

American General Financial Services, Inc.,
Plaintiff,

Case No. 2106CC-04765

Vs.

Alicia R. Sledge
a/k/a Alicia R. Allen et al.
Defendants.

FILED

SEP 08 2009

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

CONSOLIDATED WITH

Cedar Bridge, LLC,
Plaintiff

Case No. 2106CC-03441

Vs.

Darrell Tullock, American Residential
Mortgage Company N/K/A Chase Mortgage
Services, Inc., American General Finance, Inc.
A/K/A/ American General Financial Services,
Inc. and John Doe

ORDER AND JUDGMENT

This case was called for trial on May 14, 2009. The parties appeared in person and by counsel. Evidence was adduced. Upon written request the parties were granted an additional 30 days to simultaneously file proposed Findings of Fact and Conclusions of Law at which time the case would be deemed submitted. The parties having done so and the court being fully advised in the premises, hereby enters is Findings of Fact, Conclusions of Law and Judgment as follows:

FINDINGS OF FACT

1. Plaintiff, American General Finance, Inc. a/k/a American General Financial Services (hereinafter AGFS) is a corporation in good standing duly authorized to do business in St. Louis County and the State of Missouri.

2. Defendant, Cedar Bridge is a limited liability company registered in the State of Missouri in good standing and authorized to do business in the County of St. Louis, Missouri.
3. The trial of this matter is on the issue of unjust enrichment. Defendant Cedar concedes the only determination is the amount AGFS shall receive from Cedar.
4. American General as assignee, had a First Deed of Trust on the real property located in the County of St. Louis, State of Missouri, known and numbered as 3933 Beachwood, St. Louis, Missouri 63121 (hereinafter the Beachwood Property).
5. Real estate taxes on the subject property for the years 2001, 2002, 2003 and 2004, due St. Louis County were unpaid and the property was sold at a delinquent tax sale in Jan., 2005 for \$8,1000.00
6. In Sept., 2005, Cedar sent a notice regarding redemption to AGFS.
7. On Dec. 2, 2005, St. Louis County Collector issued a Tax Deed to Cedar and said deed was recorded with the St, Louis County Recorder of Deeds.
8. AGFS never received any notice of St. Louis County's intent to sell the taxes on the subject property, nor of the purchase of the taxes by Cedar or of the intention to issue the tax deed to Cedar.
8. The parties stipulate that the redemption notice sent by Cedar to AGFS is defective pursuant to Valli v. Glasgow Enterprises, Inc. , 204 S.W. 3rd 273 (MO. App. E.D. 2006).
9. Thereafter, quiet title actions were instituted by the parties in order to clear the title.
10. On June 18. 2007, Cedar sold the subject property to third party buyers for \$85,900.00, despite the pending quiet title litigation.
11. Prior to said sale by Cedar, AGFS claimed a legal and equitable interest superior to all other liens and interests in the subject property.
12. Credible evidence adduced at trial revealed that on the date of trial May 14, 2009, that an outstanding balance of \$42, 097.73 was due AGFS.
13. The court finds Defendant's valuation of the property at \$21, 000.00 at the time of the tax sale based on the poor condition of the property not credible.

14. William Glasgow, testified that he was the sole owner of Cedar, Glasgow Realty and managing agent for Cedar, and offered oral testimony and written accounts related to the subject property that he had expended \$71,489.33 on improvements and repair costs on the subject property.
15. The court finds witness Glasgow's testimony as to condition of premises and the costs improvements and repairs made to the subject property not credible.
16. The court also finds that Defendant Cedar presented evidence at trial that included expenditures for work done on other property that Defendant owns, had been included in the \$71, 489.33 Cedar was claiming for improvements and repairs on the subject property, when no such repairs/improvements had been made.
17. The Court finds that as a result of Cedars accounting the exact amount of the offset is not ascertainable.
18. The Court finds that based on the credible evidence the proper measure of enrichment to Cedar is the amount due to AGFS under its note totaling \$42, 097.73.

CONCLUSIONS OF LAW

Section 104.340 RSMO provides, "The owner or occupant of any land or lot sold for taxes, or any other persons having an interest therein, may redeem the same at anytime during the one year next ensuing." Section 140.420 RSMO states, "If no person shall redeem the lands sold for taxes within one year from the sale, the collector....shall execute to the purchaser...a conveyance of the real estate." Cedar purchased the property at a tax sale on August 22, 2005. Thus, AGFS had until August 22, 2006 to redeem the property. Cedar obtained the tax deed dated December 2, 2005 just four months after the sale. Thus Cedar obtained its tax deed prematurely, before the redemption period ran and said deed should be voided.

