

JOSEPH CHARLES GANNON, *et ux.*

Plaintiffs

v.

MARY JO EATON, *et al.*

Defendants

IN THE

CIRCUIT COURT FOR

HOWARD COUNTY

Case No.: 13-C-11-087694 CN

MEMORANDUM OF LAW IN SUPPORT OF MARK AND MARCIA CISSELL'S MOTION FOR SUMMARY JUDGMENT

Mark and Marcia Cissell, through their attorney, Thomas C. Valkenet, submit this memorandum of law in support of their motion for summary judgment.

I. Summary of the Case.

This case arises out of a broken real estate contract between the Plaintiffs and one of the defendants, Mary Jo Eaton. After the Plaintiffs declared their contract dead, Mary Jo Eaton contracted with Mr. Cissell and passed title to Mr. and Mrs. Cissell. This lawsuit was filed after Ms. Eaton formed her contract with Mr. Cissell. The Complaint did not name Mr. and Mrs. Cissell, and it did not seek relief against the real property. The Amended Complaint that named Mr. and Mrs. Cissell as additional defendants was filed four months after they closed with Ms. Eaton, and three months after their deed was recorded.

The Amended Complaint seeks a declaration that the Plaintiffs have an equitable interest in the real property. Mr. and Mrs. Cissell are entitled to summary judgment because they are *bona fide* purchasers, for value, who took equitable title after the Plaintiffs' canceled their contract with Ms. Eaton, and before this lawsuit was filed.

II. Discussion.

A. The law of summary judgment.

Maryland Rule 2-501(e) directs that summary judgment shall be granted when the moving party has placed before the court pleadings, depositions, answers to interrogatories, admissions and affidavits,

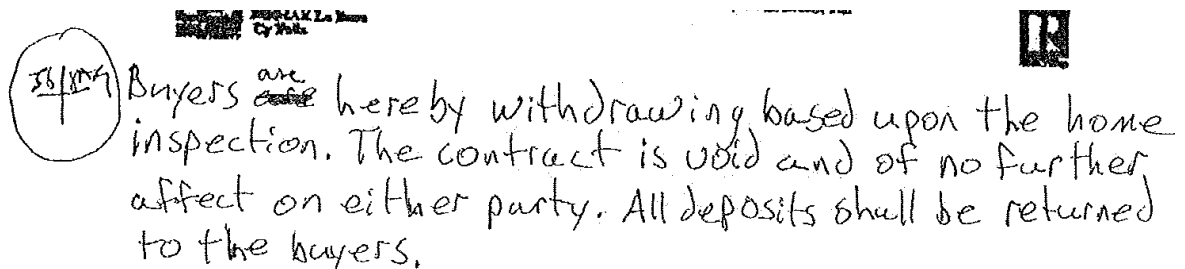
demonstrating that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. *Melbourne v. Griffith*, 263 Md. 486, 491, 283 A.2d 363, 365 (1971).

After Mr. and Mrs. Cissell set forth sufficient grounds for summary judgment, it is incumbent upon the Plaintiffs to show with some particularity that there is a genuine dispute as to a material fact. *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726 (1993). If they oppose this motion, the Plaintiffs must do more than simply show there is some metaphysical doubt about the material facts. The Plaintiffs must present admissible evidence that would permit the fact finder to hold in their favor. *A.J. Decoster Co. v. Westinghouse Elec. Corp.*, 333 Md. 245, 634 A.2d 1330 (1994).

It is not credibly disputed that Mr. and Mrs. Cissell made their contract with Mary Jo Eaton before the Complaint was filed, and without knowledge of the Plaintiffs claimed interest in the real property. Mr. and Mrs. Cissell became *bona fide* purchasers, immune to any intervening interest claimed by the Plaintiffs, on June 6, 2011, when Mr. Cissell made his contract with Ms. Eaton. This entitles Mr. and Mrs. Cissell to judgment on Count One of the Amended Complaint.

B. Facts not credibly disputed.

1. On May 24, 2011, the Plaintiffs annotated a Contract Addendum dated May 17, 2011, attached as Exhibit A, to declare their contract with Mary Jo Eaton “void and of no further affect on either party.” The handwritten note is excerpted, here:


Buyers ~~are~~ ^{are} hereby withdrawing based upon the home inspection. The contract is void and of no further affect on either party. All deposits shall be returned to the buyers.

See, Amended Complaint, ¶18.

2. On June 6, 2011, Mark Cissell entered into a contract with Mary Jo Eaton to purchase 12731 Chapel Chase Drive, Clarksville, Maryland 21029 (“Property”). Exhibit B (Affidavit of Mark Cissell).

