

2016 IL App (2d) 151265-U  
No. 2-15-1265  
Order filed October 26, 2016

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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SHREE RADHEY SHYAM GROUP	)	Appeal from the Circuit Court
SERIES, LLC,	)	of DuPage County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12-L-963
	)	
SPRINTCOM, INC.; STC TWO, LLC;	)	
GLOBAL SIGNAL ACQUISITIONS II, LLC;	)	
GLOBAL SIGNAL ACQUISITIONS III, LLC;	)	
JOHN SAKASH REVOCABLE TRUST	)	
dated January 2, 1987; and JKM	)	
PARTNERSHIP,	)	
	)	
Defendants	)	
	)	
(John Sakash Revocable Trust dated	)	
January 2, 1987 and JKM Partnership,	)	
Defendants-Appellants; Sprintcom, Inc.,	)	
STC Two, LLC, Global Signal Acquisitions II,	)	Honorable
LLC, and Global Signal Acquisitions III, LLC,	)	Bonnie M. Wheaton,
Third-Party Plaintiffs).	)	Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Presiding Justice Schostok and Justice Hutchinson concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in granting plaintiff summary judgment on its claim for forcible entry and detainer.

¶ 2 Defendants the John Sakash Revocable Trust dated January 2, 1987, (the Trust), and JKM Partnership (JKM) (collectively, Sakash) appeal from the trial court's order granting plaintiff, Shree Radhey Shyam Group Series, LLC, summary judgment. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff and Sakash dispute which entity is entitled to lease payments from a cell phone tower located on a portion of the property commonly known as 23W110 Army Trail Road in Glendale Heights. Defendants Sprintcom, Inc.; STC TWO, LLC (STC); Global Signal Acquisitions II, LLC (GSA II); and Global Signal Acquisitions III, LLC (GSA III) (collectively, the Cell Tower Defendants) had leased a portion of the property and constructed an equipment base station and antenna structure on the property.

¶ 5 Before this dispute, the Trust owned the property and leased a portion of it to Sprintcom for the installation and operation of the cell tower under a PCS Site Agreement (the site agreement). The Trust subsequently transferred title of the entire parcel to Victor Soto, who is not a party to this action. A foreclosure action against Soto resulted in plaintiff purchasing the property. The Cell Tower Defendants continued operating the cell tower. The Cell Tower Defendants initially sent payments to Sakash but forwarded some to plaintiff when plaintiff obtained title to the entire parcel.

¶ 6 On August 21, 2012, plaintiff filed a two-count complaint against the Trust and the Cell Tower Defendants, alleging that it was the titleholder of record of the property and that neither Sakash nor the Cell Tower Defendants had a right to occupy or use the property without compensating plaintiff. Count 1, for forcible entry and detainer, sought possession of the property and unpaid rent. Count 2, for declaratory judgment, sought adjudication of the final rights and liabilities of the parties with respect to the property. Plaintiff alleged that, contrary to

its demands to Sakash and the Cell Tower Defendants, fewer than all rental payments were forwarded to plaintiff.

¶ 7 On November 2, 2012, the Trust filed an answer and raised an affirmative defense, arguing that a recorded lease and a 14-year history of receiving monthly rental payments from the Cell Tower Defendants entitled it to future payments. On November 16, 2012, the Cell Tower Defendants filed their own answer to the complaint, generally stating that they would tender rent to whichever party was so entitled.

¶ 8 On November 16, 2012, the Cell Tower Defendants filed a third-party complaint against plaintiff, the Trust, and JKM for declaratory and injunctive relief regarding the proper disposition of the rental payments. The third-party complaint alleged that, following the death of John Sakash, the Trust assigned the lease to JKM, which began receiving the rent payments from GSA III. Because the Trust and JKM had a rival claim against plaintiff for the payments, the Cell Tower Defendants were in “great doubt as to which party is entitled to the lease payments” and could not determine which claim was valid.

