

Action to Quiet Title - Equitable Interest - Exchange Agreement

1. Where a property owner entered into an agreement with defendant realtor whereby realtor would acquire property to exchange with owner and sell owner's property within twelve months, the exchange agreement does not give the realtor and equitable interest in the property.
2. Judgements entered against a realtor do not attach to property subject to an exchange agreement with a realtor.

Ivo V. Otto III, Esquire
Carol A. Steinbour, Esquire
Thomas J. Finucane, Esquire
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OPINION AND ORDER

WALKER, J., September 16, 1992:

FINDINGS OF FACT

Plaintiff, Food Lion, brought this quiet title action to remove certain clouds on property purchased by the plaintiffs from Gary and Dora Yates. Clouds on the title exist as a result of various judgments defendants Thomas E. Mutchler, Jr., Ruth E. Mutchler and Marjorie I. Palmer obtained against Duane B. Dillard. Defendants assert that Duane B. Dillard holds and equitable interest in the Yates' property and have also filed various counterclaims against the plaintiff. Default judgments have been entered against all defendants except the Mutchlers and Palmer. The following is a chronological summary of the pertinent facts.

On January 27, 1989 Duane B. Dillard and David Dillard entered into an exchange agreement with Gary C. Yates and Dora B. Yates. Pursuant of the agreement, the Dillards were to acquire property to be exchanged for the Yates' property, subject to inspection and approval by Yates. The contract required the

Dillards to secure and agreement of sale of the Yates' property within twelve (12) months of the signing of the contract.

On June 14, 1989, the plaintiff signed an option agreement for the Yates' property with the Dillards. On January 19, 1990, plaintiff forwarded a check in the amount of five thousand (\$5,000) dollars to the Dillards to extend the option period for five (5) successive periods of thirty (30) days. Dillards' attorney returned the check, instructing the plaintiff to forward any further checks to the Yates' attorney.

On February 7, 1990, the Yates and the Dillards executed a release of rights of the exchange agreement, which terminated the previous exchange agreement because of the Dillards' inability to obtain an agreement of sale within the month period. The release also stated that the Dillards do "not have presently, nor shall have in the future, any interest or claim in any conveyance, trasfer or exchange of said real estate."

On May 18, 1990, plaintiff entered into a real estate contract for sale with the Yates for the subject property. A title search revealed judgments against Duane B. Dillard previously obtained by the Mutchlers and Palmer. Plaintiff proceeded to closing with Yates on June 20, 1990. Plaintiff and Yates established a fund to be held in escrow pending the removal of the clouds from title.

On June 5, 1992, this court ordered separate trials for the plaintiff's quiet title action and the defendants' counterclaims. The plaintiff presently moves for summary judgment on the quiet title action.

Defendant's position is that, pursuant to the exchange agreement, Duane B. Dillard has an equitable interest in the Yates' property, to which the defendants' judgments have properly attached. Defendants assert that the escrow account represents Duane B. Dillard's equitable interest and should be distributed to satisfy their judgments and liens on the Yates' property.

Plaintiff's position is that Duane B. Dillard has no equitable interest in the Yates' property because the exchange agreement

expired under its own terms and Duane B. Dillard executed a release of rights of the exchange agreement subsequent to the agreement's natural expiration. This matter is now ripe for disposition.

DISCUSSION

A motion for summary judgment will be granted only when the moving party is entitled to judgment as a matter of law. *Mariscotti v. Tinari*, 335 Pa. Super. 599, 485 A.2d 56 (1984). The moving party has the burden of showing that no genuine issues of fact exist. *Penn Center House, Inc. v. Hoffman*, 520 Pa. 171, 553 A.2d 900 (1989), Pa.R.C.P. 1035(b).

The issue in deciding the motion for summary judgment in the instant case is whether it can be determined, as a matter of law, that the Dillards have no equitable interest in the Yates' property. The court finds, as a matter of law, that the Dillards have no equitable interest in the Yates' property and hereby grants plaintiff's motion for summary judgment on the action to quiet title.

Defendants Mutchlers' and Palmers' assertion that the Dillards hold an equitable interest in the Yates' property is not supported by the facts or case law relied upon by the defendants. In fact, the court has had difficulty in ascertaining and understanding the theory upon which the defendants are relying.

Defendants assert that the Dillards have and equitable interest in the property as a result of the exchange agreement entered into between the Dillards and the Yates. The Dillards were acting as real estate brokers pursuant to the agreement. Duane B. Dillard may hold an equitable interest in the commission earned on the sale, but that issue is not before this court. The issue before the court concerns the motion to quiet title to the Yates' property, not the determination of the disbursement of the commission on the sale of the property. It should be noted, however, that the plaintiff and the Yates have placed the commission in an escrow account pending anticipated litigation presumably between Duane B. Dillard, David Dillard and several creditors of Duane B. Dillard.

