

UNOFFICIAL COPY



ORDER QUIETING TITLE

Doc# 2411007016 Fee \$88.00
ILRHSP FEE:\$18.00 RPRF FEE:\$1.00
KAREN A. YARBROUGH
COOK COUNTY CLERK'S OFFICE
DATE: 4/19/2024 1:04 PM
PAGE: 1 OF 16

For Recorder's Use Only

This Order relates to the following property.

PARCEL 1: Unit 4005-3, in the 4005-07 South Calumet Condominiums as delineated on a survey of the following described real estate: the North 5 Feet of Lot 43, all of Lot 44, and the South 9.85 Feet of Lot 45 in Circuit Court Partition of the East ½ of the Northeast 1/4 of the Northwest 1/4 of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, (Except that Part Taken for Grand Boulevard) in Cook County, Illinois, which survey is attached as Exhibit "A" to the Declaration of Condominium recorded as Document Number 00464279; together with its undivided percentage interest in the common elements, all in Cook County, Illinois.

PARCEL 2: The exclusive right to the use of P-1, a limited common element as delineated on the survey attached to the Declaration aforesaid recorded as Document 00464279.

PIN: 20-03-111-033-1003

This instrument prepared by: Jeffrey S. Blumenthal, 33 N. Dearborn, Suite 800, Chicago, IL 60602.
Jsb@slutzkyblumenthal.com

W:\JEFF\Deeds\citidrink cover sheet for recording.wpd

Prepared By & Returned to
Jeffrey S Blumenthal
Slutzky & Blumenthal
33 N Dearborn St,

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

CITIMORTGAGE, INC. and ANTOINE DRINK,)	
)	Case No. 2018 CH 03507
Plaintiffs,)	
)	
Vs.)	
)	Hon. Thaddeus L. Wilson
MARYLAND AT FIVE LLC,)	
)	
Defendant.)	

ORDER

This matter coming before the Court for hearing on Plaintiff's Emergency Motion to Reconsider Court's Order Entered November 15, 2023, and for Possession, the court having heard argument of counsel and considered the filed pleadings,

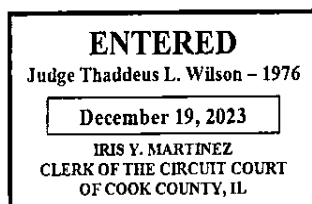
IT IS HEREBY ORDERED:

- (1) The Motion to Reconsider is GRANTED.
- (2) The stay of enforcement of the court's judgment is vacated and there is no stay in effect.
- (3) Plaintiffs' Motion for Order of Possession is GRANTED. Accordingly, Plaintiffs are entitled to immediate possession of the condominium unit identified by PIN 20-03-111-033-1003, commonly known as Unit 3N, 4005 S. Calumet, Chicago, Illinois.
- (4) No later than December 22, 2023, Defendant shall provide Plaintiffs with all contact information for any tenants currently inhabiting Unit 3N, as well as a copy of all lease/occupancy documents.
- (5) Nothing in this order precludes Plaintiffs from presenting a motion for Defendants to turnover rents Defendant collects from any tenant occupying Unit 3N.
- (6) The next date of **May 1, 2024** for **status** of appeal to stand. The parties may either appear in-person in Courtroom 2307 or appear remotely via Zoom, unless otherwise ordered by the Court. [Meeting ID: 876 8729 8501 / Passcode: 926987]

ENTERED:

Prepared by:

Jeffrey S. Blumenthal,
Slutzky & Blumenthal
33 N. Dearborn, Suite 800
Chicago, Illinois 60602
T: (312) 372-1104
Atty Code 50074, ARDC 312405
jsb@slutzkyblumenthal.com



Judge Thaddeus L. Wilson

1976

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

CitiMortgage, Inc., and Antoine Drink,)	
)	
)	2018 CH 03507
Plaintiffs,)	
)	Motions for Summary Judgment (3)
v.)	
)	Calendar 1
Maryland at Five, LLC,)	
)	Hon. Thaddeus L. Wilson
Defendant.)	Judge Presiding

)	
4005 S. Calumet LLC, and Maryland at)	
Five LLC,)	
)	
Counter-Plaintiffs,)	
)	
v.)	
)	
CitiMortgage, Inc., and Antoine Drink,)	
)	
Counter-Defendants.)	

