Illinois Official Reports

Appellate Court

Chicago Title Land Trust Co. v. Love, 2022 IL App (1st) 191936

Appellate Court Caption	CHICAGO TITLE LAND TRUST COMPANY, as Trustee UTA Dated July 10, 2014, and Known as Trust No. 8002365326, Plaintiff-Appellee, v. ADOLPH H. LOVE JR.; ALAN LOVE; GWENDOLYN LOVE; MARY LOVE; GUY DM LOVE; ARLENE LOVE; FLORESIA LOVE; BRIDGETTE LOVE; THE CITY OF CHICAGO; UNKNOWN HEIRS, DEVISEES, AND LEGATEES OF ADOLPH H. LOVE SR.; UNKNOWN HEIRS, DEVISEES, AND LEGATEES OF DEREK LOVE; UNKNOWN OWNERS; UNKNOWN CLAIMANTS; and PERSONS IN POSSESSION OF OR HAVING AN INTEREST IN THE SUBJECT PROPERTY; Defendants-Appellees (Christopher Vaughn, Intervenor-Appellant).
District & No.	First District, Sixth Division No. 1-19-1936
Filed	December 2, 2022
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 15-CH-6558; the Hon. Neil H. Cohen, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Mark A. Wolff and Daniel E. Radakovich, both of Chicago, for appellant. No brief filed for appellees.

Panel JUSTICE TAILOR delivered the judgment of the court, with opinion. Presiding Justice Mikva and Justice Oden Johnson concurred in the judgment and opinion.

OPINION

¶ 1 This appeal arises from a partition action. The subject property was sold at a judicial sale to intervenor-appellant, Christopher Vaughn. After the sale of the property was confirmed, Vaughn sought reimbursement from the previous owners for payment he made to satisfy a tax lien on the property. The circuit court denied Vaughn's request. For the reasons that follow, we affirm the judgment of the circuit court of Cook County.

¶ 2 I. BACKGROUND

¶ 3 On March 5, 2005, Adolph H. Love Sr. died intestate as the owner of the property commonly known as 3331 South Giles Avenue in Chicago, Illinois (Giles property). Upon Adolph Sr.'s death, his surviving children—defendants Bridgette Love, Floresia Love, Arlene Love, Alan Love, Gwendolyn Love, Derek Love, and Adolph H. Love Jr. (collectively, the Love defendants)—each became owner of a 1/7 interest in the Giles property.

¶ 4 In October of 2014, Arlene, Floresia, and Bridgette each separately transferred their 1/7 interest in the Giles property by quit claim deed in trust to plaintiff, Chicago Title Land Trust Company (Chicago Title), as trustee under the trust agreement dated July 10, 2014, and known as trust number 8002365326.

¶ 5 In 2015, Chicago Title filed the instant partition action, seeking the sale of the Giles property and the distribution of the proceeds among the interest owners according to their respective interests.

¶ 6 On June 8, 2016, the delinquent property taxes for the Giles property were sold to Corona Investments.

¶ 7 In July of 2016, Derek Love died intestate. The heirs to his 1/7 interest in the Giles property were his siblings—Bridgette, Floresia, Arlene, Alan, Gwendolyn, and Adolph Jr.—and Derek's mother, Mary Love.

¶ 8 On October 23, 2017, the trial court entered an order approving a contract for private sale of the Giles property to Vaughn for $155,000. Subsequently, Chicago Title filed a motion to reconsider the order for private sale. Several Love defendants filed a motion to compel the sale. For reasons unclear from the record, the private sale to Vaughn was never completed.

¶ 9 On June 26, 2018, plaintiff Chicago Title filed a third amended complaint for partition, which is the operative complaint on appeal. The third amended complaint named the City of Chicago as a defendant and alleged that the city was the holder of a $1142.13 lien for water and sewer service, a $1000 judgment lien, and a *lis pendens* on the Giles property. Corona Investments was not named as a party in the third amended complaint.

¶ 10 On August 8, 2018, Gwendolyn, Mary, and Adolph Jr. filed their motion for a judgment ordering public sale of the Giles property. On September 28, 2018, the trial court ordered that the Giles property be sold at a judicial sale. The record does not reflect that a decree for

partition, determining the rights and interests of the parties and whether the property should be divided, had been entered at that time.

¶ 11 The Giles property was sold to Vaughn for $103,334.33 at a judicial sale on November 30, 2018. The trial court confirmed the judicial sale on January 8, 2019, and ordered that a sheriff's deed be issued to Vaughn and the proceeds of the sale be deposited with the Cook County clerk to await distribution.

¶ 12 On February 8, 2019, Vaughn filed a motion for reimbursement. Vaughn asserted that the plaintiff and defendants failed to pay the property taxes on the Giles property and that the delinquent taxes were sold to Corona Investments in June of 2016. Vaughn further pointed out that Corona Investments was never made a party to the partition action, nor was Corona Investments given notice of the judicial sale of the Giles property. Vaughn stated that the Cook County clerk had issued a tax redemption estimate of $28,642.39 that was due by May 24, 2019.

