



EX
CASE # 17-7236

OFFICIAL RECEIPT
STAFFORD GENERAL DISTRICT COURT
1300 COURTHOUSE RD/ PO BOX 940
STAFFORD, VA 22554
540-658-4641

RECEIVED
STAFFORD GENERAL DISTRICT COURT
JAN 19 2018
#5

CIVIL

DATE: 01/19/18 TIME: 10:27:24 ACCOUNT: 179GV17006416-00 RECEIPT: 18000001154
CASHIER: KRD REG: SJ47 TYPE: FULL PAYMENT
ACCT OF: MAHJOR, HAMID R RECD: MAHJOR, HAMID R
CASH: \$60.00

CODE DESCRIPTION	PAID	CODE DESCRIPTION	PAID
206 SHERIFF FEES	60.00		
		TENDERED :	60.00
		AMOUNT PAID:	60.00
		CHANGE AMT :	.00

DATE: 01/19/18
CASHIER: KRD
ACCT OF: MAHJOR
CASH

CLERK OF COURT: BONNIE CAMP

PAYOR'S COPY
RECEIPT COPY 1 OF 3

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF STAFFORD COUNTY

FFC PROPERTIES, LLC,

Plaintiff,

v.

Case No. V17-6416

HAMID MAHJOR,

Defendant.

DEFENDANT'S MOTION TO DISMISS UNLAWFUL DETAINER ACTION

Defendant, Hamid Mahjor ("Mahjor"), moves for dismissal of this unlawful detainer case as resolving possession of the subject property will require this Court to determine title, and there is a bona fide question as to whether or not FFC Properties holds good title, and in support thereof submits the following.

INTRODUCTION

Defendant filed a complaint in the Stafford Circuit Court challenging the foreclosure sale of the subject Property prior to said sale. Defendant further filed a request for an injunction of the foreclosure sale. The petition for injunction was denied, after which Mahjor recorded a lis pendens giving notice of his claims to any potential purchaser. The foreclosure went forward and FFC properties was the purchaser at the auction. Mahjor also amended his complaint, naming FFC as a defendant. The circuit court case filed by Mahjor was removed to federal court, Alexandria, where it was dismissed on the defendants' motion to dismiss which asserted the statute of limitations had run on raising the issue of fraud, and further the issue was res judicata given prior bankruptcy proceedings. Mahjor appealed to the Fourth Circuit Court of Appeals, which affirmed.

Received #5
JAN 19 2018
Stafford General
District Court

The clear point of the appeal now before the U.S. Supreme Court is straightforward: the subject promissory note was procured by fraud and is thus void – fraud by Mr. Milan, an agent of the original lender, Greenpoint who, with apparently the knowledge of Greenpoint, engaged in this fraud repeatedly to make money for his employer. The victim of that fraud is Mahjor, who had his entire down payment, \$184,000 (Ex A – Mahjor Amended Complaint, ¶14), stolen from him.

Importantly, the defendants did not contest that the note is void as a result of that fraud (not voidable, but void *ab initio*). Rather, they argued that Mahjor in bankruptcy filings acknowledged this debt as his. In truth, Mahjor is not empowered with bringing void things to life, even were the debt his, which it is not. A voidable thing, yes, but the Vasquez Note is not voidable - it is void. Further, defendants argued the statute of limitations had run on raising the defense of “void” as if it were a fraud defense, and the Court accepted that argument and granted the 12b6 motion to dismiss.

While the case was dismissed and affirmed by the Fourth Circuit, it is on appeal in the U.S. Supreme Court.

ARGUMENT

1. An unlawful detainer action in the General District Court provides the Court with very narrow jurisdictional authority. The judge in said cases is limited to one issue, and one issue only: is the party bringing the action entitled to possession. In a foreclosure action, this decision is based on the submission of a clerk’s certified copy of the Trustee’s Deed of Sale. The court may not try issues of title, ownership, or anything outside of that narrow issue of possession. (*Addison v. Salyer*, 185 Va. 644, 648-649, 40 S.E.2d 260, ___ (1946).

2. Furthermore, upon an appeal from the General District Court (“GDC”) the jurisdiction of the Circuit Court does not expand in anyway. Rather, the court to which the action

is appealed has no greater jurisdiction than the lower court. *Hirschkop v. Commonwealth*, 209 Va. 678, 682-683, 166 S.E.2d 322, ____ (1969)(citing *Stacy v. Mullins*, 185 Va. 837, 841, 40 S.E.2d 265, 266 (1946).

