

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2014-030864-CA-01

SECTION: CA31

JUDGE: Migna Sanchez-Llorens

Weiss, Adeena

Plaintiff(s)

vs.

Towers Of Blue Lagoon 1 Inc

Defendant(s)

**ORDER ON DEFENDANT, BI 27, LLC'S AMENDED MOTION FOR SUMMARY
JUDGMENT**

Docket Index Number: **265**

Full Name of Motion: **BI 27, LLC's Amended Motion for Final Summary Judgment**

THIS CAUSE came before the Court on Defendant, BI 27, LLC's ("**BI 27**") Amended Motion for Final Summary Judgment as to all of Plaintiffs' claims against BI 27 and the subject mortgage, including Count I (Quiet Title), Count II (Declaratory Relief), and Count V (Slander of Title) ("**Motion**"). The Court, having heard argument of counsel, reviewed the record, affidavits, transcripts, the Motion, Plaintiffs', Adeena Weiss, N/K/A Adeena Weiss-Ortiz, individually and on behalf of Tower of Blue Lagoon, Inc., et al. ("**Plaintiffs**") Memorandum of Law in Opposition of the Motion together with the deposition transcripts attached (Index 260), and the May 25, 2021 Notice of Filing of the Transcript of the Proceedings Held before the Honorable Antonio Arzola on May 12, 2016 (Index 263), and being otherwise duly advised in the premises, hereby **FINDS** as follows:

BACKGROUND

BI 27 seeks entry of final summary judgment in its favor with respect to all of Plaintiffs'

quiet title and other claims against BI 27, including but not limited to the subject of this litigation, Plaintiffs' claim that the mortgage on the real property which was assigned to BI 27 in 2017 is invalid.

i. *Procedural Posture*

Plaintiff, Adeena Weiss, initiated this action on December 5, 2014, with a three-count Complaint for declaratory judgment for fraudulent transfer of title, quiet title to real property, and declaratory judgment to relinquish liens, all as to the real property located at 4865 N.W. 7th Street, Miami, Florida 33126 ("**Property**"). Compl. ¶¶ 2, 8-11, 12-14, 15-17.

Plaintiff alleged in her Complaint that she "owns title to the Property" by virtue of being one of two sole shareholders in Towers of Blue Lagoon, Inc., Towers of Blue Lagoon (1), Inc., and Towers of Blue Lagoon (2), Inc. ("**Tower Entities**"). *Id.* at ¶ 3. Plaintiff also alleged that Defendant Alitza Weiss ("**Weiss**") "fraudulently executed various Quit Claim Deeds and transferred title to the Property to herself and recorded those deeds." *Id.* at ¶ 15.

On May 12, 2016, Plaintiffs filed an Amended Complaint to quiet title to real property and for declaratory judgment to relinquish liens in which Plaintiff made the same allegations as in her original Complaint. Am. Compl. ¶ 3.

On August 4, 2016, Plaintiffs filed a Second Amended Complaint to quiet title to real property, relinquish liens, and for fraudulent transfer of real property in which Plaintiff made the same allegations as contained in the original Complaint and the Amended Complaint. Second Am. Compl. ¶¶ 5, 8-9, 15.

On October 5, 2020, Plaintiffs filed a Sixth Amended Complaint to quiet title to the Property, for declaratory relief, conversion, breach of fiduciary duty, and slander of title in which the Plaintiff made the same allegations as contained in the prior filed complaints. Sixth Am. Compl. ¶¶ 15, 17, 19. The substance of Plaintiffs' claims in the Sixth Amended Complaint is that

Plaintiff Adeena Weiss is an owner of Towers of Blue Lagoon, Inc., Towers of Blue Lagoon (1), Inc., and Towers of Blue Lagoon (2), Inc., which owned the Property. *Id.* at ¶¶ 15, 17. Plaintiffs also allege that Defendant Weiss “caused to be recorded several deeds, without [Plaintiffs’] consent or authorization, in order to fraudulently transfer the [Property].” *Id.* at ¶ 19. Throughout the course of this litigation, the crux of Plaintiffs’ claims has been that Defendant Weiss fraudulently conveyed the Property away from the Tower Entities.