The executed release of rights of exchange agreement and the terms of the exchange agreement itself extinguished any possible equitable interest Duane B. Dillard may have held in the Yates' property. The exchange agreement required the Dillards to secure an agreement of sale of the Yates' property within twelve (12) months. The Dillards did not secure an agreement of sale, but rather only secured an option to purchase the property within the twelve month period. Thus the Dillards did not satisfy the conditions of the contract because the twelve month period expired prior to the plaintiff's execution of the contract for sale of the property, which negates any possibility of an equitable interest in the Yates' property. Moreover, subsequent to the expiration of the twelve month period, Yates and the Dillards executed a release of rights of the exchange agreement further evidencing termination of the previous agreement.

Defendants assert that Dillards hold an equitable interest in the Yates' property as a result of the executed contract of sale between Yates and the plaintiff. In support of this contention, defendants cite *Synes Appeal*, 401 Pa. 387, 164 A.2d 221 (1960). *Synes Appeal* concerned a purchaser of an option agreement for a piece of land seeking the condemnation award on the theory that he had equitable title as a result of the option agreement. The court held the option agreement insufficient "in law to work and equitable conversion of the realty." *Id.* at 394, 164 A.2d at 224. Defendants rely on this case for the proposition that a duly executed contract of sale creates an equitable interest. While this statement may be true, this court finds it inapplicable to the defendant's argument. Upon expiration of the exchange agreement, the Dillards had only obtained an option agreement for the purchase of the Yates' property. *Synes Appeal* explicitly states that an option agreement does not create an equitable interest in realty. Thus neither the Dillards nor Food Lion had an equitable interest in the Yates' property prior to the expiration of the exchange agreement and release, and the judgments defendants previously obtained against the Dillards could not have been properly attached to the Yates' property.

In conclusion, the court finds that the plaintiff met the burden of the motion for summary judgment on the action to quiet title. The court finds that no genuine issue of material fact exists and, as a matter of law, the Dillards held no equitable interest on the

Yates' property that the defendants could have attached. The plaintiff's motion for summary judgment is granted.

ORDER OF COURT

September 16, 1992, plaintiffs' motion for summary judgment is granted.

SMITH V. EXXON, C.P. Franklin County Branch, No. A.D. 1991-356

Civil Procedure - Preliminary Objections - Demurrer - Admission of Facts and Inferences - Conclusions and Unjustified Inferences Not Admitted - Tests Sufficiency of Opponent's Pleading to State Cause of Action - Essentials of a Case in Negligence

1. Preliminary Objections in the nature of a demurrer admit as true all well and clearly pleaded material, factual averments and all inferences deducible therefrom.
2. Conclusions of law and unjustified inferences are not admitted by a demurrer.
3. A demurrer tests whether the complaint sets forth a cause of action which, if proved, would entitle the party to the relief sought, and if such is the case, the demurrer may not be sustained.
4. To establish a cause of action grounded in negligence, the plaintiff must establish (1) a duty by the defendant to conform to a certain standard of conduct; (2) a breach of that duty; (3) a causal connection between the defendant's conduct; and (4) a subsequent injury to the plaintiff.

John A. Adamczyk, Esquire, Attorney for Plaintiff
John M. Phelan, Esquire, Attorney for Defendant

OPINION AND ORDER

WALKER, P.J., September 21, 1993:

FINDINGS OF FACT

On August 1, 1989, plaintiff Debbie Smith was assaulted and raped by Gerald Daniels while working the night shift at the Blue Chip Mini-Mart in Greencastle, Pennsylvania. The plaintiff filed two separate actions as a result of this incident. The plaintiff filed a complaint against Gerald Daniels, Richard Sterner, the owner/operator of the shopping center in which the mini-mart is located, Blue Chip Fuels, Blue Chip Mini-Mart and Oliver Oil Company, Inc. Blue Chip Mini-Mart, a twenty-four hour convenience store which also sells gasoline, is a subsidiary of Oliver Oil. In this separate action, the plaintiff filed a complaint against Exxon Corporation, wholesale supplier of gasoline to Oliver Oil.

In her complaint against defendant Exxon, plaintiff alleges that Exxon acted negligently in failing to develop, implement and maintain comprehensive security measures to deter criminal acts of third parties on the premises of Blue Chip Mini-Marts. In separate counts, the plaintiff also seeks damages for negligent infliction of emotional distress and loss of consortium (by plaintiff's husband). On July 9, 1993 Exxon filed preliminary objections to the complaint, averring that it owed no duty to the plaintiff since it was merely a wholesale supplier of gasoline to the Blue Chip stores through the parent company, Oliver Oil.

Exxon supplied gasoline to Oliver Oil and its mini-marts pursuant to a distributor agreement dated August 2, 1988, attached to the complaint as exhibit 1. In the agreement, Exxon agreed to supply motor fuels and diesel fuel to Oliver Oil (Paragraph 2); permitted Oliver Oil and its subsidiary stores to accept Exxon credit cards (Paragraph 5); permitted Oliver Oil to display Exxon trademarks (Paragraph 11); and reserved the right to sample the gasoline at Oliver Oil facilities to determine that they are Exxon products (Paragraph 11). Oliver Oil agreed to abide by Exxon guidelines for the proper use of Exxon trademarks (Paragraph 11) and to prepare a market development plan, subject to review by Exxon (Paragraph 12). The agreement also required that Oliver Oil meet certain minimum conditions at its facilities selling Exxon products, including clean stores with paved driveways, restrooms available to the general public,