3. Until the institution of the unlawful detainer action, the foreclosure process has not been subject to any judicial scrutiny. The General District Courts accept clerk certified copies of foreclosure trustee's deeds (pursuant to Va. Code § 8.01-389(C)¹) as evidence of a title, which, in truth, is 'trying title.' Other issues about title or the regularities of the foreclosure – matters such as continuity of title through the land records, authority of parties to act, unproven fiduciary relationships, lack of consideration paid by UD plaintiff, etc. – are excluded. These are all matters that rebut the *prima facie* presumptions arising from application of the referenced statute. The statute to which homage is given is a judicial notice statute and only provides a rebuttable presumption that the representations of the deed are true.

4. The courts, this Court, should move to protect the property rights of Virginia's citizens and it does not have to go far. Consider the advice of Justice Whiting in his dissent in Smith v. Credico Industrial Loan Company :

As to the purchaser at the trustee's foreclosure sale, there is no question. He receives all the title, for better or worse, that the mortgagor enjoyed, and consequently he can recover *in ejectment* against the mortgagor and those claiming through him by descent or purchase. ... (I)t seems clear that legal title remains in the mortgagor under the deed of trust, and passes from him only when the trustee sells upon default.

234 Va. 514, 362 S.E.2d 735, 738 (1987) (Emphasis added.)

5. In Virginia, ejectment requires proof of title. By admitting evidence tending to

¹ § 8.01-389(C): Specifically, recitals of any fact in a deed or deed of trust of record conveying any interest in real property shall be *prima facie* evidence of that fact.

establish a *title* chain, which Plaintiff will do, it will [*should*] effectively convert the instant matter from an unlawful detainer action to an ejectment case.

6. A defendant in an unlawful detainer case should at least be allowed to rebut the presumptions raised by a facially valid title and, if that is accomplished, the burden of proving a valid title to support the claim for possession should shift to the plaintiff. This should be so because Plaintiff's claim for possession essentially derives from a chain of title to the subject property and not from a lease granted by the plaintiff.

7. The recent opinion from the VA Supreme Court, Parrish v National Mortgage Association, 787 S.E. 2d 116, 292 Va. 44 (2016) confirmed a homeowner's right to challenge facially valid title. If the homeowner has a valid defense that would survive demurrer, the general district court is to dismiss the case for the foreclosing party to refile an ejectment action in the Circuit Court and establish its title.

8. However, the problem facing Appellant is the defenses he raised were dismissed when they should not have been as the ruling was, respectfully, in clear conflict with precedent from the U.S. Supreme Court and the Virginia Supreme Court.

9. Specifically, (A) in opposing the 12b6 motion to dismiss Appellant cited the Virginia Supreme Court speaking of void orders, stating an order which is void *ab initio* can be challenged "by all persons, anywhere, at any time, or in any manner." Singh v. Mooney, 541 S.E. 2d 549, 551 (Va. 2001). The federal court, Alexandria, acknowledged that case law (see Ex B - Memo Op., Dkt#31, p. 8-9), but viewed it as a fraud claim, not as a claim the note was void, and did not accept that that same principle applied to [void] contracts.

10. That ruling that there was a statute of limitations on raising the void defense regarding contracts, but not orders (or ignoring that this was not a "fraud" claim, but a claim the

note was void), clearly violates U.S. Supreme Court precedent, which states "[t]he authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought in which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it. . . ." Kaiser Steel Corporation v. Mullins, 455 U.S. 72, 77 (1982) (citing McMullen v. Hoffman, 174 U.S. 639, 654, 19 S.Ct. 839, 845, (1899)). The Supreme Court further quoted McMullen stating that "to permit a recovery in this case is in substance to enforce an illegal contract, and one which is illegal because it is against public policy to permit it to stand. The court refuses to enforce such a contract and it permits defendant to set up its illegality, not out of any regard for the defendant who sets it up, but only on account of the public interest." *Id.*, 77 (again citing McMullen v. Hoffman, at 669, 19 S.Ct. 851, (1899)).

11. Similarly, the Virginia Supreme Court held "the law will not imply a promise to pay for services which are in derogation of public policy, any more than it will enforce a specific contract having that object in view; and when a plaintiff cannot establish his cause of action without relying on an illegal contract, or on services which by their very nature contravene public policy, he cannot recover." Roller v. Murray, 112 Va. 780, 72 S.E. 665, 667 (Va., 1911). Despite that clear and unambiguous case law, the federal court referred to that argument as "so frivolous that it barely warrants a response." (Memo Op p. 8 – Ex B).