¶ 13 Chicago Title and Gwendolyn, Mary, and Adolph Jr. filed responses. Vaughn filed a reply.

¶ 14 On May 8, 2019, the trial court issued an order denying Vaughn's motion for reimbursement, based on the doctrine of *caveat emptor*, and denying his request to stay judgment pending an appeal. In the same order, the trial court ordered distribution of the proceeds of the judicial sale as follows: to Chicago Title, a 3/9 share; to Mary, a 2/9 share; to Adolph Jr., a 1/9 share; to Gwendolyn, a 1/9 share; to Alan, a 1/9 share; and to Derek's heirs, a 1/9 share. The trial court then ordered that each of Derek's heirs—namely his siblings and his mother, Mary—take a 1/7 share of the proceeds from his 1/9 share.

¶ 15 Thereafter, Chicago Title and Alan separately filed motions to modify the trial court's order for distribution of proceeds. Mary, Adolph Jr., and Gwendolyn also filed a motion to reconsider the trial court's order. On May 15, 2019, Vaughn filed an additional motion for distribution of proceeds, again asking to be compensated for the amount he paid to satisfy the tax lien on the property.

¶ 16 On May 16, 2019, the trial court granted Alan's motion to modify the judgment and entered and continued the other motions for briefing.

¶ 17 On June 17, 2019, Vaughn filed a motion for distribution of proceeds, arguing that he should be reimbursed for the amount of the tax lien under theories of subrogation and unjust enrichment. Chicago Title filed a response. Gwendolyn, Adolph Jr., and Mary also filed a response in opposition. Vaughn filed a reply, attaching a certificate of deposit for redemption, evidencing his payment of $28,645.39 to the Cook County clerk on March 1, 2019. The certificate shows that $4015.41 in taxes for 2014 had been sold, and $17,798.54 in taxes for 2015 to 2017 and more than $6500 in penalties and fees were also unpaid.

¶ 18 On August 22, 2019, the trial court entered an order denying Vaughn's motion. The trial court held that the doctrine of *caveat emptor* applied to Vaughn's purchase of the Giles property at the judicial sale and that applying subrogation in favor of Vaughn would result in unjust enrichment to him and would be inequitable to the plaintiff and defendants.

¶ 19 On August 26, 2019, the trial court issued a final order for the distribution of the judicial sale proceeds. The court found that Bridgette, Arlene, and Floresia were each separately entitled to a 1/56 share in the proceeds; Mary was entitled to 2/56 share; Alan, Adolph Jr., and Gwendolyn were each entitled to a 9/56 share; and Chicago Title was entitled to a 24/56 share plus reimbursable expenses in the amount of $22,044.55.

¶ 20 Vaughn filed a timely notice of appeal.

¶ 21 II. ANALYSIS

¶ 22 We note that this appeal was taken on the appellant's brief only and no appellee has filed an appearance or submission to this court. Thus, we resolve this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976). On appeal, Vaughn argues that the trial court erred in denying his motion for reimbursement of the amount he paid to satisfy the tax lien because, under the partition act of the Code of Civil Procedure (Act) (735 ILCS 5/17-101 *et seq.* (West 2018)), the trial court did not determine the rights and interests of all parties with an interest in the Giles property and distribute proceeds from the judicial sale accordingly.[1]

¶ 23 The Act lays out the procedure by which judgment must be obtained in a partition case. Once a complaint for partition is filed, the trial court must fix the rights, titles, and interest of all the parties in the action and enter judgment accordingly. *Id.* § 17-105. After judgment is entered, the trial court must make a finding as to whether the property can be equitably divided "without manifest prejudice to the parties in interest." *Id.* If it cannot, the trial court must then order a public sale of the property. *Id.*

¶ 24 Within 10 days of the sale, a report of the sale must be filed with the trial court. *Id.* § 17-118. At this time, any objections to the sale must be brought before the trial court for ruling. *Id.* The trial court may either confirm or reject the sale. *Id.* Section 17-118 then provides:

> "Upon confirmation of the sale, the person making the sale or some person specially appointed shall execute and deliver to the purchaser proper conveyances, taking in case of sale on credit, security as required by the judgment. These conveyances shall operate as an effectual bar against all parties and privies to the proceedings and all persons claiming under them." *Id.*

¶ 25 Once the sale is approved, the trial court will direct the distribution of the proceeds from the sale to the parties according to their interests. *Id.* § 17-119. Only after this order accounting for the proceeds of the sale is entered does the judgment in a partition case become final and appealable. *Coats v. Coats*, 92 Ill. App. 2d 75, 80 (1968).

