Case Law Shorts

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Case Law Shorts 9/3/13 *New York Appellate Division, Second Dept.*
Deed/Acknowledgment Trumps Parties Clause/Intent of Grantor: Owner, an individual, transferred property to a corporation in 1984. In 1989, owner executed another deed from himself to the same corporation, however, the acknowledgment purported to show a conveyance from the corporation to the owner (corporate acknowledgment?). Thereafter, owner, individually, deeded the property to creditor, who apparently believed the acknowledgment to effectuate a conveyance back to the owner. Creditor ultimately sued to quiet title and owner countered, arguing that the creditor's deed was ineffective inasmuch as it was conveyed in an individual capacity whereas the property was owned by the corporation. The Supreme Court, Kings County, dismissed for owner based upon the face of the deed. The Second Dept. reversed however, stating that the acknowledgment created ambiguity and that the Court could consider extrinsic evidence because of it. The extrinsic evidence showed that owner intended to effectuate a conveyance back to himself when he executed the 89' deed, therefor, owner was vested when he made the deed to the creditor and the creditor's deed is valid. Al's Atl., Inc. v Shatma, LLC, Appellate Division, Second Department, 2013 NY Slip Op 05604, August 14, 2013.
opinion

Case Law Shorts 8/27/13 *New York Appellate Division, Second Dept.*
POA/Conveyance by Agent to Self/Will/Executor vs. Agent/Bank of America/Encumbrancer for Value/Deed Set Aside: Agent (one of two daughters) deeded property from her mother to herself via mother's POA and obtained a mortgage. Mother died shortly thereafter and executor (ousted sister), moved for summary judgment seeking to pierce the validity of the conveyance and set aside the deed (mother's will named both sisters as beneficiaries). Institutional lender contested. The Surrogate's Court, Queens County, in an earlier ruling, found that lender made a prima facie showing that it was a bona fide encumbrancer for value but that there was a question of fact with respect to whether lender should have made an inquiry into the validity of the conveyance by the agent to herself. With respect to the current presentation, the executor moved for summary judgment to turn over the property inasmuch as the Court ruled in a related accounting proceeding, to which both sisters were parties but which lender was not, that the deed was invalid. Lender countered that the deed was valid. The Court denied executor's motion but also rejected lender's argument based upon privity – lender had privity with the sister/agent and therefor, was collaterally estopped from contesting the validity of the deed ruling. Both parties appealed and the Second Dept. sustained. The Court said that lender was not aggrieved as the Surrogate's Court had determined that it was an encumbrancer for value - the relief sought by lender had already been provided. As to executor's motion… "The petitioner's motion for summary judgment on the petition was properly denied. The Surrogate's Court's determination in the related accounting proceeding against Watson, that the deed to her is null and void on the grounds of breach of fiduciary duty and failure to establish a gift, does not entitle the petitioner to summary judgment against the mortgagees, who are still entitled to pursue the defense that they are bona fide encumbrancers for value (see Marden v

Dorthy, 160 NY 39, 50)." Matter of Hill, Appellate Division, Second Department, 2013 NY Slip Op 05694, August 21, 2013
opinion

Case Law Shorts 8/22/13 *New York Appellate Division, Second Dept.*
Fence Encroachment/Title Policy Exception for Fence Variations/Ejectment/Trespass: Plaintiff sued neighbor claiming that neighbor's fence encroached onto plaintiff's property. Neighbor, relying upon its stale (5 yrs old) survey at the time of neighbor's purchase, claimed that the fence did not encroach. Plaintiff however, produced a current survey showing an encroachment of up to almost 8 feet. Neighbor, seeking coverage, brought in title insurer. However, title insurer moved to dismiss inasmuch as the survey reading denoted variations between the fence and the line of record. The Supreme Court, Queens County granted for title insurer on the variations exception, but also stated that the evidence failed to show that the fence was located on neighbor's property. Thereafter, plaintiff moved for summary judgment, based upon "The doctrine of the law of the case", as the Court found no evidence to support neighbor's claim in its ruling on the title insurer's motion to dismiss the third party complaint. The Court granted for plaintiff, following the law of the case. However, the Second Dept. reversed stating that a dismissal predicated upon the law of the case can be supported only where the issue is resolved on the merits. Here, there were competing surveys and the plaintiff failed to show entitlement to judgment as a matter of law. Ramanathan v Aharon, Appellate Division, Second Department, 2013 NY Slip Op 05621, August 14, 2013.
opinion

Case Law Shorts 8/16/13 *New York Appellate Division, Second Dept.*
MERS/Assignment of Only One of Consolidated Mortgages/Null and Void: Plaintiff executed a CEMA consolidating two mortgages. MERS was the named mortgagee, as nominee for Countrywide, on both mortgages and the CEMA. Thereafter, MERS, as nominee for Countrywide, assigned mortgage 1 to defendant. Plaintiff sought to have mortgage 1 declared null and void by reason of the assignment. Defendant sought to establish that the mortgage was "not null and void" and to dismiss but the Supreme Court, Westchester County, denied. The Second Dept. reversed… "Where, as here, balances of first mortgage loans are increased with second mortgage loans and CEMAs are executed to consolidate the mortgages into single liens, the first notes and mortgages still exist and may be assigned to other lenders (see Aurora Loan Servs., LLC v Weisblum, 85 AD3d 95, 109)." Benson v Deutsche Bank Natl. Trust, Inc., Appellate Division, Second Department, 2013 NY Slip Op 05606, August 14, 2013.
opinion