12. And (B) the federal court's ruling that Mahjor's bankruptcy filings, having listed the Vasquez loan as a debt, somehow breathed life into the void note thus making his argument *res judicata* was directly contrary to precedent from the Virginia Supreme Court:

[A] void contract is a complete nullity, one that has no legal force or binding effect. It is one which never had any legal existence or effect, and one which cannot in any manner have life breathed into it ... In Cohen v. Mayflower Corp., 196 Va. 1153 1160, 86 S.E.2d 860, 864

(1955), we said: "It is, of course, elementary that 'A void contract is no contract at all; it binds no one and is a mere nullity. Accordingly, an action cannot be maintained for damages for its breach.'..." (Citations omitted).

Kennedy v. Annandale Boys Club, Inc., 272 S.E. 38, 39 (Va. 1980).

II. THE PROMISSORY NOTE IS VOID *AB INITIO*, AND A DEED OF TRUST – A MERE INCIDENT TO THE NOTE - CANNOT SECURE A VOID NOTE, THUS ANY FORECLOSURE IS VOID

The Vasquez Note is Void Ab Initio

The true distinction between void and voidable acts, orders, and judgments is that the former can always be assailed in any proceeding, and the latter only in a direct proceeding. Alexander v. Nelson, 42 Ala. 462. The distinction between the terms "void" and "voidable," in their application to contracts, is often one of great practical importance; and, whenever entire technical accuracy is required, the term "void" can only be properly applied to those contracts that are of no effect whatsoever, such as are a mere nullity, and incapable of confirmation or ratification. Allis v. Billings, 6 Mete. (Mass.) 415, 30 Am. Dec. 744. Void in part, void in toto. Curtis v. Leavitt, 15 N. Y. 9, 90. Void things are as no things. People v. Shall, 9 Cow. (N. Y.) 778, 7S4. A note executed by one using the fictional name of another, is an illegal contract, thus is a legal nullity and is void *ab initio*.

If the Note is void, and it is – arguing against that fact is an uphill battle in light of the evidence thereof, then the deed of trust is similarly void. The deed of trust serves one purpose – secure repayment of the debt, and is a mere incident thereto. See Horvath v. Bank of N.Y., 641 F.3d 617, 623 (4th Cir., 2011). If there is no "debt" – and there is not as it is void – then there is, as a matter of law, no deed of trust. With no deed of trust, there can no foreclosure, no power of sale to exercise, and no trustee to a nonexistent deed of trust.

Further, re the note the Defendants do not have it and cannot produce it and it is likely not owned by Greenpoint, either as a result of its *bankruptcy* or having transferred it (putting aside that Greenpoint does not exist anymore as an entity – it was shut down in 2009).

There can be little argument that a contract which is illegal – and using straw purchasers (i.e. fake names and information) is illegal – cannot be enforced. Yet the defendants repeatedly glossed over this clear and present fact. And “the law will not imply a promise to pay for services which are in derogation of public policy, any more than it will enforce a specific contract having that object in view; and when a plaintiff cannot establish his cause of action without relying on an illegal contract, or on services which by their very nature contravene public policy, he cannot recover.” Roller v. Murray, 112 Va. 780, 72 S.E. 665, 667 (Va., 1911). The above applies to Greenpoint and its agents: it cannot recover on the illegal contract. Nor can the substitute trustee enforce the power of sale in a deed of trust that secures a void note – there is no debt to secure, thus there is no deed of trust as a matter of law.

Bankruptcy

And given an illegal contract is “void ab initio” – it is “not voidable only, but wholly void, and of no legal effect, and [n]o performance on either side can give the unlawful contract any validity, or be the foundation of any right of action upon it.” Deal v. Commonwealth, 299 S.E. 2d 346, 348 (Va. 1983). Thus, the entirety of the defendants’ arguments based on the bankruptcy filings of the Plaintiff are irrelevant – he has no more power to “make” the contract a “thing,” let alone a valid thing, than the defendants. And similar to when a contract is once declared ultra vires, “the fact that it is executed does not validate it, nor can it be ratified so as to make it the basis of suit or action, nor does the doctrine of estoppel apply.” Id. At 348-349.

