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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-941

Filed 3 September 2024

Guilford County, No. 21 CVS 9622

REDEVELOPMENT COMMISSION OF GREENSBORO, Plaintiff,

v.

MERIDIAN CONVENTIONS, LLC, d/b/a MERIDIAN CONVENTION CENTER, A NORTH CAROLINA LIMITED LIABILITY COMPANY, WEST TOWN BANK & TRUST, AN ILLINOIS BANKING CORPORATION, Defendants.

Appeal by plaintiff from order entered 16 February 2023 by Judge R. Stuart Albright in Guilford County Superior Court. Heard in the Court of Appeals 14 May 2024.

Boydoh Law, PLLC, by Robert E. Boydoh, Jr., for plaintiff-appellant.

Offit Kurman, P.A., by Robert B. McNeill, for defendant-appellee Meridian Conventions, LLC; and Blanco, Tackaberry & Matamoros, P.A., by Chad A. Archer and Ashley S. Rusher, for defendant-appellee West Town Bank & Trust.

THOMPSON, Judge.

Redevelopment Commission of Greensboro (plaintiff) filed this action against defendants, Meridian Conventions, LLC, d/b/a Meridian Convention Center (Meridian), and West Town Bank & Trust (WTB), seeking to quiet title to real

property known as the Event Center. Plaintiff alleges that the trial court erred in granting defendants' joint Rule 12(b)(6) motion to dismiss because the applicable statute of limitations is twenty years, as set out in N.C. Gen. Stat. § 1-40. We do not agree.

Accepting the allegations in plaintiff's complaint as true—thereby treating defendant Meridian's deed to the Event Center as invalid—we conclude that defendant Meridian's deed constitutes color of title, and the seven-year prescriptive period outlined in N.C. Gen. Stat. § 1-38 is the applicable statute of limitations. As such, plaintiff failed to bring its quiet title action against defendants within the prescriptive seven-year period, and plaintiff's action was barred by the statute of limitations. Thus, the trial court did not err in granting defendants' motion to dismiss because plaintiff failed to state a claim for which relief could be granted.

I. Factual Background and Procedural History

This case involves real property in Guilford County, North Carolina. The Heritage House Condominiums (Heritage House) were created on 29 December 2004 by the then-owner of the property (Declarant). Declarant established Heritage House pursuant to a certain Declaration found in Book 6232, Page 586 of the Guilford County Registry. The Heritage House property was previously a hotel and when it was converted into the condominium complex, the two six-story towers of guestrooms were converted into 177 residential units, and a two-story building (connected to the

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residential units by a common wall) which contained a lobby and meeting spaces was converted into the commercial unit, known as the Event Center.

In July of 2013, following a foreclosure sale by Capital Bank¹, defendant Meridian was deeded the Event Center. Since July 2013, defendant Meridian has operated the property as an event space.

In January 2015, the residential units, their common elements,² the parking lot, and the grounds were declared blighted areas by the Greensboro Planning Board pursuant to Chapter 160A of the North Carolina General Statutes.³ On 15 September 2015, the Greensboro City Council passed a resolution in which plaintiff was tasked with redeveloping the blighted areas. However, plaintiff and defendant disagreed about “whether or how much of the towers could be demolished[,] and which aspects should remain to keep the event center operational[,]” because of the innate features of this hotel-turned-condominium-complex (*e.g.*, the unit owners’ property interests in the common areas, including the parking lot and exterior walls and roofs). Eventually, the towers were demolished pursuant to an agreement between plaintiff

¹ Declarant defaulted on a loan that Capital Bank’s predecessor, Southern Community Bank and Trust, had lent to declarant which resulted in Capital Bank initiating a foreclosure sale.

² According to the Declaration found in Book 6232, Page 586 of the Guilford County Registry, the common elements include: “‘Accessory Common Element A’, ‘Accessory Common Element B,’ ‘Common Elements Lobby & Entrance Halls[.]’” These common elements make up the two-story building that defendant Meridian was deeded in July 2013, known as the Event Center.

³ Defendant Meridian contends that the Event Center was never, and has never been, declared “blighted.”

and defendants. Still, according to defendants, plaintiff has sought to dispossess defendants of the Event Center without compensation.

a. Condemnation Action

On 31 March 2017, plaintiff filed a condemnation complaint against defendant Meridian and others but omitted defendant WTB. Subsequently, on 19 April 2018 plaintiff filed a Rule 19 motion to join WTB as a necessary party, and the court granted this motion. Within this complaint, and the two amended complaints that followed, plaintiff alleged that defendant Meridian *owned* the event center, and that defendant WTB had a deed of trust “upon the property owned by Meridian[.]” Furthermore, in the first complaint, and the two amended complaints that followed, plaintiff contended that “the property to be taken [did] not include the [Event Center][.]” However, on 18 October 2019, plaintiff filed a third amended and restated complaint, which alleged that defendant Meridian occupies the Event Center and that defendant WTB purports to have a deed of trust on the Event Center.

