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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

ELITE FINANCIAL INVESTMENTS, INC.,)
)
 Plaintiff,)
)
 v.)
)
 MELISSA SWEISS,)
)
 Defendant.)

No. 09 CH 12423

Doc# 1835419042 Fee \$48.00
 RHPF FEE:\$9.00 RPRF FEE: \$1.00
 EDWARD H. MOODY
 COOK COUNTY RECORDER OF DEEDS
 DATE: 12/20/2018 01:01 PM PG: 1 OF 6



ORDER

This case presents a title dispute concerning property located at 1912 W. Division Street in Chicago. On June 4, 2018, the Court granted summary judgment in favor of the plaintiff, Elite Financial Investments, Inc. ("EFII"), and against the defendant, Melissa Sweiss ("Melissa").¹ Melissa moves to reconsider.

Prior to December 20, 2007, legal title to the property was held by Chicago Title Land Trust Company ("Chicago Title"), as trustee of a land trust created for the benefit of Murad Sweiss ("Murad"), Melissa's husband. On December 20, 2007, Chicago Title, at Murad's direction, conveyed the property to Elite Financial Inc. ("EFI"), a corporation that did not exist at the time. EFII, which did exist at the time, contends that the transfer documents contain typographical errors and that the parties intended for Chicago Title to transfer the property to EFII, not EFI, in order

¹ EFII is the third party plaintiff and Melissa is the third party defendant. Miden Property Holdings, Inc. originally brought its first party complaint against Murad Sweiss, Melissa's husband, but the first party complaint was dismissed for want of prosecution on February 7, 2017. Normally, the dismissal of the first party complaint would moot the third party complaint. Section 2-406 of the Civil Practice Law requires a showing that the third-party defendant is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. 735 ILCS 5/2-406; *People v. Florino*, 143 Ill. 2d 318, 342-43 (1991). Section 2-406 allows a defendant to bring in a new party who is or may be liable to him. *Id.* at 343. Section 2-406, however, cannot be used to tender a new defendant to the plaintiff, and it does not create substantive rights. *Id.* Section 2-406 has, as a rule, been invoked only for contribution or indemnification claims. *Id.* The restriction requiring that the liability alleged in the third-party action be derivative of the liability of the original defendant has led to this limitation on the use of section 2-406. *Id.* Here, EFII's third party complaint did not assert derivative liability and, therefore, should not have been brought in this case. However, considering the age of the case and extent of discovery undertaken herein, rather than dismissing the third party complaint and requiring EFII to file a new case, on March 2, 2017, the Court, in the interest of judicial economy, permitted EFII to continue to prosecute its claim against Melissa in this case as an independent claim.

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to satisfy a debt that Murad owed EFII. Thomas Kaput was president of EFII at the time of the transfer.

Melissa's claim to the property is based on a warranty deed dated May 13, 2008, whereby EFI transferred the property to her. The May 13, 2008, deed purports to be signed by Mr. Kaput, as president of EFI. EFI did not exist at that time either. Aaron Spivack, an attorney and notary public, signed a certification on May 13, 2008, with his notary seal affixed next to his signature, stating that "Thomas Kaput, personally known to me to be the President of" *EFII (not EFI)*, appeared before him and signed the warranty deed. However, Mr. Spivack admitted in his deposition that Mr. Kaput did not appear before him and that he did not witness Mr. Kaput sign the May 13, 2008, deed. The May 13, 2008, deed was not recorded with the Cook County Recorder of Deeds until August 28, 2009. Mr. Kaput avers in his affidavit that he did not sign the May 13, 2008, deed; that his signature on the May 13, 2008, deed was forged; and that neither he nor his company received any consideration from Melissa for the property.

On September 29, 2009, EFII recorded a "corrected" deed with the Recorder of Deeds, which purported to correct the December 20, 2007, deed that transferred title to EFI. The corrected deed is simply a copy of the December 20, 2007, deed, with EFI crossed out as the grantee and replaced with EFII, all by hand. In addition, there is an asterisk at the bottom of the document written in hand that states, "Re-recorded to correct Grantee's Name." Neither Murad nor Chicago Title was aware of or consented to the preparation or recording of the corrected deed. Not to be outdone in the fight over the property, Melissa and/or Murad caused EFI to be incorporated on March 22, 2018, with attorney Spivack acting as their agent, presumably to lay claim to the property under the deed dated December 20, 2007.²

The Court agrees with Melissa that it erred in granting summary judgment in favor of EFII. EFII contends that Mr. Kaput's affidavit, in which he avers that he did not sign the May 13, 2008, deed transferring the property to Melissa, is uncontested, and that Mr. Spivack admits that he did not witness Mr. Kaput sign the May 13, 2008, deed when he notarized Mr. Kaput's signature. EFII attaches a deed dated May 13, 2008, to its complaint, but that deed relates to an adjoining property, 1918 W. Chicago, which is not the subject of this lawsuit (but was the subject of a case before Judge Kathleen Kennedy before she retired involving the same or related parties). In his affidavit, Mr. Kaput avers that he "did not sign the May 13, 2008 Deed conveying 1912 W. Division to Melissa Sweiss or anyone else." However, in the very next paragraph of his affidavit, Mr. Kaput avers that he "had no knowledge of the Deed that is attached to my complaint conveying 1912 W.

² The Court also takes judicial notice that, in an apparent further exercise of revival, EFII, which was involuntarily dissolved on August 12, 2011, and apparently never reinstated, was incorporated once again on June 12, 2018, by its agent, Musa Tadros. The record does not indicate whether Tadros is allied with any of the parties here.