Defendant FFC must be required to file an Ejectment Action in Circuit Court

FFC is seeking to evict Mahjor while his appeal is ongoing in the US Supreme Court. A major difference between Mahjor filing a complaint and asserting claims (as is often done by homeowners in a non-judicial forum), and defending an ejectment action, is the ability to raise defenses. Mahjor's defenses will include the fact the note and deed of trust are void, but will also raise the problem given the date the Deed of Trust was recorded, identifying Vasquez and Mahjor as the grantees, when Vasquez had no interest in the Property to subject to a lien. The deed to Vasquez and Mahjor (Ex C) was recorded back in 2006 and was immediately followed by a deed of gift from Vasquez to Mahjor (Ex D). Thus, when the Deed of Trust was recorded, Vasquez (a fake fraudulent person used by Greenpoint's agent, Milan) had no interest to encumber, and Mahjor had no debt. With no interest for Vasquez (a fictional straw purchaser, lest we forget) to encumber, and no loan in the name of Mahjor, there is a question as to the validity of the Deed of Trust on these grounds as well.

Mahjor asks this Court to appoint a guardian attorney –request attorney Chris Brown, handling this *pro bono* - to represent Defendant as he is disabled and entitled to one and the court cannot proceed against him with his disability as he is entitled to counsel per VA Code § 8.01-9.

Defendant also requires an Iranian Farsi interpreter for any proceedings.

THE LIS PENDENS IS FURTHER EVIDENCE FFC HAS NO TITLE

Further supporting the argument that FFC Properties does not have good title is the fact the lis pendens is still legally on the Property. The Stafford Circuit Court granted a motion to release the lis pendens which gave notice of the underlying case, now on appeal in the U.S. Supreme Court. That Order as void, however, as 1) the case was removed from Stafford to the EDVA, so the Stafford court had no jurisdiction to hear a motion under that same case number and the motion

to release the lis pendens was filed under same case number of case removed to EDVA; 2) Judge did not appoint a guardian as required by VA Code §8.01-9; 3) Mahjor was not in good health and judge forced him to continue; 4) Mahjor informed the judge over 10 times he could not read or write English, and request for interpreter was denied; 5) the case in Stafford – CL 17-0209-00 was removed to the EDVA, and thus Stafford had no jurisdiction to enter an order in CL 17-0209-00 but it did, see attached order releasing the lis pendens in that case – Ex E). Of course, once the lis pendens was released FFC Properties, plaintiff in the eviction case, was able to get a Trustees' Deed and file the unlawful detainer case seeking to evict. Mahjor filed a complaint against the judge (incorrectly against Sharpe, but it was amended to be against Judge Bass who signed the order) with all supporting documentation – see Ex F. The case law and statute support the position the Order releasing the lis pendens is void, and Mahjor appealed to the VA Sup Ct (Ex G – Petition for Appeal). Briefly, the support is clear:

28 U.S.C. §1441(c)(2) states:

Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed.

28 .S.C. § 1446 (d) states that once removed the state court shall proceed no further.

Once the case was removed from Stafford Circuit court, jurisdiction in Stafford Circuit Court was lost to the federal court. Thus, it had no jurisdiction to hear the motion, as the case was removed to the federal court. As there was no jurisdiction for Stafford Circuit Court to hear the motion, no order may be entered, and no hearing can be held by this Court, and the Order entered is void *ab initio*. The VA Sup Ct ruled in 2003 that actions taken by the state court after removal are void *ab initio*:

The removal of a case from state court to federal court effects a transfer of the entire action, including all the parties and all the claims, to the federal court. *City of Gainesville v. Brown-Crummer Investment Co.*, 277 U.S. 54, 60, 48 S.Ct. 454, 72 L.Ed. 781 (1928); *Arango v. Guzman Travel Advisors Corp.*, 621 F.2d 1371, 1376 (5th Cir.1980); *Murphy v. Kodz*, 351 F.2d 163, 167 (9th Cir.1965); *Hartlein v. Illinois Power Co.*, 151 Ill.2d 142, 176 Ill.Dec. 22, 601 N.E.2d 720, 726 (1992). A defendant, upon filing a notice of removal, "shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk" of the state court, which effects the removal. 28 U.S.C. § 1446 (d). At that point, "the [s]tate court shall proceed no further unless and until the case is remanded." *Id.*