Section 140.405 provides:

At least 90 days prior to the date when a purchaser is authorized to acquire the deed (1 year after sale per Section 140.420 RSMo), the purchaser shall notify any person who holds a publicly recorded deed of trust, mortgage, lease, lien or claim upon the real estate of the latter person's right to redeem such person's publicly recorded security or claim. Once the purchaser has notified the county collector by affidavit that proper notice was given, anyone with a publicly recorded deed of trust, shall have 90 days to redeem said property or be forever barred from redeeming.

Cedar failed to produce any such affidavit and thus the deed from St. Louis County to Cedar was improperly delivered to Cedar.

Further Cedar's notice of redemption has been determined by the Appellate Court of the Eastern District of Missouri to be deficient in the case of Valli v. Glasgow Enterprises, Inc., 204 S.W.3d 273 (Mo. App. E.D. 2006). The redemption notice in that case was identical to the notice in this case except for the names of the parties, dates and property description. The appellate court held the notice was deficient because:

1. It incorrectly states the redemption period. The notice states the redemption period runs for 90 days from the date of the notice but Section 140.405 provides the redemption period runs 90 days from the date on which the purchaser "notified the County Collector by affidavit that proper notice has been given." Valli at 277. As in the Valli case, the affidavit has not been presented in this case. In any event, the redemption period is incorrectly stated.

2. The letter does not notify the interested party that it would be forever barred from redeeming the property if it fails to redeem within the 90 day period. Valli at 277.

Cedar alleges, per RSMo §140.600(3) and §140.340, as amended, that it is entitled to an offset in the amount of all taxes paid at the sale and all taxes paid subsequent to the sale plus interest at the rate set forth in the statutes plus all repairs and improvements made to the property

by Cedar, and payments made for insurance premiums for property insurance against loss, a certain portion of its overall overhead and attorney fees.

Cedar's allegations misstate the Missouri Statutes. Section 140.600 relating to suits to set aside tax deeds limits the tax sale buyer's recovery from the Plaintiff to "the amount of money due to the defendant or to other persons, on account of taxes or interest thereon paid as aforesaid by the defendant." Said statute does not provide for the recovery of repairs, improvements, insurance payments, overhead, attorney fees, or any other charges related to the property.

Similarly Section 140.340 relating to redemption of a property sold at tax sale limits the tax sale buyer to recovery of "the full sum of the purchase money named in his certificate of purchase and all the cost of the sale together with interest." The tax sale buyer would also be entitled to reimbursement for subsequent taxes paid with interest at 8%. Again, there is no allowance for the recovery of repairs, improvements, paid insurance premiums, overhead, attorney fees, or any other charges.

While Section 140.340 and 140.600(3) govern the repayment of funds via redemption or a suit to set aside a tax sale generally, the circumstances involved in this case are more specifically addressed by Section 140.405 and the court in Valli at 277; Hutchison v. Cannon, 29 S.W.3d 844,847 (Mo.App. S.D. 2000); Campbell v. Siegfried, 823 S.W.2d 156,157-158 (Mo. App. E.D. 1992). As a result of Cedar's failure to comply with the mandatory notice requirement of Section 140.405, Cedar lost any interest it obtained in the property.

Thus, when Cedar sold the property to a third party on June 18, 2007, it had no right to do so, given the statutes and cases cited. Said action deprived AGFS of its redemption rights, and thus Cedar was unjustly enriched by said sale. The exact amount of that enrichment is


not ascertainable by Cedar's records. This Court determines that said enrichment is best Measured by the amount of loss sustained by AGFS in the amount of \$42,097.73.

As St. Louis County is holding a surplus of funds from the tax sale referenced in this judgment in the amount of \$3,100.00, it is ordered that St. Louis County pay said \$3,100.00 to American General Financial Services at 113 Triad West, O'Fallon, MO 63366.

AGFS shall have and recover from Cedar the sum of \$42,097.73, less the \$3,100.00 to be paid by St. Louis County for total sum of \$38,997.73.

Judgment entered in favor of American General Financial Services, Inc. and against Cedar Bridge, LLC in the amount of \$38,997.73 plus interest and court costs.

SO ORDERED


Judge Gloria C. Reno
Div 19
9/8/09