On March 10, 2016, Plaintiff filed an “Amended Notice of Lis Pendens,” and on April 12, 2016, Plaintiff filed a “Second Amended Notice of Lis Pendens” as to each of the four folio numbers associated with the Property. (Despite being titled an “Amended Notice of Lis Pendens,” no prior Notice of Lis Pendens had been filed in this action.) The Amended Notice of Lis Pendens was recorded at Official Records Book 29994, Pages 4559-61 in the Official Records of Miami-Dade County, Florida. The Second Amended Notice of Lis Pendens was recorded at Official Records Book 30034, Pages 4863-65 in the Official Records of Miami-Dade County, Florida.

On April 28, 2016, Defendants Caroline Weiss, Towers of Blue Lagoon, Inc., Towers of Blue Lagoon (1), Inc., and the Estate of Jack Weiss (collectively, “**Weiss Defendants**”) filed an Emergency Motion to Discharge Lis Pendens or In the Alternative to Require an Adequate Bond (“**Motion to Discharge**”). Mot. to Discharge Composite Ex. 3. In the Motion to Discharge, the Weiss Defendants argued that Plaintiff was not entitled to a lis pendens as a matter of right because her claims were not founded on a duly recorded instrument. *Id.* at ¶ 1. The Weiss Defendants further argued that, because of the recently recorded Notices of Lis Pendens, the Weiss Defendants were unable to obtain the mortgage loan financing necessary to pay off approximately \$1.6 million in ad valorem taxes on the Property. *Id.* at ¶¶ 8-9.

On May 12, 2016, this Court held an evidentiary hearing on the Motion to Discharge. The Order on Motion to Discharge was subsequently recorded at Official Records Book 30084, Pages

793-94 in the Official Records of Miami-Dade County, Florida. On May 19, 2016, this Court entered an Order (“**Order on Motion to Discharge**”) denying the Weiss Defendants’ request to discharge the lis pendens, but instead set a bond in the amount of \$2 million, giving Plaintiff until 4:30 pm on Monday, May 23, 2016, to post the bond. Order on Mot. to Discharge ¶ 3. The Order on Motion to Discharge also stated that if no bond were posted by the deadline, then “the lis pendens on the properties is hereby discharged without further order of this Court.” *Id.* at ¶ 4. Plaintiff failed to post the Court-ordered bond by the May 23, 2016 deadline. Mot. to Discharge, Ex. 6.

On May 26, 2016, this Court entered an Order Confirming Discharge of Lis Pendens (“**Order Confirming Discharge**”). The Order Confirming Discharge was recorded at Official Records Book 30093, Pages 2109-10 in the Official Records of Miami-Dade County, Florida.; Mot. to Discharge, Ex. 6. The Order Confirming Discharge noted the requirement that Plaintiff post a bond in the amount of \$2 million by May 23, 2016. Order Confirming Discharge; Mot. to Discharge, Ex. 6. The Court determined that no bond had been posted and confirmed the lis pendens on the Property had been discharged as of 4:30 P.M. on May 23, 2016. *Id.* at ¶ 1. The Plaintiff did not seek appellate review of the Order on Motion to Discharge or the Order Confirming Discharge, and Plaintiff never recorded a subsequent lis pendens against the Property.

On June 10, 2016, the Weiss Defendants obtained a loan for approximately \$5 million and gave as security a Mortgage and Security Agreement dated June 10, 2016, in favor of Elite Construction Management, LLC against two of the parcels of the Property (“**Mortgage**”). The Mortgage was recorded in Official Records Book 30117, Page 2139, of the Official Records of Miami Dade County, Florida.