"After compliance with the removal statute[,] the jurisdiction of the [s]tate court is suspended until there has been a remand." *Levine v. Lacy*, 204 Va. 297, 300, 130 S.E.2d 443, 445 (1963); *accord Yarnevich v. Brink's, Inc.*, 102 F.3d 753, 754 (4th Cir. 1996); *Maseda v. Honda Motor Co.*, 861 F.2d 1248, 1254 (11th Cir.1988); *Allman v. Hanley*, 302 F.2d 559, 562 (5th Cir.1962). "Any subsequent proceedings in state court on the case are void *ab initio*." *Maseda*, 861 F.2d at 1254-55 (citing *Steam-Ship Co. v. Tugman*, 106 U.S. 118, 122, 1 S.Ct. 58, 27 L.Ed. 87 (1882)); *accord South Carolina v. Moore*, 447 F.2d 1067, 1073 (4th Cir.1971). A later determination that the removal petition was not proper does not change that outcome. *See Maseda*, 861 F.2d at 1254 n. 11; *Moore*, 447 F.2d at 1073; *United States v. Silberglitt*, 441 F.2d 225, 227 (2d Cir.1971); *Lowe v. Jacobs*, 243 F.2d 432, 433 (5th Cir.1957).

Lewis v. C.J. LANGENFELDER & SON, JR., 587 S.E.2d 697, 700-701, 266 Va. 513 (Va., 2003).

This Fourth Circuit Court of Appeals has, of course, held the same:

Under § 1446 (d), removing defendants must promptly provide written notice of the removal to opposing parties and to the state court. See 28 U.S.C. § 1446 (d). The statute specifies that removal is effected by the filing of the notice of removal with the state-court clerk, at which point "the State court shall proceed no further unless and until the case is remanded." *Id.* (emphasis added). Defendants argue that under § 1446 (d), any post-removal action taken by the state court is void. Although the Defendants have not sought an order invalidating the amendment from the state court or the district court, they argue that, even absent any injunction, the amendment to the Koch complaint was void *ab initio* because "[t]he § 1446 (d) bar is self-acting." Brief of Appellants at 32.

Because § 1446 (d) explicitly states that "the State court shall proceed no further" once removal is effected, 28 U.S.C. § 1446 (d), we agree with the Defendants that the statute deprives the state court of further jurisdiction over

the removed case and that any post-removal actions taken by the state court in the removed case action are void ab initio. See *South Carolina v. Moore*, 447 F.2d 1067, 1072-73 (4th Cir. 1971) ; accord *Polyplastics, Inc. v. Transconex, Inc.*, 713 F.2d 875, 880 (1st Cir. 1983) ("[A]ny action taken by the Puerto Rico court after removal was effected was a nullity anyway, with or without the order against further proceedings.").

Ackerman v. Exxonmobil Corp., No. 12-1103, p. 11-12 (4th Cir., 1013).

CONCLUSION

It is clear the Note, thus the Deed of Trust as well, is void, and void contracts cannot be enforced, and there is no statute of limitations for challenging a void document, and any identification of the loan by Plaintiff in his bankruptcy cannot breathe life into a void document. The District Court erred in granting the 12b6 motion to dismiss on the ground that the statute of limitations on the ability to challenge it as void had run – again, it cannot run; or on the grounds that my bankruptcy filings somehow breathed life into the void note, which cannot be.

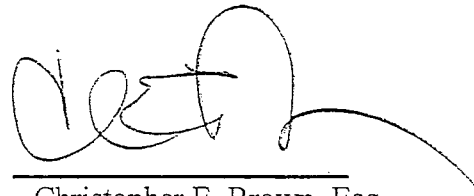
Further, the lis pendens is still on the Property, the order releasing it is void, thus FFC does not have title – said title is subject to the lis pendens.

For the above stated reasons, Plaintiff respectfully requests that the Court grant the motion to Dismiss the Unlawful Detainer against him and direct Plaintiff to file an ejectment action in circuit court and establish its title.

Respectfully submitted,

HAMID MAHJOR

By Counsel,



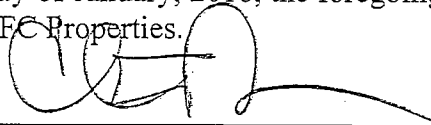
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Exhibits to Motion:

- Ex A – Mahjor Amended Complaint
- Ex B - District Court Memorandum Opinion
- Ex C - Order releasing Lis Pendens
- Ex D – Complaint against the judge who release the lis pendens with supporting documentation
- Ex E – Original Deed
- Ex F – Deed of Gift
- Ex G – Petition for Appeal of Order releasing Lis Pendens

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January, 2018, the foregoing and all exhibits were served via U.S. Mail on counsel for FFC Properties.



Christopher E. Brown