¶ 26 In his brief, Vaughn concedes that upon confirmation of sale generally, section 17-118 of the Act and the doctrine of *caveat emptor* would bar his claim for reimbursement for satisfaction of an existing tax lien on the Giles property.

¶ 27 In Illinois, the rule of *caveat emptor* applies in all judicial sales except in cases of fraud, misrepresentation, or mistake. *Checkley & Co. v. Citizens National Bank of Decatur*, 43 Ill. 2d 347, 349 (1969). The purpose of the rule of *caveat emptor* is to give permanency and stability to judicial sales. *Id.* at 350. "The risk of a mistake or defect as to title under the circumstances is to be borne by the purchaser." *Id.* A purchaser at a judicial sale takes the property as is, subject to any liens or encumbrances. *Bassett v. Lockard*, 60 Ill. 164, 166 (1871). "[T]he law

[1] In the circuit court, Vaughn sought reimbursement for transfer taxes in addition to amount represented by the tax lien. On appeal, Vaughn argues only that he should have been reimbursed for the amount he paid to satisfy the property tax lien. We therefore consider any argument as to the transfer taxes to be forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) ("Points not argued are forfeited ***.).

presumes that all men inspect public records through which a title to property is derived, before purchasing the property." *Levy v. Odell*, 237 Ill. App. 606, 613 (1925).

¶ 28 Vaughn does not argue that any of the exceptions to the *caveat emptor* rule apply to this case. Notably, Vaughn does not even argue that he was unaware of the tax lien prior to his purchase of the Giles property. Rather, Vaughn argues that the doctrine of *caveat emptor* cannot bar his claim where the trial court erred by failing to join Corona Investments to the lawsuit as required by section 17-103 of the Act (735 ILCS 5/17-103 (West 2018)) and by failing to enter a decree of partition *prior* to confirming the judicial sale as required by section 17-105 (*id.* § 17-105).

¶ 29 "Issues of statutory interpretation are questions of law which we review *de novo*." *Krautsack v. Anderson*, 223 Ill. 2d 541, 553 (2006). When interpreting a statute, we ascertain and give effect to the intent of the legislature by applying the language of the statute as written, with its plain and ordinary meaning. *Id.* at 552-53.

¶ 30 Section 17-103 requires that "[e]very person having any interest, whether in possession or otherwise, who is not a plaintiff shall be made a defendant" in a complaint for partition. 735 ILCS 5/17-103 (West 2018). Holders of liens on the subject property are necessary defendants. *Ashton v. Macqueen*, 361 Ill. 132, 141 (1935).

¶ 31 We agree with Vaughn that Corona Investments, as the holder of a tax lien on the Giles property, should have been joined as a defendant in this case under section 17-103. We disagree, however, that the statute requires the trial court, rather than the parties, to name all interested persons as defendants. The plain language of section 17-103 does not impose this duty on any particular actor. Section 17-102 provides that the verified complaint for partition "shall set forth the interests of all parties interested therein, so far as the same are known to the plaintiffs." 735 ILCS 5/17-102 (West 2018). Reading section 17-102 together with section 17-103 suggests that it is the duty of the plaintiff to join all interested parties as defendants to the partition proceeding. This result accords with case law that indicates that the complainant holds responsibility for joinder of all interested parties in a partition suit. See, *e.g.*, *Gage v. Reid*, 104 Ill. 509, 513 (1882) (holding that "petitioners must make all persons known to hold an interest in, or who claim title to, the premises, parties to the proceeding"). And as our supreme court has held, it is the duty of the parties to see that a proper decree of partition is rendered. *Baker v. Baker*, 284 Ill. 537, 546 (1918).

¶ 32 Vaughn cites no case law to support his argument that the trial court itself was required to join Corona Investments. Nor does he explain just how the trial court was to go about naming Corona Investments as a party. We will not impose exceptions, limitations, or conditions that the legislature did not express in the statute. *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶ 15. Nor will we "construe the statute in a way that leads to absurd, unjust, or inconvenient results." *In re Marriage of Goesel*, 2017 IL 122046, ¶ 31. It would be both absurd and inconvenient to require the trial court to independently research the title to property that is the subject of a pending partition action and then require the trial court to join any unnamed, interested parties it discovers. Where the statute does not expressly impose this condition, we decline to find that the trial court was responsible for joining Corona Investments to the suit.

¶ 33 In any case, Vaughn's argument that the failure to join Corona Investments to the suit requires him to be reimbursed for payments made to satisfy the tax lien lacks merit. The effect of the failure to name Corona Investments as a defendant and determine the rights of Corona Investments as to the Giles property is that Corona Investments was not bound by the decree

of partition. See *Baker*, 284 Ill. at 543 (holding that "[p]ersons not made parties and who do not appear are not bound by the partition decree"). Corona Investments's right to avoid the judgment does not in any way inure to Vaughn's benefit. Additionally, Vaughn's concerns regarding Corona Investments's rights could have been addressed if Vaughn had joined Corona Investments to the suit any time after he intervened, but he failed to do so.