On January 28, 2020, Plaintiffs filed a Fifth Amended Complaint, alleging for the first time that the Weiss Defendants had “caused to be recorded” the Mortgage, which had been

assigned to BI 27 by virtue of an Assignment of Mortgage and Other Loan Documents, recorded on December 21, 2017 at Official Record Book 30801, Pages 2244-2247 of the Official Records of Miami Dade County, Florida. Fifth Am. Compl. ¶¶ 20-21. Plaintiffs alleged that the Mortgage was a “cloud on title”, and sought to quiet title to the Property, and obtain a declaration that BI 27 and all persons claiming under the Mortgage have no lien on the Property and that the Mortgage is “invalid and unenforceable.” Fifth Am. Compl. ¶ 34; Count II (Prayer for Relief).

On October 16, 2020, Plaintiffs filed a Sixth Amended Complaint asserting the same allegations against BI 27 and adding a cause of action for slander of title.

ii. *Summary of the arguments*

In sum, the substance of Plaintiffs' claims in this action have always been that Defendant Weiss fraudulently conveyed the Property away from Towers of Blue Lagoon, Inc., Towers of Blue Lagoon (1), Inc., and Towers of Blue Lagoon (2), Inc.

BI 27 contends that based *entirely* on the above facts “and the operation of controlling Florida Statute section 48.23(1)(b)(2), the lien of [BI 27’s] Mortgage was taken exempt from all claims against the subject property filed in the action by Plaintiff and from any judgment entered in this action.”

LEGAL ANALYSIS

i. *Summary Judgment Standard*

On May 1, 2021, the Supreme Court of Florida amended Florida Rule of Civil Procedure 1.510 to comport with Federal Rule of Civil Procedure 56, Summary Judgment standard. As such, the rule shall be construed and applied in accordance with the Federal Summary Judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Electric Industry Co. v. Zenith Radio*

Corp., 475 U.S. 574 (1986). The new summary judgment standard replaces the non-movant’s burden to introduce only competent evidence and the movant’s burden to introduce evidence which would be favorable to a directed verdict at trial. The new summary judgment standard recognizes that a moving party does not bear the burden of persuasion at trial and can obtain summary judgment without disproving the nonmovant’s case, by merely pointing out that the non-movant failed to meet its burden. *See Wease v. Ocwen Loan Servicing.*, 915 F.3d 987, 997 (5th Cir. 2019) (stating that “[a] movant for summary judgment need not set forth evidence when the nonmovant bears the burden of persuasion at trial”).

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fla. R. Civ. P. 1.510(a). Further, Florida’s summary judgment standard must be “construed and applied in accordance with the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986),” and more generally to case law interpreting Federal Rule of Civil Procedure 56. *In re Am. to Fla. R. Civ. P. 1.510*, 317 So. 3d 72, 75 (Fla. 2021); Fla. R. Civ. P. 1.510 cmt. to 2021 Am. As such, summary judgment is no longer disfavored in Florida and is now regarded as “an integral part” of rules aimed at “the just, speedy, and inexpensive determination of every action.” *Id.* (quoting Fed. R. Civ. P. 1; cf. Fla. R. Civ. P. 1.010).

The movant “bears the initial responsibility of informing the [] court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*, 477 U.S. at 323. After the movant has met its burden, the burden of production shifts and the nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita*, 475 U.S. at 586. “For factual issues to be considered genuine, they must have a real basis in the

record.” *Mann v. Taser Int’l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009).

ii. *Florida Statute section 48.23(1)(b)(2)* (“**Sec. 48.23**”)

Florida’s lis pendens doctrine is statutory. Florida Statute section 48.23(1)(b)(2) provides in relevant part that:

Any person acquiring for value . . . [a] lien upon the real . . . property during the pendency of an action . . . **shall** take such . . . lien **exempt from all claims against the property that were filed in such action by the party . . . whose notice . . . was . . . discharged, and from any judgment entered in the proceeding**, notwithstanding the provisions of s. 695.01, **as if such person had no actual or constructive notice of the proceeding or of the claims made therein or the documents forming the causes of action against the property in the proceeding.**

Fla. Stat. § 48.23(1)(b)(2) (2019) (emphasis added).

