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FIFTH DIVISION  
December 15, 2017

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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CARL ANDERSON and LINDA ANDERSON,	)	Appeal from the
	)	Circuit Court of
Petitioners-Appellants,	)	Cook County.
	)	
v.	)	No. 14 COIN 000015
	)	
MARIA PAPPAS, Cook County Treasurer, as Trustee	)	
Under the Indemnity Fund Created By Section 21-295	)	
of the Property Tax Code,	)	The Honorable
	)	Laguina Clay-Herron,
Respondent-Appellee.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

**ORDER**

¶1 *HELD:* Petitioners’ indemnity claim was properly dismissed where they were not owners of the subject property and, therefore, could not establish standing to bring the claim against respondent.

¶2 Petitioners, Carl and Linda Anderson, appeal the circuit court’s order dismissing their petition for indemnity against respondent, Maria Pappas, Cook County Treasurer as Trustee under the Indemnity Fund created by section 21-305 of the Property Tax Code (Tax Code) (35

ILCS 200/21-305 (West 2006)). Petitioners contend the circuit court erred in dismissing their complaint where they were the rightful owners of the subject property and had standing to bring their indemnity claim against respondent. Based on the following, we affirm.

¶3

### FACTS

¶4 On April 27, 2006, petitioners purchased the subject property located at 1190 Hickory Lane in Elk Grove Village, Illinois, for \$289,000. On January 25, 2007, petitioners applied for and were granted a \$10,000 home equity line of credit from Harris Bank. Thereafter, petitioners attempted to increase their line of credit with Harris Bank, but were denied. According to their fourth amended complaint, the subject of which underlies this appeal, in January 2008, petitioners applied for a loan from Mark Spillane of Illinois Mortgage Association based on a recommendation from Harris Bank. Petitioners alleged they were approved for the loan and executed a number of documents to execute said loan. One of the documents petitioners signed was a quitclaim deed for the subject property to Marquette Bank under trust number 17325. Spillane and Marquette Bank subsequently paid petitioners' home equity loan with Harris Bank, paid the outstanding second installment for their 2006 taxes, and disbursed approximately \$20,000 to petitioners. Petitioners, however, never received a payment book or any correspondence to make mortgage payments. In addition, petitioners were provided a lease to occupy the subject property. The lease included an "option to purchase" the subject property for \$81,500. According to petitioners, they were "under the firm belief that they were executing nothing more than documentation as collateral for funding of their loan." Petitioners alleged in their fourth amended complaint that they believed Illinois Mortgage "possessed nothing more than an unrecorded mortgage against the property." Then, on February 5, 2008, Marquette Bank recorded a mortgage for the subject property under the enumerated trust.

¶5 In July 2008, Spillane filed a forcible entry and detainer action against petitioners for failure to pay \$6,100 in rent from March through July 2008. According to their fourth amended complaint, petitioners were unable to resolve “the title issues” and were “left in a state of limbo not knowing if they owned the property or not.” Moreover, petitioners alleged “[d]ue to the title issues, [they] were unable to obtain a loan to satisfy the unpaid taxes.” On September 13, 2010, Interstate Funding Corporation purchased the 2008 annual taxes for the subject property, which had not been paid by Spillane or petitioners. Interstate Funding subsequently assigned the 2008 taxes to Galaxy Sites, LLC. Then, on December 11, 2013, the circuit court issued a tax deed for the subject property to Galaxy Sites.

¶6 On March 6, 2015, petitioners filed their fourth amended petition for indemnity pursuant to section 21-305 of the Tax Code claiming they were the true owners of the subject property because the quitclaim deed they executed was “nothing more than an [unrecorded] mortgage” and there was no valid mortgage existing against the property. Petitioners named Mark Spillane and/or Marquette Bank as additional defendants in the lawsuit. The circuit court entered a default judgment against Spillane and Marquette Bank.<sup>1</sup> Respondent later filed a motion to dismiss petitioners’ fourth amended complaint pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2006)), arguing that petitioners lacked standing to bring their complaint and failed to demonstrate resulting damages. Petitioners responded and filed a cross-motion for summary judgment.

¶7 The circuit court ultimately granted respondent’s motion to dismiss and denied petitioners’ cross-motion for summary judgment. In its May 12, 2016, written order, the circuit court found “that given all the circumstances petitioners were not the owners of the subject

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<sup>1</sup> The court previously had entered a default judgment against Marquette Bank on August 14, 2014, in response to petitioners’ prior amended indemnity complaint.

property and do not have standing to bring a claim under the Indemnity Statute.” The May 12, 2016, order further provided:

“The Court took into consideration the facts surrounding the transaction between Spillane and the petitioners including the unsigned lease, Carl Anderson’s testimony regarding the rights of the respondents to have dogs on the subject property and petitioners’ deposition testimony.