¶ 9 The first counterclaim sought an injunction barring Sakash and plaintiff from pursuing any action against the Cell Tower Defendants for future lease payments before resolving their claims, to protect against “double or triple litigation.” In the event that Sakash was entitled to the rental payments, the second counterclaim sought from plaintiff a refund of certain payments that the Cell Tower Defendants had potentially made in error.

¶ 10 On January 23, 2013, plaintiff moved for summary judgment. Plaintiff filed a two-count amended complaint on February 7, 2013, and was granted leave to add JKM as a defendant and make JKM subject to the motion for summary judgment. The claim for forcible entry and detainer was the same as in the original complaint, seeking possession of the property,

compensation for defendants' use of the property, and attorney fees and costs. The amended declaratory judgment claim added JKM as the assignee of a lease between the Trust and Sprintcom. The claim sought an adjudication of the parties' rights regarding whether various agreements still applied to the property and whether the Trust or JKM were entitled to any rental payments.

¶ 11 On August 13, 2014, the trial court entered summary judgment for plaintiff. The trial court determined that Sakash had no right, title, or interest in the property and plaintiff was entitled to all rent since the date that it acquired the property. The written order stated that "[t]his is a final and appealable order." On September 9, 2014, Sakash filed a notice of appeal. The Cell Tower Defendants' two counterclaims against plaintiff and Sakash remained pending.

¶ 12 Because the counterclaims remained pending at the time, we held that Sakash could not appeal from the summary judgment without a proper written finding pursuant to Supreme Court Rule 304(a) (eff. Feb. 26, 2010). On August 24, 2015, we dismissed the appeal as premature on the ground that Rule 304(a) had not been sufficiently invoked. *Shree Radhey Shyam Group Series v. Sprintcom, Inc.*, 2015 IL App (2d) 140901-U, ¶ 15.

¶ 13 On December 15, 2015, the trial court entered a final order disposing of all the claims. The court stated that, consistent with the summary judgment entered on August 13, 2014, the Cell Tower Defendants' counterclaim for injunction against Sakash would be granted and that plaintiff was entitled to all rent from the date of its acquisition of the property. All of the other claims, including the Cell Tower Defendants' *quantum meruit* claim, were dismissed with prejudice. On December 22, 2015, Sakash filed a timely notice of appeal.

¶ 14

## II. ANALYSIS

¶ 15 Sakash appeals from the summary judgment entered for plaintiff on its claim for possession and past rents related to the cell tower. Summary judgment is appropriate only when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2014). The purpose of summary judgment is not to try a question of fact but, rather, to determine whether a genuine issue of material fact exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). “A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts.” *Adams*, 211 Ill. 2d at 43. If a party moving for summary judgment introduces facts that, if not contradicted, would entitle him to a judgment as a matter of law, the opposing party may not rely on his pleadings alone to raise issues of material fact. *Klitzka v. Hellios*, 348 Ill. App. 3d 594, 597 (2004).

¶ 16 In reviewing a grant of summary judgment, this court must construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the nonmoving party. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). Summary judgment is to be encouraged to expedite the disposition of a lawsuit; however, it is a drastic means of disposing of litigation and should be allowed only when the right of the moving party is clear and free from doubt. *Springborn v. Village of Sugar Grove*, 2013 IL App (2d) 120861, ¶ 24. We review *de novo* a trial court’s grant of summary judgment. *Springborn*, 2013 IL App (2d) 120861, ¶ 24.

¶ 17 This dispute turns on two documents between Sakash and Soto: a warranty deed transferring title from Sakash to Soto and a leaseback of the cell tower portion from Soto to

Sakash. The leaseback was executed before the warranty deed, but they were recorded simultaneously on March 19, 2003. Neither mentions anything about Sakash reserving the right to receive the rent payments after title was transferred to Soto.

¶ 18 Specifically, the documents show that, on May 23, 1987, title to the property was transferred by quit claim deed from Michael Sakash to the Trust and recorded. On September 17, 1997, a memorandum of the site agreement between the Trust and Sprintcom for 1,200 square feet of the property was recorded.