The relevant provision of this statute is unambiguous. *See, e.g., Adhin v. First Horizon Home Loans*, 44 So. 3d 1245, 1252 (Fla. 5th DCA 2010) (stating “[t]here is no ambiguity in the language of the statute”). Florida Statute section 48.23(1)(b)(2) provides that, when a proponent of a lis pendens allows the notice of lis pendens to be discharged, a lender for value, and its predecessors and successors in interest, takes exempt from all of the claims against the property and from any judgment entered in the proceeding, as if the lender had no actual or constructive notice of the proceeding or of the claims made therein or the documents forming the causes of action against the property.

Plaintiff Adeena Weiss failed to post the bond as required by this Court’s Order on Motion for Discharge. As a result, Plaintiff Adeena Weiss’s Notice of Lis Pendens was discharged by Order of the Court as of May 23, 2016. Thereafter, the Mortgage was executed and recorded.

As a result, pursuant to Florida Statute Section 48.23(1)(b)(2), the lien on the Mortgage is “exempt from all claims” against the Property filed by Plaintiff and from any judgment entered in this action, “as if [BI 27] had no actual or constructive notice of the proceeding or of the claims made therein or the documents forming the causes of action against the property in the proceeding.” Fla. Stat. § 48.23(1)(b)(2).

However, Plaintiff Adeena Weiss argues that the lis pendens statute does not apply in this case because after the lis pendens was discharged, the Complaint was amended to add as Plaintiffs, in a derivative capacity, the Tower Entities, who were predecessors in title to the Property. Plaintiffs argue that this meant their claims were founded on the original vesting deeds in favor of the Tower Entities (i.e., duly recorded instruments) and that they did not need a Notice of Lis Pendens to bind third parties. Plaintiffs’ claims, during the entire course of this action, have been that Defendant Weiss *fraudulently conveyed* the Property away from the Tower Entities. *See e.g.*, Sixth Amend. Compl. ¶ 19 (stating “in order to fraudulently transfer the Subject Property”); ¶ 20 (“Fraudulent Deeds”); ¶ 23 (“the transfers and encumbrances caused by Defendant, CW and any related entities, and such transfers and encumbrances are fraudulent”); and ¶ 29 (“Fraudulent Deeds”).

As Plaintiffs allege here, since the grantee fraudulently or otherwise wrongfully obtained title and an action is brought to rescind the deed, the plaintiff is not entitled as a matter of right to file a notice of lis pendens. *Berkley Multi Unites, Inc. v. Linder*, 464 So. 2d 1356, 1357-58 (Fla. 4th DCA 1985). Thus, claiming that this action is not founded on the deed, but instead, on the circumstances preceding and surrounding the execution of the deed. *See, e.g., Am. Legion Comty. Club v. Diamond*, 561 So. 2d 268, 271 (Fla. 1990) (holding that a suit to set aside a conveyance of real property is not an action “founded on a duly recorded instrument” within the meaning of the lis pendens statute).

Plaintiffs’ claims of fraudulent conveyance are thus not founded on a duly recorded

instrument and the lis pendens statute exempts the Mortgage from “all claims” against the Property and from any judgment entered in this case. The fact that Plaintiff Adeena Weiss added the Tower Entities as derivative plaintiffs to her Second Amended Complaint is of no significance because Plaintiffs’ claims for fraudulent conveyance have been identical across all of the Complaints, including Plaintiff, Adeena Weiss’ Complaint, that had been pending when the lis pendens was discharged, as well as the immediately following Second Amended Complaint. Am. Compl. ¶ 3; Second Am. Compl. ¶ 15. Thus, when the Mortgage was given, it was taken exempt from Plaintiffs’ fraudulent conveyance claims.