On 2 June 2020, defendants filed a motion to dismiss plaintiff’s third amended and restated complaint, and the trial court granted the motion. The trial court noted that “[p]laintiff in its Third Amended Complaint seek[s] to condemn property which it also claims it owns[.]” and that “[p]laintiff seek[s] to quiet title, in itself, to certain property which it has previously acknowledged is owned by [d]efendant Meridian, to which [defendant] Meridian has a deed, upon which [defendant WTB] has a deed of trust, and upon which local governments have been assessing and collecting taxes

from [defendant] Meridian.” Based on this reasoning, the trial court dismissed plaintiff’s condemnation action without prejudice as to defendants.

On 22 December 2021, plaintiff filed a notice of appeal. On 9 February 2023, this Court dismissed plaintiff’s appeal for lack of appellate jurisdiction and remanded the matter to the trial court for further proceedings. As of 14 May 2024, the matter remains pending in the lower court.

b. Quiet Title Action

On 16 July 2020, plaintiff effectively filed a complaint to quiet title against defendant Meridian and defendant WTB to establish ownership and title of certain real property known as the Event Center. However, pursuant to Rule 41(a), plaintiff voluntarily dismissed this complaint without prejudice on 8 December 2020.

On 3 December 2021, pursuant to N.C. Gen. Stat. § 1A-1, Rule 41(a)(2), plaintiff refiled its quiet title action against defendants and had civil summonses issued, yet intentionally failed to serve these summonses on defendants. Plaintiff then had five sets of alias and pluries summonses issued on 23 February 2022, 20 May 2022, 15 August 2022, 3 November 2022, and 2 February 2023; but again, plaintiff made no effort to serve these on defendants.

On 10 January 2023, defendants filed a joint motion to dismiss plaintiff’s 3 December 2021 quiet title action. Defendants’ motion to dismiss was heard by Judge R. Stuart Albright during the civil session of Guilford County Superior Court on 6

February 2023. On 16 February 2023, the trial court granted defendants' joint motion to dismiss.

On 17 March 2023, plaintiff filed notice of appeal.

II. Discussion

A. Standard of Review

We review a trial court's ruling on a Rule 12(b)(6) motion to dismiss de novo. *Plasman ex rel. Boiler & Co., LLC v. Decca Furniture (USA), Inc.*, 257 N.C. App. 684, 690, 811 S.E.2d 616, 621 (2018). Under a de novo review, "[w]e consider whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory." *Id.* (internal quotation marks and citation omitted). When considering a Rule 12(b)(6) motion, we must "construe the complaint liberally and should not dismiss the complaint unless it appears beyond a doubt that the plaintiff could not prove any set of facts to support his claim which would entitle him to relief." *Id.* (citation omitted). And a complaint must be dismissed "[w]hen the complaint fails to allege the substantive elements of some legally cognizable claim, or where it alleges facts which defeat any claim[.]" *Oberlin Capital, L.P. v. Slavin*, 147 N.C. App. 52, 56, 554 S.E.2d 840, 844 (2001). When a trial court is ruling on a Rule 12(b)(6) motion to dismiss, it may consider, in addition to the pleadings, "[d]ocuments attached as exhibits to the complaint and incorporated therein by reference[.]" *Woolard v. Davenport*, 166 N.C. App. 129, 133–34, 601 S.E.2d 319, 322 (2004), and "documents which are the subject of a plaintiff's complaint and

to which the complaint specifically refers even though they are presented by the defendant.” *Oberlin Capital, L.P.*, 147 N.C. App. at 60, 554 S.E.2d at 847.

B. Color of Title

“In North Carolina, to acquire title to land by adverse possession, the claimant must show actual, open, hostile, exclusive, and continuous possession of the land claimed for the prescriptive period.” *White v. Farabee*, 212 N.C. App. 126, 132, 713 S.E.2d 4, 9 (2011) (internal quotation marks, brackets, and citation omitted). “Ordinarily, adverse possession of privately owned property must be maintained for twenty years in order for the claimant to acquire title to the land.” *Id.* “However, by statute, when the claimant’s possession is maintained under an instrument that constitutes ‘color of title,’ the prescriptive period is reduced to seven years.” *Id.*

Color of title is conferred by an instrument that purports to convey title but, in actuality, fails to do so. *Id.* More specifically, color of title can be defined as, “a writing, upon its face professing to pass title, but which does not do it, either from a want of title in the person making it or the defective mode of conveyance which is used[.]” *Id.* (citation omitted). Moreover, to constitute color of title, the instrument “must not be so obviously defective that no man of ordinary capacity could be misled by it.” *Id.* (citation omitted). Finally, “[i]t is well established that a deed may constitute color of title to the land described therein.” *Id.* (citation omitted). “When the deed is regular upon its face and purports to convey title to the land in controversy, it constitutes color of title. It is immaterial whether the conveyance actually passes the title. It is

sufficient if it appears to do so.” *Id.* at 133, 713 S.E.2d at 9 (emphasis omitted) (ellipsis and citation omitted).