¶ 19 On January 6, 1999, Articles of Agreement for Deed were entered into between the Trust and Soto for the entire property, but a memorandum of the document was never recorded. On February 1, 1999, the Trust, as lessee, and Soto, as lessor, entered into a leaseback, called the “industrial lease,” for the cell tower portion of the property. The industrial lease was not recorded when it was executed.

¶ 20 In February 2003, Soto executed a mortgage on the property, which was presumably recorded. At an unknown time, the Trust assigned its interest in the lease to JKM, and the assignment was not recorded.

¶ 21 On February 28, 2003, the Trust conveyed the entire parcel, including the cell tower portion, by warranty deed to Soto. On March 19, 2003, the warranty deed was recorded simultaneously with the industrial lease, which does not reference Sakash’s right to receive rent payments pursuant to the site agreement.

¶ 22 In 2006, Soto refinanced his loan, the mortgage was recorded, and the note was held by U.S. Bank. Also in 2006, Sprintcom’s rights under the site agreement were transferred to STC, then to GSA II, and then to GSA III.

¶ 23 On September 9, 2009, U.S. Bank filed a mortgage foreclosure action, and the trial court in that case obtained jurisdiction by publication over Soto, unknown owners, and non-record claimants. On February 8, 2010, a judgment of foreclosure was entered against Soto. At a sheriff's sale on June 29, 2010, U.S. Bank purchased the entire parcel. The sale was approved by the court on July 20, 2010. On November 8, 2010, a sheriff's deed to U.S. Bank was recorded, and U.S. Bank conveyed the entire parcel to plaintiff by special warranty deed on October 27, 2011. At no relevant time was Sakash in actual physical possession of the cell tower portion of the property.

¶ 24 After reviewing these facts as shown in the pleadings and documents on file, the trial court agreed with plaintiff that the chain of title to the property lacked any recorded leases or reservation of rights to Sakash, and without such recordation, the subsequent conveyances of title necessarily included conveyance of the right to receive rent.

¶ 25 A. Chain of Title

¶ 26 First, Sakash argues that it was never outside the chain of title because the Trust's warranty deed to Soto and the industrial lease from Soto to the Trust were exchanged and recorded simultaneously as part of one transaction. Sakash contends that, because the warranty deed to Soto and the leaseback to Sakash were recorded at the same time, both are valid, regardless of Soto losing title through foreclosure. Plaintiff responds that, even if the simultaneous recordation makes them both effective, the two documents do not provide Sakash with rights not contained in either. We agree with plaintiff.

¶ 27 The trial court noted the following undisputed facts. The Trust became the title holder of the entire parcel on May 23, 1987. The next recorded document, from 1989, was the memorandum of the site agreement between the Trust and Sprintcom for the cell tower portion.

The next recorded document, executed on February 28, 2003, was the warranty deed from the Trust to Soto for the entire parcel. The deed contained no reservation of any right to the Trust, including any right to future rent payments under the site agreement and the industrial lease. At that time, neither the Articles of Agreement for Deed nor the industrial lease of the cell tower portion had been recorded.

¶ 28 The court observed that the industrial lease between the Trust and Soto was not recorded until after the recording of the warranty deed from the Trust to Soto. At that point of recording, the warranty deed had already conveyed the Trust's entire interest to Soto. The court concluded that the recording of the industrial lease regarding the cell tower portion did not affect the title because the purported lease memorialized a transaction in which the "lessee," the Trust, had already conveyed to Soto all of its interest in the property at the time of the recording.

¶ 29 Even if the simultaneous recordation makes the warranty deed and industrial lease both effective, the two documents do not provide Sakash with rights not contained in either. A conveyance of property by warranty deed, where the grantor reserves nothing, conveys a lease for the property as well as the right to receive unaccrued rent payments. *Pros Corporate Management Services, Inc. v. Ashley S. Rose, Ltd.*, 228 Ill. App. 3d 573, 580 (1992). Without an express reservation of the right to future rent, the subsequent purchaser of property obtains all of the seller's rights, which can be exercised in an action for nonperformance of the lease or for the recovery of any rent unpaid rent due under the lease. *Pros Corporate Management Services, Inc.*, 228 Ill. App. 3d at 580.

