

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

IRENE VINYARD, Trustee of the Irene)	
Vinyard Revocable Living Trust,)	
)	
Plaintiff,)	
)	Cause No. 07CC-001273
vs.)	
)	Division 13
S&P PROPERTIES, INC., et al.,)	
)	
Defendants.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

On July 15 and 16, 2008, this matter came before the Court on Intervenors/Plaintiffs Ralph Cosgrove and Donelda Cosgrove's Amended Petition to Quiet Title and Defendant Lewis Mitchell Company's Petition to Quiet Title regarding the property known and numbered as 5947 Stephanie Green Court, St. Louis, Missouri 63129 and described as "Lot 22 of the Villas at South Woods, a subdivision in St. Louis County, Missouri, according to the plat thereof recorded in Plat Book 354, Page 769 of the St. Louis County Records" ("the Property"). Following the conclusion of evidence, the parties were given until August 18, 2008 to file proposed findings of fact and conclusions of law, at which time the matter was taken under submission. The Court being now fully advised enters the following Findings of Fact, Conclusions of Law and Judgment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

By way of preface, the Court notes the facts of this case are complicated. Multiple transfers of the property at issue form the basis for the disputes herein involving real estate developers, agents and investors. With the exception of the Cosgroves, all parties are real estate professionals, and the Court finds all parties bear some degree of responsibility for the situation

in which they now find themselves. With that said, the Court, in judging the credibility of the witnesses, has taken into consideration the level of expertise of the parties in real estate matters as well as other factors. The Court is aware there is conflicting evidence and the Court has chosen among the conflicting evidence in reaching this Judgment, based on the credibility of the witnesses and the totality of the circumstances.

1. In their Amended Petition for Quiet Title, the Cosgroves allege Samz Construction and Development, Inc. (“Samz”) was acting as the agent of Irene Vinyard, owner of the Property, and there was a valid and enforceable contract between them and Samz, Randy Green, and Irene Vinyard whereby they agreed to purchase the Property for \$150,000.00. The Cosgroves further allege that in reliance on this contract, they paid the purchase price agreed on by the parties and obtained equitable title to the Property prior to Plaintiff/Intervenor Caterpillar Financial Services Corporation (“CFSC”), Defendant S&P Properties, Inc., or Defendant Lewis Mitchell Company ever acquiring any alleged interest in the Property.

2. To prevail on a quiet title claim, the claimant must show the strength of his or her own title. Thurmon v. Ludy, 914 S.W.2d 32, 34 (Mo.App. E.D. 1995). Generally, if the claimant does not have some legal or equitable title to the subject property, he or she is not an aggrieved party. Id. See also, Bath v. Bath, 233 S.W.3d 742, 743 (Mo.App. S.D. 2007). The Cosgroves base their quiet title action on equitable title. A quiet title plaintiff needs a contract with a property owner to claim equitable title via equitable conversion. Bath, supra, 233 S.W.3d at 743.

3. On May 19, 2004, the Cosgroves entered into a residential sale contract with Samz Development Inc. to sell their residence at 7008 Telegraph Road in St. Louis County, Missouri 63129 for \$350,000.00. Randy Green, President, signed the contract on behalf of Samz

Development Inc.

4. Under the section of the contract entitled "Special Agreements," ¶23, the parties added the following additional terms:

"Of purchase price \$150,000 will be applied to a new 1050 sq. ft. villa, 2 bedrooms, 2 bathrooms at the Villa of Southwoods. Seller to select lot to build on."

5. On May 24, 2004, the sales contract was amended to state:

"Buyer to provide Seller with comparable place to live if villa in Southwoods is not finished for occupancy by closing date on Telegraph. New villa to be same as Providence Subdivision 5514 Aberdour Lane, St. Louis, Co. Mo.[sic]"

6. Neither Samz Development Inc. nor Randy Green was ever a title holder of the property known as the Villas at South Woods, St. Louis County, Missouri.

7. Irene Vinyard became the title holder of the property known as the Villas at South Woods, St. Louis County, Missouri, by general warranty deed dated September 20, 2004, some four months after the Cosgroves contracted with Samz Development Inc. for the sale of their Telegraph residence.

8. On December 20, 2004, the parties executed a Supplemental Agreement to Contract which provided:

"\$150,000 of the purchase price of the [property located at 7008 Telegraph] will be put in escrow for the full price of the a [sic] Villa at South Woods, a 1050 sq. Ft. 2 B Rm 2 BA Villa. To be release upon completion of his Villa at South Woods with all standard options."

9. As a matter of general property law, one who does not hold title to property or is not acting within his scope as an agent for the owner, cannot pass or transfer title to that property.