Plaintiffs further argue that section 48.023 does not apply because the Mortgage is fraudulent and a nullity. Plaintiffs contend that Defendant Weiss allegedly fraudulently conveyed the Property, a fraud that was purportedly evident from the face of the deeds, and thus, she did not have authority to give the Mortgage. However, Plaintiffs did not offer any summary judgment proof of this fraudulent conveyance or how the fraud was apparent from the face of the deeds prior to or at the hearing on BI 27’s Motion. Plaintiffs did not file an affidavit in opposition to BI 27’s Motion. Instead, Plaintiffs relied on their own allegations. At the hearing on BI 27’s Motion, Plaintiffs argued that they did *not* have to provide evidence that Plaintiff Adeena Weiss owns the shares of the company that owns the Property or that Defendant Caroline Weiss fraudulently conveyed the Property. Hr’g Tr. 30:21-31:7. As the Florida Supreme Court has recently held, it is “no longer plausible to maintain that the existence of *any* competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the slightest doubt is raised.” *In re Am. to Fla. R. Civ. P. 1.510*, 317 So. 3d 72 (Fla. 2021) (quoting *Anderson*, 477 U.S. 242 (1986)).

Plaintiffs’ allegations that BI 27 knew about the circumstances surrounding the recording of the allegedly fraudulent deeds and about the dispute between Plaintiffs and Defendant Weiss are irrelevant because section 48.123(1)(b)(2) clearly states that BI 27 took the Mortgage

“exempt from all claims” against the Property and any judgment as if BI 27 had “no actual or constructive notice of the proceedings or the claims made therein or the documents forming the causes of action against the property in the proceeding.”

The Court notes that Plaintiff's, Adeena Weiss', allegations that the mortgage is fraudulent is not a distinct claim from the allegation that the deeds are fraudulent; instead, they are based on the allegation that the mortgage was fraudulent because Defendants were not the proper owners of the Property (due to the fraudulent deeds). Thus, it would not be proper to separate the claims based on the alleged “fraudulent mortgage” from the claims based on the alleged fraudulent deeds. Pursuant to Florida Statute section 48.23(b)(1) and (2), any time that a party acquires a lien on property during the pendency of an action not based on a duly recorded instrument with no active lis pendens, the lien is exempt from all claims. If a plaintiff could avoid this by claiming that the lien is fraudulent because the underlying action alleges that the property at issue was fraudulently obtained, then this would create an exception which would likely swallow the rule. Thus, the claims against BI 27 fail pursuant to Florida Statute section 48.23.

Plaintiffs' claims against BI 27 still fail even though the Complaint alleges that Elite (the original lender) and BI 27 each had actual, independent knowledge that Defendants were not the owners of the Property and did not have the authority to execute the Mortgage. These allegations are irrelevant under Florida Statute section 48.23(b)(2), which specifically states that the person who acquired a lien on property during the pendency of an action not based on a duly recorded instrument with no active lis pendens takes the lien exempt from all claims “as if as if such person had no actual or constructive notice of the proceeding or of the claims made therein or the documents forming the causes of action against the property in the proceeding.”

In conclusion, pursuant to section 48.123(1)(b)(2), BI 27 took the Mortgage “exempt from all claims” against the Property and any judgment. According, it is hereby,

ORDERED and **ADJUDGED** as follows:

1. Defendant BI 27, LLC's Amended Motion for Final Summary Judgment is hereby **GRANTED**.
2. Pursuant to Florida Statute section 48.123(1)(b)(2), Defendant BI 27, LLC, its assignees and successors in title to the Mortgage, and the Mortgage itself are exempt from all of Plaintiffs' claims against the Property and any judgment entered in this case.
3. Full and Final Summary Judgment is hereby **ENTERED** against Plaintiffs in favor of Defendant BI 27, LLC, its assignees and successors in title to the Mortgage, as to all of Plaintiffs' claims against BI 27, LLC, the Mortgage, and the Property. Plaintiffs shall take nothing in this action and Defendant BI 27, LLC shall go henceforth without delay.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 14th day of March, 2022.

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Hon. Migna Sanchez-Llorens

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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