¶ 30 We acknowledge that the industrial lease is some evidence that Sakash and Soto intended Sakash to receive the rent payments. However, neither recorded document refers to this intent. Sakash contends that plaintiff should have anticipated – and we can now infer – such intent from



the mere existence of the leaseback, because its only purpose was the assignment of rent payments to Sakash. As plaintiff correctly points out, a court should not speculate about the parties' intent in entering into a contract where the express language of the documents does not reserve a right that easily could have been included. See *Pros Corporate Management Services, Inc.*, 228 Ill. App. 3d at 580. Thus, the warranty deed conveyed from Sakash to Soto the right to future rent under the site agreement. The right to rent passed from Soto to plaintiff through the foreclosure process. We recognize the harshness of the result if Sakash and Soto indeed had intended for Sakash to receive future rent payments, but they failed to indicate a contrary intent in their documents when they easily could have done so.

¶ 31 B. Special Warranty Deed

¶ 32 Second, Sakash argues that plaintiff had at least inquiry notice of Sakash's leasehold interest and took title subject to that interest. Sakash argues that the physical structure of the cell tower and plaintiff's awareness of a lease affecting the cell tower portion conferred a duty on plaintiff to inquire into matters not in the recorded chain of title. However, purchasers of real estate, in general, are chargeable only with notice of anything appearing in the record of the chain of title of the property they are purchasing. *Glen Ellyn Savings & Loan Ass'n v. State Bank of Geneva*, 65 Ill. App. 3d 916, 923 (1978) (a purchaser is not deemed to have actual or constructive notice of unrecorded deeds).

¶ 33 The trial court rejected the notion that the special warranty deed from U.S. Bank to plaintiff somehow resurrected the industrial lease between Sakash and Soto. The court concluded that the special warranty deed defined the scope of U.S. Bank's liability and gave plaintiff notice that it warranted only against title defects that were caused by its own conduct. We agree with the court that the special warranty deed did not make U.S. Bank responsible for

defects arising before it acquired title or require U.S. Bank to extinguish all encumbrances on the property at the time of the conveyance to plaintiff. See *Chicago Title Insurance Co. v. Aurora Loan Services, LLC*, 2013 IL App (1st) 123510, ¶ 17. The special warranty deed provided for an exception to the warranties and limited U.S. Bank's liability for Sakash's claims against the title. The language in the special warranty deed did not give any rights to Sakash that did not already exist. Sakash's interest under the industrial lease was distinct from the right to receive rent from Sprintcom under the site agreement.

¶ 34

### C. Foreclosure

¶ 35 Third, Sakash argues that the foreclosure proceedings against Soto did not divest Sakash of its interest under the industrial lease, because Sakash's interest had been recorded before the foreclosure began and Sakash was not made a party or given notice of the proceedings. Consistent with our analyses of the chain of title and the notice conferred by the special warranty deed, we conclude that any interest Sakash had in the property pursuant to the recorded documents did not include the right to rent generated by the cell tower.

¶ 36 The trial court in this case noted that the foreclosure court obtained jurisdiction by publication over unknown occupants and non-record claimants. Because neither the Trust nor JKM had possession, they only could have been non-record claimants. Their interest, if any, was extinguished in the underlying foreclosure action. The report of sale and distribution was approved by the foreclosure court on July 20, 2010, and no appeal was taken from that order. In any event, as plaintiff points out, Sakash's remedy for lack of notice of the foreclosure is against U.S. Bank, not plaintiff.

¶ 37

### III. CONCLUSION

¶ 38 The pleadings, depositions, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law on its claim for forcible entry and detainer. See 735 ILCS 5/2-1005(c) (West 2014). For the preceding reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 39 Affirmed.