Taking plaintiff’s allegation—that defendant Meridian’s deed is invalid—as true, *Plasman*, 257 N.C. App. at 690, 811 S.E.2d at 621, and because plaintiff’s complaint specifically refers to defendant Meridian’s deed, *Oberlin Capital, L.P. v. Slavin*, 147 N.C. App. at 60, 554 S.E.2d at 847, we look to the deed to determine if it constitutes color of title. Here, Capital Bank conveyed the Event Center to defendant Meridian by a Special Warranty Deed. And “[i]t is well established that a deed may constitute color of title to the land described therein.” *White*, 212 N.C. App. at 132, 713 S.E.2d at 9 (citation omitted). Moreover, the alleged defect in defendant Meridian’s deed is not “so obviously defective that no man of ordinary capacity could be misled by it,” *id.* (citation omitted), because both defendant Meridian and defendant WTB were misled by it. Therefore, we hold that defendant Meridian’s deed constitutes color of title; consequently, the applicable statute of limitations is N.C. Gen. Stat. § 1-38.

Under N.C. Gen. Stat. § 1-38, “when the claimant’s possession is maintained under an instrument that constitutes ‘color of title,’ the prescriptive period is . . . seven years.” *White*, 212 N.C. App. at 132, 713 S.E.2d at 9. And, “when a deed is relied upon as color of title, the seven-year prescriptive period ordinarily does not begin to run until the date the deed is recorded.” *Id.* at 133, 713 S.E.2d at 10. However, when the “adverse claimant and the opposing party derive their title from

independent sources, as is the case here, recordation is irrelevant, and the seven-year period begins to run when the adverse claimant obtains color of title and that does not occur until the conveyance, if a deed, is delivered.” *Id.* (brackets, ellipsis, and citation omitted). Furthermore, “for the purposes of beginning the prescriptive period for adverse possession under color of title,” a deed is considered delivered when it is signed by all the grantors. *Id.* at 134, 713 S.E.2d at 10. “As such, a deed is presumed to have been delivered at the time it bears date[,]” *Id.* at 133, 713 S.E.2d at 10 (internal quotation marks, brackets, and citation omitted); however, this is a rebuttable presumption, as “[e]vidence to the contrary . . . may negate or neutralize this presumption.” *Id.*

Plaintiff contends that it obtained title to the Event Center when it “acquired title and ownership of the entire [Heritage House] property, including the [Event Center] and all other common elements[,]” via the resolution the Greensboro City Council passed for plaintiff to “redevelop the blighted area of the Heritage House property.” Conversely, defendant Meridian contends it obtained title to the Event Center via Special Warranty Deed from Capital Bank (as grantor). Therefore, the recordation date is irrelevant for the purpose of determining when the prescriptive period began to run, because plaintiff and defendant Meridian derived their title from independent sources, *White*, 212 N.C. App. at 133, 713 S.E.2d at 10, and the prescriptive period of N.C. Gen. Stat. § 1-38 began running when Capital Bank signed the deed. *Id.* at 134, 713 S.E.2d at 10. On its face, defendant Meridian’s deed purports

to have been created on 15 July 2013. However, the Notary Public's seal below the grantor's signature indicates that Capital Bank signed the deed on 12 July 2013. Thus, there is a rebuttable presumption as to whether the prescriptive period began to run on 12 July 2013 or 15 July 2013. However, plaintiff filed its quiet title action on 16 July 2020, which falls outside the prescriptive period outlined in N.C. Gen. Stat. § 1-38.

Pursuant to Rule 41(a), plaintiff voluntarily dismissed its 16 July 2020 complaint without prejudice on 8 December 2020. Under Rule 41, "[i]f an action commenced within the time prescribed therefor, or any claim therein, is dismissed without prejudice under this subsection, a new action based on the same claim may be commenced within one year after such dismissal[.]" N.C. Gen. Stat. § 1A-1, Rule 41(a)(2) (2023). However, Rule 41(a)(2) does not operate to save plaintiff's action. While plaintiff's 3 December 2021 complaint appears to comply with the one-year period outlined in Rule 41(a)(2) because it was filed before 8 December 2021, plaintiff's 16 July 2020 action was not "commenced within the time prescribed" by N.C. Gen. Stat. § 1-38. Therefore, the statute of limitations barred plaintiff's quiet title action regardless of compliance with Rule 41.

We hold that the trial court properly granted defendants' Rule 12(b)(6) motion to dismiss because plaintiff's action was not brought within the prescriptive period of N.C. Gen. Stat. § 1-38. Therefore, plaintiff's complaint was barred by the applicable statute of limitations.

III. Conclusion

For the foregoing reasons, we conclude that the trial court did not err in granting defendants' joint motion to dismiss because the statute of limitations barred plaintiff's action.

AFFIRMED.

Judges STROUD and CARPENTER concur.

Report per Rule 30(e).