Estate of Herbert v. Herbert, 152 S.W.3d 340, 348 (Mo.App. W.D. 2004), citing City of St. Louis v. Hill, 116 Mo. 527, 22 S.W. 861, 862 (1893); Mullin v. Trolinger, 237 Mo.App. 939, 179

S.W.2d 484, 490 (Mo.App.1944). Irene Vinyard was not the title owner of the Property at the time the contract with the Cosgroves was entered on May 19, 2004, or amended on May 24, 2004; however, by the time the parties executed the Supplemental Agreement on December 20, 2004, Irene Vinyard was in fact the title holder of the Property.

10. Irene Vinyard characterized her relationship with Randy Green, President of Samz, as a partnership; she was the “investor,” with exclusive control over the finances provided for the development of the property subdivided into the Villas, and Green was the builder/developer. They split the profits on a 50/50 basis.

11. Individual partners are agents of the partnership, and the rights and liabilities with respect to each other and to third persons are largely determined by agency principles. Baker v. McCue-Moyle Development Co., 695 S.W.2d 906, 911 (Mo.App. E.D. 1984). Generally, each partner is at once a principal and agent of the partnership and the other partners in matters pertaining to the partnership business. Id. A partner, as an agent of the partnership, may bind the partnership to a contract if he has either actual or apparent authority to do so. Id.

12. Irene Vinyard testified she was aware of the contract between Samz and the Cosgroves for the sale of their property on Telegraph, and that as part of that contract, the Cosgroves were purchasing a villa at the South Woods development for \$150,000.00. She further testified she approved the Cosgroves’ contract sometime after it had been written.

13. The Court finds Samz, by and through Randy Green, was acting as an agent of the partnership between Irene Vinyard and Randy Green in the purchase of the Cosgroves’ residence on Telegraph and in the sale of the Villa.

14. The Court further finds the terms of the Supplemental Agreement executed by the

parties on December 20, 2004, sufficiently definite to constitute a valid and enforceable contract whereby the Cosgroves agreed to purchase a 1050 square foot, 2 bedroom, 2 bath Villa at the Villas of South Woods from Samz, acting as agent for the Property owner, Irene Vinyard, for \$150,000.00.

15. On March 15, 2005, by agreement between the parties, the Cosgroves selected lot 22, the Property at issue herein, for the building of a home described as 1,364 square feet, thereby modifying the terms of the December 20, 2004 contract.

16. On May 5, 2005, the Cosgroves closed on the sale of their home on Telegraph, receiving \$290,803.01 in cash and leaving \$50,000.00 in escrow at Farmer's and Merchant's Bank earmarked "Deposit – Villa at Southwoods."

17. The Cosgroves submitted receipts showing payments of \$25,000.00 to "Samz Construction Company" on October 24, 2005 and \$25,000.00 to "Samz Cons. Co. Inc. Randy Green President" on November 9, 2005.

18. On March 24, 2006, Irene Vinyard executed a deed of trust on the Property to Gregory P. White, Trustee, and Alfred F. Mullen Concrete Construction Company to secure a promissory note in the amount of \$20,033.00 owed Mullen Concrete by Samz Construction and Development, Inc. The Court finds and concludes this deed of trust was valid because Irene Vinyard still owned the Property at this point in time.

19. On April 7, 2006, Irene Vinyard, by quit claim deed, transferred the Property to herself as trustee of the Irene Vinyard Revocable Living Trust dated February 15, 2005. The quit claim deed was recorded on June 21, 2006.

20. The Cosgroves submitted a receipt showing their final payment on the Villa in the

amount of \$50,000.00 to “Forder-Schliebe Realty Company” dated June 12, 2006.

21. The equitable title of the buyer under a contract of sale arises, if at all, through performance, or an unconditional tender of performance, on his part. Lewis v. Gray, 201 S.W.2d 148, 151 (Mo. 1947); Wright v. Lewis, 19 S.W.2d 287, 289 (Mo. 1929). Having previously found the Cosgroves had a valid and enforceable contract with Samz, acting as the agent of Irene Vinyard, owner of the Property, the Court finds and concludes equitable title in the Property vested with the Cosgroves on June 12, 2006, the date they made their final payment on the Villa, thereby fully performing under their sales contract.

22. The Cosgroves are currently occupying the Property as their residence and paid taxes on the Property in the amount of \$1,310.76 for the year 2007.

23. Since equitable title to the Property passed to the Cosgroves on June 12, 2006, the Court concludes that anything transpiring with the Property after that date does not affect their title; however, in order to provide a full and complete record, the Court will set out further findings of fact regarding the circumstances surrounding the subsequent purported transfers of the Property.