¶ 34 Further, according to the certificate of deposit for redemption that Vaughn filed with the trial court, Corona Investments only purchased $4015.14 of the $28,632.39 in unpaid taxes and fees that were owed on the Giles property. Vaughn thus sought reimbursement for nearly $25,000 more than Corona Investments's recorded interest. Therefore, even if Vaughn's theory had merit, joinder of Corona Investments as a party defendant would only have provided the predicate for a small part of the amount Vaughn sought in his motion for reimbursement.

¶ 35 We also agree with Vaughn that the trial court erred in ordering a judicial sale of the property prior to entering a decree of partition in accordance with section 17-105. We have stated that the statute requires the trial court to ascertain and declare the rights, titles, and interest of all the parties and enter judgment accordingly before it can determine whether any manifest prejudice that would result from division of the property requires an order for public sale of the property. *Supra* ¶¶ 23-25. Again, however, acknowledgment of this error does not resolve Vaughn's appeal.

¶ 36 Vaughn argues that the trial court's errors negate the application of *caveat emptor* and require the trial court to issue an order reimbursing him for the tax lien. We disagree. The trial court's failure to issue a decree of partition before ordering and confirming the judicial sale means that the order confirming the judicial sale is voidable. See *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 27 ("A voidable judgment *** is an erroneous judgment entered by a court that possesses jurisdiction."). "[A] voidable judgment remains in full force and effect unless and until it is set aside by appropriate supplemental proceedings." *In re Marriage of Stefiniw*, 253 Ill. App. 3d 196, 200 (1993).

¶ 37 Here, Vaughn did not seek to void, object to, or otherwise attack the judgment confirming the judicial sale of the Giles property. Now on appeal, Vaughn seeks review only of the trial court's denial of his motion for reimbursement of the amount he paid to satisfy tax lien. In this way, Vaughn attempts to maintain the benefit of the order confirming judicial sale of the Giles property to him, while complaining that the trial court failed to comply with statutory requirements to his detriment. Vaughn points to no legal basis for this court to find that the trial court's failure to comply with statutory prerequisites before confirming the judicial sale requires reimbursement of a purchaser for a tax lien on the subject property, and this court knows of none.

¶ 38 We find that Vaughn's motion for reimbursement was barred by section 17-118, where the sale was confirmed and the required conveyances were executed before Vaughn sought reimbursement from the proceeds of the sale. Vaughn bought the Giles property at the judicial sale on November 30, 2018. On January 16, 2019, Vaughn was given leave to intervene. On January 18, 2019, the trial court entered an order confirming the sale of the Giles property to Vaughn and issuing a sheriff's deed to Vaughn. Vaughn did not object to the order confirming the sale. On February 4, 2019, despite being apprised of the existing tax lien, Vaughn nonetheless paid for the transfer stamps in order to record the sheriff's deed to the Giles property. It was not until February 8, 2019, that Vaughn raised the issue of the tax lien in his

motion for reimbursement filed in the trial court. At no time after his intervention did Vaughn seek to join Corona Investments to the lawsuit.

¶ 39 In denying Vaughn's motion for reimbursement, the trial court stated that Vaughn had been present in court as an "active and interested" party and represented himself as a "savvy and sophisticated investor in real estate" long before filing his appearance. The trial court noted that Vaughn had previously offered to purchase the Giles property in a private sale for $155,000. This offer was memorialized in orders entered on October 16, 2017, and October 23, 2017, by the trial court. Vaughn purchased the Giles property at the judicial sale for $103,334.33. At the hearing on Vaughn's motion for distribution of proceeds, the trial court observed that, even including the $28,642.19 he paid to satisfy the tax lien, Vaughn paid over $20,000 less for the Giles property than his initial private offer. The trial court also stated that Vaughn never previously requested that the court rule on the existence of any liens on the Giles property.

¶ 40 We find that the trial court properly applied the doctrine of *caveat emptor* to Vaughn's claim. As a purchaser at a judicial sale, Vaughn was chargeable with notice of this lien and with the fact that the Giles property was subject to it. Corona Investments's purchase of the Giles property's delinquent taxes predates both Vaughn's first offer to buy the Giles property at a private sale in 2017 and his eventual purchase of the Giles property at the judicial sale in 2018. A routine title search would have revealed the existence of the lien. There was no fraud, misrepresentation, or mistake related to Vaughn's purchase of the Giles property. Therefore, we find that the trial court did not err in applying the doctrine of *caveat emptor* and denying Vaughn's claim that he should be reimbursed for satisfaction of the property tax lien.

¶ 41 III. CONCLUSION

¶ 42 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 43 Affirmed.