3. On August 8, 2011, the Plaintiffs filed a Complaint alleging that Mary Jo Eaton breached a prior contract of sale with the Plaintiffs. The Complaint was filed two months after Mr. Cissell's contract with Ms. Eaton was formed. The Complaint sued only for money damages from Ms. Eaton and others. Consistent with the May 24, 2011 declaration that the Plaintiffs' contract was "void and of no further affect on either party," the Complaint did not name Mr. and Mrs. Cissell as defendants or make claim to equitable title in the real property. Exhibit C (Complaint).
4. On August 22, 2011, Mark and Marcia Cissell settled on their purchase of the Property from Ms. Eaton. Exhibit B.
5. Mr. and Mrs. Cissell financed their purchase with a \$560,000.00 loan from 1st Mariner Bank. Exhibit A. The loan is secured against the Property by a deed of trust dated August 22, 2011, and recorded among the Land Records of Howard County at Liber 13447 folio 288. Exhibit B. The bank is not a party to this case.
6. Mary Jo Eaton conveyed the Property to Mr. and Mrs. Cissell by deed dated August 22, 2011 and recorded on September 20, 2011 among the Land Records of Howard County at Liber 13446 folio 282. Exhibit B.
7. On December 20, 2011, the Plaintiffs filed the Amended Complaint to add Mr. and Mrs. Cissell as Defendants. Exhibit C (Amended Complaint).
8. At paragraph 18 of the Amended Complaint, the Plaintiffs candidly disclose that they "...withdrew from the Contract [with Mary Jo Eaton] on May 24, 2011, submitted a Release Agreement to the Defendant Eaton requesting a return of their deposit monies..." This is the Plaintiffs' affirmation of what was written on the May 17, 2011 Contract Addendum, described in paragraph 1, above.
9. At paragraph 25 of the Amended Complaint, the Plaintiffs confirm that "...Eaton failed to disclose to Defendants Cissell or Sage Title Group, LLC that a lawsuit had been filed in this matter..." This is consistent with, and is confirmed by Mr. and Mrs. Cissell's own affidavits, attached as Exhibits A and _____.

10. Paragraph 26 of the Amended Complaint alleges that "...the Plaintiffs retain equitable title in the property."
11. Paragraph 31 of the Amended Complaint alleges that "[a]n actual controversy exists between the Plaintiffs and Defendants Cissell as whether the Plaintiffs retain equitable title in the Property as a result of the failure of Defendant Eaton to release them from the Contract."
12. However, the *ad damnum* clause of Count One does not seek any relief against Mr. and Mrs. Cissell, or the real property. The Plaintiffs demand for relief seeks money, only, from other defendants, and a formal release of the canceled contract, as follows:

WHEREFORE, the Plaintiffs request that the Court determine the rights and liabilities of the parties under the Contract and declare that:

- A) The Plaintiffs timely exercised their rights to withdraw under the Contract and are entitled to a return of all deposit monies held under the Contract by Long and Foster.
- B) A Release be executed by the Plaintiffs and Defendant Eaton relinquishing any right title and interest in the Property conveyed to Defendants Cissell.
- C) Plaintiffs further request that the Court award the Plaintiffs the costs of these proceedings, as well as their attorney's fees and enter such other and further relief as justice may require.

C. The Cissells are *bona fide* purchasers, unencumbered by any claim of the Plaintiff.

1. Equitable title passed to Mr. Cissell when he contracted with Ms. Eaton.

Mr. Cissell's June 6, 2011 contract to purchase the real property from Ms. Eaton vested him with equitable title in the property. This is hornbook law:

The effect of such a contract is to vest the equitable ownership of the property in the vendee, subject to the vendor's lien for unpaid purchase money, and to leave only the legal title in the vendor pending the fulfilment of the contract and the formal conveyance of the estate.

Himmigboefer v. Medallion Industries, Inc., 302 Md. 270, 279, 487 A.2d 282, 287 (1984), quoting, *Stebbins-Anderson Co. v. Bolton*, 208 Md. 183, 117 A.2d 908 (1955). Legal title follows later, upon delivery and recording of the

deed. *Kingsley v. Makay*, 253 Md. 24, 27 (1969) (“The legal title to land, of course, does not pass, other than by operation of law, until a deed is properly executed and recorded.”). This has been the law in Maryland for over two hundred years, and is known as “equitable conversion.” It was first described in Maryland’s case law, as follows:

A contract for land, bona fide made for a valuable consideration, vests the equitable interest in the vendee from the time of the execution of the contract, although the money is not paid at that time. When the money is paid according to the terms of the contract, the vendee is entitled to a conveyance, and to a decree in Chancery for a specific execution of the contract, if such conveyance is refused.