24. On October 12, 2006, CFSC obtained a default judgment in the amount of \$157,277.33 against Irene Vinyard in the case of *Caterpillar Financial Services Corporation v. Irene Vinyard d/b/a Midway Leasing Co. & Midway Leasing, LLC*, Cause No. 06CC-002748. The Court notes CFSC’s judgment is against Irene Vinyard individually. As of October 12, 2006, the Property had already been transferred into her trust. The Court makes no findings regarding fraudulent conveyance as that issue was not raised before the Court. Furthermore, at this point equitable title to the Property had already vested in the Cosgroves. Thus, the Court

finds and concludes CFSC has no judgment lien against the Property.

25. On February 8, 2007, Alfred F. Mullen Concrete Construction Company assigned its deed of trust on the Property to G. Stafford Company. That same day, Irene Vinyard entered into an Adjournment of Sale Agreement with G. Stafford Company to delay a foreclosure sale of the Property on February 17, 2007 for thirty days. The Agreement provided that in the event Vinyard was unable to secure financing to pay off the debt secured by the Deed of Trust on or before March 13, 2007, a date four weeks from the date originally advertised for the foreclosure sale, “the advertised sale shall proceed and/or Quit Claim Deed shall be recorded.” In consideration for the Agreement, Vinyard agreed to pay G. Stafford Company \$5,000.00 and execute a Quit Claim Deed to the Property which was to be held unrecorded. The Quit Claim Deed, dated February 7, 2007, purported to effect a transfer of the Property by Vinyard, as Trustee of the Irene Vinyard Revocable Living Trust, to S&P Properties, Inc.

26. A quitclaim deed transfers and is designed to transfer only such title and interest as the grantor had when he delivered the deed. See, e.g., Jamieson v. Jamieson, 912 S.W.2d 602 (Mo.App. E.D. 1995). Therefore, the quit claim deed could transfer to S&P Properties only such title and interest as Irene Vinyard had in the Property on February 7, 2007. At this point in time, Irene Vinyard had no title and interest in the Property because equitable title had already vested in the Cosgroves. Thus, the Quit Claim Deed could not have effected a transfer of the Property to S&P Properties, Inc. The Court finds Stafford to be a knowledgeable businessman and investor who is well aware of the difference between a quit claim deed and a general warranty deed.

27. Irene Vinyard testified she secured financing through Westre Investments, LLC and

presented a document entitled "Loan Commitment" dated March 9, 2007, as evidence thereof.

28. Barbara Westre of Westre Investments, LLC, testified the document entitled "Loan Commitment" was a revocable preliminary loan approval subject to an unsatisfied condition precedent. It was Ms. Westre's testimony that the title commitment she reviewed did not provide her with enough information to fund the loan and in fact revealed two liens on the Property. Westre Investments requires first lien holder position; in this case, Ms. Westre testified she could not have funded the loan by 12 p.m. noon on March 13, 2007 because she could not have ensured that Westre Investments would be in the required first lien holder position.

29. Neither Irene Vinyard nor Ms. Westre communicated with S&P Properties or Gary Stafford on March 13, 2007 regarding financing under the Adjournment Agreement. The Court finds Irene Vinyard totally not credible on her claim she did not know or believe she had to communicate her obtaining of financing to S&P Properties or Gary Stafford pursuant to the Adjournment Agreement.

30. Pursuant to the Adjournment Agreement, the Property was subject to foreclosure at 12:00 p.m. noon on March 13, 2007; however, Stafford recorded the Quit Claim Deed at 10:39 a.m. that day.

31. On March 15, 2007, S&P Properties entered into a Special Sale Contract with Lewis Mitchell Co. for the Property for \$140,000.00.

32. On March 16, 2007, Irene Vinyard, as Trustee of the Irene Vinyard Revocable Trust, recorded a deed purporting to transfer the Property to the Cosgroves.

33. Prior to closing with Lewis Mitchell Co. on March 22, 2007, Stafford and S&P Properties entered into an agreement of Indemnification with Investors Title Company wherein

Stafford and S&P Properties agreed to indemnify Investors Title against any loss or damage resulting from the enforcement or attempted enforcement of the Adjournment of Sale Agreement between Stafford and Irene Vinyard.

34. The closing statement between S&P Properties and Lewis Mitchell Co. indicates Lewis Mitchell Co. paid the taxes owed on the Property for the years 2004-2006 in the amount of \$1,406.74 and for 1/1/2007 to 3/23/2007 in the amount of \$242.37. Lewis Mitchell Co. also made lien payoffs to Ambassador Floor Company in the amount of \$4,406.99 and to B & W Foundations in the amount of \$12,000.00.