Specifically, the Court makes the following findings of fact based on the evidence presented and the deposition testimony of both Carl and Linda Anderson:

(1) the petitioners were aware of the lease given Carl Anderson[’s] testimony that the petitioners discussed with Mr. Spillane about whether the petitioners could have dogs on the subject property;

(2) the petitioners subsequently failed to pay the real estate taxes on the subject [property] after 2008; and

(3) that given all the circumstances the petitioners were aware that they were transferring the subject property to Spillane.”

This appeal followed.

¶8

#### ANALYSIS

¶9 Petitioners contend the circuit court erred in finding they were not owners of the subject property and they lacked standing to bring their indemnity claim.

¶10 A section 2-619(a)(9) motion to dismiss admits the legal sufficiency of the plaintiff’s complaint, admits all well-pleaded facts and all reasonable inferences therefrom, and asserts that an affirmative matter outside the complaint bars or defeats the cause of action. *Reynolds v. Jimmy John’s Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 31. A plaintiff’s lack of standing is

an affirmative matter that completely defeats the ability to successfully prosecute a claim. *Id.*

¶ 33. In considering a section 2-619(a)(9) motion, the court construes the pleadings in the light most favorable to the nonmoving party and will grant the motion only if the plaintiff can prove no set of facts would support a cause of action. *Id.* ¶ 31. “The parties may ask the court to consider the pleadings, as well as any affidavits and deposition evidence, and to take judicial notice of facts contained in public records where such notice will aid in the efficient disposition of the case.” (Citations omitted.) *Advocate Health & Hospitals Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759 (2004). We review the granting of a section 2-619(a)(9) motion to dismiss *de novo*. *Id.*

¶ 11 The doctrine of standing precludes individuals who have no interest in a controversy from bringing suit. *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). In order to have standing, there must be some injury in fact to a legally cognizable interest. *Id.* (citing *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492 (1988)). Standing requires a claimed injury, actual or threatened, that is (1) distinct and palpable; (2) fairly traceable to the defendant’s actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief. *Id.*

¶ 12 Turning to petitioners’ complaint, we must determine whether their claimed injury was an injury in fact to a legally cognizable interest. Petitioners argue the quitclaim deed executed to Spillane was merely an equitable mortgage and not a conveyance of the property. According to petitioners, the circumstances surrounding the transaction demonstrate they lacked the intent to transfer ownership interest to Spillane. Petitioners note they are novices who had been turned down for an additional loan by Harris Bank. In order to obtain a loan, they contacted Spillane. Prior to executing any documents, they inquired whether they needed a lawyer and were assured

they did not. Petitioners met with Spillane on three or four occasions at his office and then executed “a large stack” of papers in connection with their purported loan. In that stack was the signature page of the quitclaim deed, which they unknowingly signed. According to petitioners, the loan was for only 12% of the value of the subject property. Based on all of those circumstances, petitioners argue it is clear they never had any intent to sell their home or convey the subject property to Spillane.

¶13 Section 21-305 of the Tax Code provides, in relevant part:

“[a]ny owner of property sold under any provision of this Code who sustains loss or damage by reason of the issuance of a tax deed \*\*\* and who is barred or is in any way precluded from bringing an action for the recovery of the property shall have the right to indemnity for the loss or damage sustained.” 35 ILCS 200/21-305 (West 2006)).

Generally, ownership is described as “the collection of rights allowing one to use and enjoy property, including the right to convey it to others.” Black’s Law Dictionary 1131 (7th ed. 1999). “The primary elements of ownership are the rights of possession, use and enjoyment, the right to change or improve the property, and the right to alienate the property.” *Dep’t of Transportation v. Anderson*, 384 Ill. App. 3d 309, 312 (2008).

¶14 Viewing the facts in a light most favorable to petitioners and drawing all reasonable inferences therefrom, we find petitioners did not own the subject property and, therefore, did not have standing to bring their indemnity claim against respondent. It is undisputed that petitioners signed a quitclaim deed to Spillane. It is also undisputed that petitioners received a lease for the subject property from Spillane, and never received information regarding a mortgage or payment books for a mortgage. Petitioners admitted that, at most, they made two “payments” to Spillane. Moreover, Spillane and/or Marquette Bank paid off petitioners’ Harris mortgage, paid the

outstanding tax installment for 2006, and tendered approximately \$20,000 to petitioners.

Petitioners never paid another tax installment. Simply stated, petitioners had relinquished their right to convey or alienate the property. In other words, they relinquished their ownership rights.

In terms of standing to bring the underlying indemnity claim against respondent, petitioners cannot trace their claimed injury, namely, loss of ownership, to respondent. Nor can petitioners receive the relief requested from respondent, *i.e.*, just compensation for the subject property.

Because section 21-305 of the Tax Code required ownership, respondent established that petitioners lacked standing to bring their indemnity claim.

¶15 In coming to our conclusion, we considered petitioners' equitable mortgage argument; however, we found that claim cannot be sustained against respondent where she was not a party to the alleged equitable mortgage.

¶16 **CONCLUSION**

¶17 We affirm the judgment of the circuit court dismissing petitioners' indemnity claim against respondent for lack of standing.

¶18 Affirmed.