Hampson v. Edelen, 2 H. & J. 64, 66 (1807).

2. Mr. Cissell took equitable title with no notice of Plaintiffs’ claims.

In Maryland, a *bona fide* purchaser is one who acquires an interest in real property without notice of prior equities. *Washington Mut. Bank v. Homan*, 186 Md. App. 372, 394 (2009). A BFP purchases in good faith, for value, and without notice or knowledge of any infirmity in the vendor's title. *Fertitta v. Bay Shore Dev. Corp.*, 252 Md. 393 (1969). As a BFP, Mr. and Mrs. Cissell took title to the real property “free and clear” of interests that were not properly noticed. *Taylor Elec. Co., Inc. v. First Mariner Bank*, 191 Md. App. 482, 503 (2010) *cert. denied*, 415 Md. 43, (2010) (“...once a *bona fide* purchaser or lender for value acquires title by way of execution of contract for sale or valid mortgage, the purchaser or mortgagee takes title free and clear of any subsequent lien”).

The facts on this issue are not in dispute.

- The Plaintiffs declared their contract with Ms. Eaton to be “void and of no further affect on either party” on May 24, 2011.
- Ms. Eaton contracted with Mr. Cissell on June 6, 2011.
- The lawsuit against Ms. Eaton and others was not filed until August 8, 2011.
- Mr. and Mrs. Cissell had no knowledge of any claim to a property interest by the Plaintiffs.

It is by operation of equitable conversion on June 6, 2011 that Mr. Cissell gained the status of *bona fide* purchaser. It does not matter that the full purchase price was paid at a later date, and that the deed from Ms. Eaton to him and his wife was executed at a later date. He made the contract with Ms. Eaton during the

gap, between the Plaintiffs' cancelation of their contract, and the filing of the lawsuit. It is his BFP status, measured from June 6, 2011, that insulates the fee interest he now holds with his wife from claims made by the Plaintiffs in this case.

The Court does not need further analysis to justify a grant of summary judgment in favor of Mr. and Mrs. Cissell. The contract between Ms. Eaton and Mr. Cissell vested equitable title in Mr. Cissell on June 6, 2011, after the prior contract was canceled. There simply was no intervening interest of the Plaintiffs in existence on June 6, 2011 to be enforced by this court.

The filing of the lawsuit on August 8, 2011 has no impact on the analysis. It is settled that a lawsuit involving claims to real property notifies "any **future** purchaser of the title to the property that they will take the property subject to the result of the pending litigation" [*emphasis supplied*]. *Greenpoint Mortg. Funding, Inc. v. Schlossberg*, 390 Md. 211, 222 (2005). The Plaintiffs filed suit against Ms. Eaton and others **after** Mr. Cissell's June 6, 2011 contract vested him with equitable title. And while this is enough to conclude the discussion, it is also true that the Complaint sued only for the return of their deposit and monetary damages stemming from Ms. Eaton's breach of contract. These are not claims against the real property that ordinarily create *lis pendens* notice, had the lawsuit been filed timely.

3. The Plaintiffs have failed to join 1st Mariner Bank.

If the Court needs additional grounds to grant summary judgment in favor of Mr. and Mrs. Cissell, it is the Plaintiffs' failure to include the purchase money lender as a party. 1st Mariner Bank is the beneficiary of a \$560,000 deed of trust. The Plaintiffs' failure to join the Bank is entirely consistent with their desire for money damages, only. If the Plaintiffs were intent on asserting an equitable interest in the Property, 1st Mariner would be a necessary and indispensable party. Rule 2-211 would require joinder of the Bank before the Plaintiffs' claimed equitable interest could be adjudicated. Any finding in favor of the Plaintiffs would necessarily displace the lien of the Bank.

The absence of the Bank, however, is entirely consistent with the Plaintiffs' May 24, 2011 declaration that their contract with Ms. Eaton was ended. The Bank is not a necessary party to a case seeking only money

damages for breach of contract. And if this case is only for money damages, there is no basis to impose an equitable interest in Mr. and Mrs. Cissells' home.

III. Conclusion.

Summary judgment in favor of Mr. and Mrs. Cissell on Count One of the Amended Complaint is appropriate where equitable title passed after cancelation of the Plaintiffs' contract with Ms. Eaton, and before this lawsuit was filed.

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Certificate of Service

I HEREBY CERTIFY that on _____, 2013 a copy of this memorandum of law in support of Mark and Marcia Cissells' motion for summary judgment was mailed, first class, postage prepaid to:

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