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Division to Melissa Sweiss until well after the Deed was recorded.” By referencing the deed for 1918 W. Division that is attached to EFII’s complaint, it is not clear to the Court whether Mr. Kaput is referring in his affidavit to the property at 1912 W. Division, or the property at 1918 W. Division, which again is not the subject of this lawsuit. Because Mr. Kaput’s affidavit is ambiguous, EFII is not entitled to summary judgment.

Although it is not necessary to reach the other issues raised by Melissa in her motion to reconsider, the Court does so because they will undoubtedly be raised at the trial of this case. First, Melissa argues that Mr. Spivack’s admission – that Mr. Kaput did not appear before him when he notarized Mr. Kaput’s signature – relates to property at 1918 W. Division. However, a review of Mr. Spivack’s deposition transcript shows that he was clearly referring to documents that he notarized bearing Mr. Kaput’s signature that relate to the property located at 1912 W. Division. Mr. Spivack’s admission clearly lends some support to EFII’s theory that Mr. Kaput’s signature on the May 13, 2008, deed was forged.

Second, Melissa argues that when construing the validity of signatures on a deed and certificate of acknowledgment, the party seeking to set aside the deed can only overcome the validity of signatures by “clear and convincing evidence from disinterested witnesses.” *In re Estate of Bontkowski*, 337 Ill. App. 3d 72, 76 (1st Dist. 2003) (testimony of handwriting expert, a disinterested witness, was sufficient to establish that deed was forged). Here, EFII has even better evidence – the admission of Melissa’s own lawyer in the alleged transaction that he did not see Mr. Kaput sign the document. Nevertheless, “[w]hile such testimony casts doubt on the execution of the deed, [citations omitted] it is not positive proof of forgery,” *Witt v. Panek*, 408 Ill. 328, 334 (1951). Mr. Kaput’s signature on the subject deed looks similar to his signature on documents bearing his signature that are not questioned. And Mr. Spivack has a copy of Mr. Kaput’s driver’s license in his possession. The Notary Public Act, 5 ILCS 312/6-102(d)(3), states that state-issued photographic identification documents are satisfactory to identify the person signing the document. Therefore, while Mr. Spivack’s admission casts doubt on the genuineness of the deed, whether Mr. Kaput’s signature was forged on the May 13, 2008, deed remains a question of fact that must be determined by a fact-finder at trial.

Third, Melissa argues EFII is not in possession of the property and that it is necessary for a party to have possession of the property in order to pursue a quiet title action. While “a Plaintiff suing to remove a cloud on title must be in possession of the property ... in cases where fraud was charged or other equitable principle to be applied, courts of equity assumed jurisdiction and it was extended to include cases where the holder of the cloud on the title was not in possession.” *McGookey v. Winter*, 381 Ill. 516, 526 (1943). Fraud is a central issue in this case;

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therefore, EFII need not have actual possession of the property to prevail on its claim.

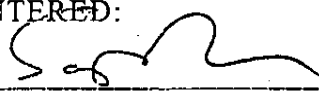
Fourth, Melissa appears to argue that because EFI did not exist at the time Chicago Title transferred the property to it on December 20, 2007, the transfer is void and ownership of the property reverts back to Chicago Title. (Mot. to Reconsider, ¶28). However, Melissa fails to develop this argument. Moreover, there is evidence that the December 20, 2007, deed contained a scrivener's error by conveying the property to EFI instead of EFII. In cases where the error is a typographical error, misspelling, an omission, or other like error, the document may be reformed to correct that error. *See Chance v Kimbrell*, 376 Ill. 615, 615 (1941) ("where parties intend to pass a present estate to an existent grantee but under a name other than the correct one, such a conveyance passes title to the intended grantee.")

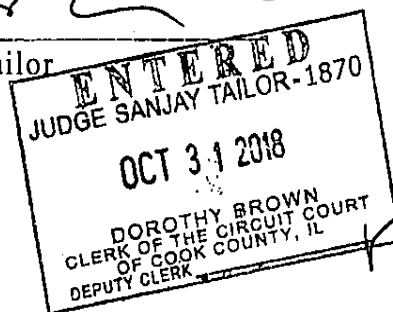
Fifth, Melissa argues that EFII may not obtain a judgment in its favor because it was involuntarily dissolved. Under the Business Corporations Act, "no corporation required to pay a franchise tax, license fee, penalty or interest under this Act shall maintain any civil action until all such franchise taxes, license fees, penalties and interest have been paid in full." 805 ILCS 5/15.85; *see also Henderson-Smith & Associates v. Nonamani Family Service Center*, 323 Ill. App. 3d 15, 19 (1st Dist. 2001). However, Melissa fails to offer evidence regarding the circumstances of EFII's involuntary dissolution, including whether EFII is delinquent on its tax or fees. Moreover, it is not clear whether EFII was reinstated, in which case the Court presumes that any delinquent taxes or fees would have been paid, or whether EFII was formed as an entirely new corporation, assuming that's even possible. In any case, questions of fact exist on this issue.

IT IS THEREFORE ORDERED:

1. Defendant Melissa Sweiss' motion to reconsider is granted; and
2. The June 4, 2018, Order granting summary judgment in Melissa Sweiss' favor is vacated.

ENTERED:


Sanjay T. Tailor




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I hereby certify that the document to which this certification is affixed is a true copy.

Date **DOROTHY BROWN DEC 20 2018**

Dorothy Brown
Clerk of the Circuit Court
of Cook County, IL



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LEGAL DESCRIPTION

Lot 3 in the Heirs of Joseph Peacock's Subdivision of Lot 18 in Block 2 in Joseph Peacock's Subdivision
of the South 6 acres of the West 10 acres of the South 25 acres of the West 1/2 of the
Northeast 1/4 of
Section 6, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook
County, Illinois.

Property Address: 1912 W. Division St., Chicago, IL

PIN: 17-06-226-027-0000

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