35. A General Warranty Deed between S&P Properties and Lewis Mitchell Co. was executed on March 22, 2007 and recorded with the St. Louis County Recorder of Deeds on March 23, 2007. Having found that S&P Properties acquired no interest or title in the Property pursuant to the Quit Claim Deed executed by Irene Vinyard on February 7, 2007, the Court further finds that S&P Properties had no interest or title to transfer to Lewis Mitchell Co. Since the Cosgroves' equitable title to the Property arose prior to the transaction between S&P Properties and Lewis Mitchell Co., the Court finds and concludes the sale of the Property to Lewis Mitchell Co. is void.

36. The Court finds Lewis Mitchell Company's contention that it had no notice of any other interest in the Property not credible. It was clear from the testimony before the Court that Lewis Mitchell was aware of the Cosgroves. There had been visits to the Property and in fact, Lewis Mitchell posted a "Vacate Order" on the Property on March 23, 2007, requesting the "occupants" of the Property to vacate the premises immediately or face eviction.

37. On March 23, 2007, Irene Vinyard filed her Petition for ex parte temporary

restraining order, preliminary injunction and permanent injunction. That same day, a temporary restraining order was issued against S&P Properties, Inc., Gary Stafford, Investors Title Co., Inc., and any purchaser of the Property forbidding the “sale of, transfer of, conveyance of, assignment of, pledge of, encumbrance of, and/or recording of title to [the Property].” On April 25, 2007, the Court entered its Preliminary Injunction Order which remained in effect until final decision of the Court. Given the Court’s decision herein, there is no need for a Permanent Injunction and the bond previously posted by Irene Vinyard is hereby ordered released.

38. In this matter, this Court has acted as the fact-finder. Should the Court of Appeals disagree with the application of the law to these facts, and find that equitable title did not pass to the Cosgroves and that the Quit Claim Deed from Irene Vinyard to S&P Properties did in fact transfer an interest in the Property to S&P Properties, this Court does further find, after determining the weight and credibility of the evidence and based on the record before it, that Irene Vinyard was not in compliance with the Adjournment of Sale Agreement and thus was not prejudiced by Stafford’s early recording of the quitclaim deed. Accordingly, absent equitable title passing to the Cosgroves, these additional findings of fact conclude the sale of the Property from S&P Properties to Lewis Mitchell Co. is valid, and in that event, Lewis Mitchell Co. is the title holder of the Property.

39. In an action to quiet title, the Court is required to adjudicate the respective interests of all parties, not just those seeking to quiet title. Calvert v. Latimer, 670 S.W.2d 588, 590 (Mo.App. E.D. 1984). Plaintiff Irene Vinyard and Defendants Samz, Gary Stafford, G. Stafford Co., S&P Properties, Inc., and Investors Title Co., Inc., all disclaim an ownership interest in the Property, and the Court finds they have no ownership interest. Intervenor/Third-Party Plaintiff

CFSC takes the position that it has a judgment lien in the amount of \$157,277.33 against the Property, but makes no claim of ownership interest in the Property and the Court finds it has no ownership interest. Defendant Randy Green, having failed to file any responsive pleadings in this matter, is in default and therefore the Court finds he has no ownership interest in the Property.

JUDGMENT AND DECREE

WHEREFORE, the Court hereby ORDERS, ADJUGES and DECREES that Ralph Cosgrove and Donelda Cosgrove, husband and wife, are the title holders in fee simple of the real estate known and numbered as 5947 Stephanie Green Court, St. Louis, Missouri 63129 and described as "Lot 22 of the Villas at South Woods, a subdivision in St. Louis County, Missouri, according to the plat thereof recorded in Plat Book 354, Page 769 of the St. Louis County Records," free of any and all liens, encumbrances or claims of Irene Vinyard, individually and as trustee of the Irene Vinyard Revocable Living Trust, Randy Green, Samz Construction and Development, Inc., Caterpillar Financial Services Corporation, S&P Properties, Inc., Gary Stafford, Investor's Title Co., Inc., and Lewis Mitchell Co., and their heirs, successors and assigns. A certified copy of this Court's Judgment and Decree shall be recorded with the St. Louis County Recorder of Deed within ten (10) days of this Judgment.

SO ORDERED:

Date

Barbara W. Wallace, Judge

cc: Jonathan E. Fortman
Attorney for Ralph and Donelda Cosgrove, Intervenors

Patrick T. McLaughlin
Attorney for Caterpillar Financial Services

Mitchell D. Jacobs
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