, 424 Md. 549, 574 (2012). Similarly, "[t]he standard of review for a declaratory judgment entered as a result of the grant of a motion for summary judgment is 'whether that declaration was correct as a matter of law.'" *Catalyst Health Solutions, Inc. v. Magill*, 414 Md. 457, 471 (2010) (quoting *Olde Severna Park Improvement Ass'n, Inc. v. Gunby*, 402 Md. 317, 329 (2007)

"When reviewing a grant of summary judgment, we determine 'whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.'" *Blackburn Ltd. P'ship v. Paul*, 438 Md. 100,

107 (2014) (quoting *Myers v. Kayhoe*, 391 Md. 188, 203 (2006). "The 'moving party must set forth sufficient grounds for summary judgment,' . . . and the movant is responsible for informing the circuit court of the basis for its motion and for identifying deficiencies in the pleadings and record which demonstrate the absence of a genuine issue of fact.'" *Mohammad v. Toyota Motor Sales, U.S.A., Inc*., 179 Md. App. 693, 703 (2008) (quoting *Davis v. Goodman*, 117 Md. App. 378, 392 (1997)). Once "the moving party has produced sufficient evidence in support of summary judgment, the non-movant 'must demonstrate that there is a genuine dispute of material fact by presenting facts that would be admissible in evidence.'" *Clark v. O'Malley*, 434 Md. 171, 194 (2013) (quoting *Gross v. Sussex, Inc*., 332 Md. 247, 255 (1993)). "This Court considers 'the record in the light most favorable to the nonmoving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party.'" *Blackburn Ltd. P'ship v. Paul*, 438 Md. at 107-08 (quoting *Myers v. Kayhoe*, 391 Md. at 203).

The question of whether Fraidin retained some interest in the property in 2017 depends on the efficacy of the judgment foreclosing rights of redemption in 2001. In its motion for summary judgment, 2635 N. Calvert established that the judgment, on its face, wiped out any interest that Fraidin previously had. Hence, Fraidin could claim an interest in the property only if he could generate a factual issue as to whether he somehow had the right to reopen the 16-year-old judgment.

Maryland Code (1986, 2012 Repl. Vol.), § 14-845(a) of the Tax-Property Article defines when a court may reopen a judgment in a tax-sale foreclosure proceeding:

> 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 an application to reopen a judgment rendered is filed within 1 year from the date of the judgment.

In opposition to the motion for summary judgment in the circuit court, Fraidin submitted an affidavit. In that affidavit, Fraidin stated that he was unaware of the sale of the property to Helman in 2002 and implied (but did not explicitly state) that he was unaware of the tax sale in 1998. He claimed that he had "had no reason" to search the land records concerning the property and that, "so far as [he] knew, the taxes and mortgage on the property were being paid" during the 19 years after the tax sale occurring. He also claimed to have been "advised," by some unidentified person at some unidentified time, "that the mortgage was current." He asserted that Helman and 2635 N. Calvert had "been operating the property as fiduciaries on his behalf" and that Helman held his interest in the LLC "in constructive trust" for Fraidin.

Under § 14-845(a) of the Tax-Property Article, Fraidin's affidavit was plainly insufficient to reopen the judgment in the tax-sale foreclosure proceeding. Fraidin did not assert that the court lacked jurisdiction to foreclose his rights of redemption or those of any other interested person. He asserted no factual basis upon which the court could conclude that someone had committed fraud in the conduct of the foreclosure

proceedings. Finally, he did not assert a claim of "constructive fraud,"[1] and he certainly did not assert any such claim within a year of the judgment, as § 14-845(a) requires.

In his appellate brief, Fraidin goes beyond the factual assertions in his affidavit. He raises the prospect of "fraud," "illegality," and "unclean hands." He insinuates that Helman intentionally failed to pay the taxes on the property in order to prompt a tax sale, through which he could extinguish Fraidin's interest and acquire the property for himself. He does not explain how Helman somehow got the tax-sale purchaser, American Bankers Capital, to go along with the alleged scheme.

Fraidin, through counsel, made a similar argument at the hearing on the summary judgment motion. At that time, the circuit court correctly observed that Fraidin had put forth no admissible evidence in support of that argument. The court did not err in entering summary judgment against a party who failed to come forward with admissible evidence sufficient to generate a genuine dispute of a material fact. *See, e.g.*, *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 740 (1993).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[1] In a tax-sale foreclosure proceeding, the concept of "constructive fraud" refers to the failure to provide notice or to make a good faith effort to provide notice. *Canaj, Inc. v. Baker and Division Phase III, LLC*, 391 Md. 374, 422-23 (2006) (citing *Jannenga v. Johnson*, 243 Md. 1, 5 (1966)).