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Order on Defendants' Motions for Summary Judgment (MICHAEL MCCHESNEY)

Elizabeth E. Long
Superior Court of Fulton County

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JUL 15 2008
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

MICHAEL MCCHESNEY, Plaintiff, v. IH RIVERDALE, LLC and GEOFFREY NOLAN, Defendants, Third-Party Plaintiffs v. MCCHESNEY CAPITAL PARTNERS, LLC GEORGE MCCHESNEY and NICK WALDORFF, Third-Party Defendants	)	Civil Action No.: 2004CV83192

ORDER ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Defendants have moved the Court for summary judgment on all counts of Plaintiff's Complaint. The parties did not request oral argument. After reviewing the record of the case and the briefs submitted on the motion, the Court finds as follows:

I. FACTS

In August, 2003, IH Riverdale, LLC ("IH") and Geoffrey Nolan, Defendants in this case, filed a complaint and a lis pendens on a property located in Clayton County, Georgia, (the "Meadow Springs Property") in a related case, IH Riverdale, LLC and Geoffry Nolan v. McChesney Capital Partners, LLC, et al., *civil action number* 2003CV73603 (the "Main Case"). In response, Michael McChesney, filed this lawsuit seeking a declaratory judgment that he was a bona fide purchaser for value of the

Meadow Springs Property, and alleging slander of title concerning the Meadow Springs Property.

In January, 2001, McChesney Capital Partners, LLC ("MCP"), entered into an agreement to purchase (the "Purchase Agreement") a tract of land for development ("Phase I") from G&I Development Company, LLC ("G&I"). The Purchase Agreement stated that at closing G&I would grant MCP an option (the "Option") to purchase an additional adjacent tract of land (the "Phase II" property, also referred to as the Meadow Springs Property). On April 19, 2001, MCP assigned 50% of its interests in the Purchase Agreement to "Nolan or IH Riverdale, LLC" (the "Assignment"), including the Option. The terms of IH/Nolan's interests in the Option were to be defined in an operating agreement to be entered into at a later time.

Riverdale Capital Investments, LLC ("RCI") was created to acquire and develop Phase I. In order for the Phase I property to be acquired in accordance with IRS § 1031 tax-deferred exchange regulations, MCP transferred its right to purchase Phase I to Qualified Exchange Accommodations LLC, who acted as an intermediary in the transaction, and directed that the property be conveyed to RCI.[1] On June 13, 2001, RCI closed the Purchase Agreement with G&I and developed Phase I. Pursuant to the Purchase Agreement, after the Phase I closing, G&I and MCP executed another agreement for the Phase II/Meadow Springs Property. The terms of IH/Nolan's participation in the Option were defined in RCI's Amended Operating Agreement, granting IH/Nolan, among other things, a right of first refusal (the "Right of First Refusal") to invest in the Phase II/Meadow Springs Property.

[1] Jeb Beardsley, an attorney, advised MCP on the structure of this transaction and the other § 1031 transfers involved here.

In 2003, Meadow Springs, LLC ("Meadow Springs") was created to acquire and develop the Phase II/Meadow Springs Property. After an assignment from MCP, Meadow Springs exercised the Option through a §1031 tax-deferred exchange.[2] On April 4, 2003, Meadow Springs closed the Phase II/Meadow Springs Property and began development.

In order to finance construction, Meadow Springs obtained a short-term $1.5 million loan from Michael McChesney (the "McChesney Loan") while it sought long-term financing. In August, 2003, Meadow Springs was in the process of closing a multi-million dollar construction loan from Regions Bank, when IH and Nolan filed the complaint and lis pendens in the Main Case. IH/Nolan claimed that they were prevented from exercising their Right of First Refusal to participate in the Option and filed suit in the Main Case to enforce their rights. The following day a copy of the complaint and the lis pendens was hand delivered to Regions Bank by Defendants' then-counsel.

The Regions Bank loan did not close and Meadow Springs subsequently defaulted on the McChesney Loan. Thereafter, Michael McChesney foreclosed on the Phase II/Meadow Springs Property and purchased it through foreclosure proceedings.

As a result of the lis pendens in the Main Case, and the title objection it created, Michael McChesney brought this action against IH and Nolan seeking a declaratory judgment and alleging slander of title. Meadow Springs also brought a similar lawsuit against IH and Nolan, *civil action number* 2007CV143869 (the "Meadow Springs Action"), alleging slander of title and tortious interference as a result of the lis pendens. In an Order in the Meadow Springs Action dated January 15, 2008, (the "Meadow Spring Order") this Court granted summary judgment for IH/Nolan finding that IH/Nolan had an

[2] Again, MCP's attorney structured the transfer, and at the time was president of Meadow Springs.

interest in the Meadow Springs Property, that the lis pendens was lawful, that its contents were privileged, and that IH/Nolan's actions with respect to Regions Bank did not exceed the privilege. The Meadow Spring Order is currently on appeal to the Georgia Court of Appeals.

II. SUMMARY JUDGMENT

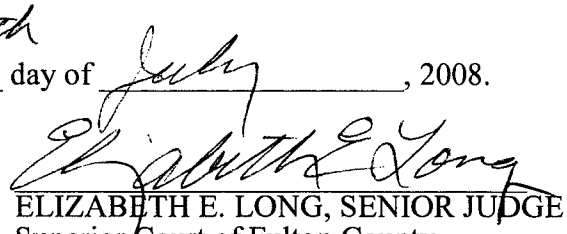
To prevail on a motion for summary judgment, the moving party must demonstrate that "there is no genuine issue of material facts, viewed in the light most favorable" to the non-moving party, "to warrant judgment as a matter of law." Lau's Corp. v. Haskins, 261 Ga. 491 (1991). See also, Danforth v. Bullman, 276 Ga. 531, 532 (2005).

The Court finds, as it did in the Meadow Spring Order, that the lis pendens filed on the Meadow Spring Property was appropriate. See Colony Bank Southeast v. Brown, 275 Ga. App. 807 (2005); Aiken v. Citizens & S. Bank, 249 Ga. 481 (1982).

Statements contained in a lis pendens are absolutely privileged. O.C.G.A. § 51-5-8. The Court finds, as it did in the Meadow Spring Order, that IH/Nolan's publication of the lis pendens and Complaint in the Main Case to Regions Bank did not exceed the boundaries of the absolute privilege established in O.C.G.A. § 51-5-8. See, Panfel v. Boyd, 187 Ga. App. 639 (1988); O'Neal v. Home Town Bank, 237 Ga. App. 325 (1999).

Plaintiff's Complaint seeks a declaratory judgment that he is a bona fide purchaser for value of the Meadow Spring Property; that issue is not the subject of Defendants' Motion for Summary Judgment, or of this Order. Therefore, that issue remains unresolved. The remainder of Defendants' Motion for Summary Judgment is hereby **GRANTED**.

SO ORDERED this 15th day of July, 2008.



ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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