ORDER

THIS MATTER comes before the Court on three Motions for Summary Judgment: (1) Plaintiffs/Counter-Defendants CitiMortgage and Antoine Drink's Motion for Summary Judgment as to the Complaint, (2) Defendants/Counter-Plaintiffs Maryland at Five LLC and 4005 S. Calumet LLC's Motion for Summary Judgment as to the Complaint, and (3) Plaintiffs/Counter-Defendants CitiMortgage and Antoine Drink's Motion for Summary Judgment as to Count I and Count II of the Counterclaim. The Court having reviewed the pleadings, applicable law, and having heard oral argument, finds as follows:

UNOFFICIAL COPY

I. Factual Background and Procedural History

In 2005, 4005 S. Calumet, LLC purchased a building for the development of a six-unit condominium located at 4005-4007 S. Calumet in Chicago. The units located to the south of the building bear the address 4007 S. Calumet, while the northern units bear the 4005 S. Calumet address. Thus, 4005 S. Calumet address contains units 1N, 2N, and 3N, and the 4007 S. Calumet property contains units 1S, 2S, and 3S. On June 30, 2008, 4005 S. Calumet, LLC transferred interest in a unit to Plaintiff Antoine Drink by special warranty deed ("2008 deed"). Mr. Drink financed his purchase by obtaining a mortgage loan from CitiMortgage for \$169,000. The 2008 warranty deed includes the PIN 20-03-111-033-1003 and the legal description corresponding with 4005 S. Calumet, Unit 3N. The 2008 warranty deed also lists a common address of 4005 S. Calumet, Unit 3S. After purchasing the property, Mr. Drink moved into 4007 S. Calumet, Unit 3S and has resided there since.

On September 17, 2013, 4005 S. Calumet, LLC executed a deed transferring its purported interest in 4005 S. Calumet, Unit 3N to Azam Khan. The deed was recorded on January 9, 2014 ("2014 Deed"). On November 2, 2015, Azam Khan conveyed his purported interest in Unit 3N to Defendant/Counter-Plaintiff Maryland at Five, LLC. The 2008, 2014, and 2015 deeds all contain the PIN 20-03-111-033-1003 and legal description, corresponding to 4005 S. Calumet, Unit 3N.

On August 5, 2014, at a Cook County Annual Tax Sale, Fair Deal of Illinois purchased the delinquent 2012 taxes for Unit 4007-3S, which has a PIN of 20-03-111-033-1006. On September 14, 2017, the Court in the tax matter entered an order directing the issuance of a tax deed for 4007 S. Calumet, Unit 3S. As of the date of this order, Mr. Drink still lives in 4007 S. Calumet, Unit 3S, and Defendant Maryland at Five has possession of 4005 S. Calumet Unit 3N.

UNOFFICIAL COPY

On March 16, 2018, Plaintiffs CitiMortgage, Inc. and Antoine Drink filed a three-count complaint to quiet title, ejectment, and declaratory relief against Defendant Maryland at Five. Subsequently, Defendant Maryland at Five filed a First Amended Counterclaim against Drink and CitiMortgage seeking to reform of the 2008 deed. On May 31, 2022, Plaintiffs/Counter-Defendants also filed additional affirmative defenses and counterclaims.

II. Legal Standard

Summary judgment is proper when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c). When evaluating a motion for summary judgment, a circuit court must view the record in the light most favorable to the nonmoving party. *Horne Ins. Co. v. Cincinnati Ins. Co.*, 213 Ill. 2d 307, 315 (2004). “Summary judgment is a drastic means of disposing of litigation. .,” *Berlin v. Sarah Bush Lincoln Health Center*, 179 Ill. 2d 1, 7 (1997), and, therefore, “should be granted only when the right of the moving party is clear and free from doubt.” *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011).

III. Analysis

Plaintiffs and Defendants seek summary judgment on all three counts of the Complaint. Plaintiffs also seek summary judgment on Count I and Count II of the Counterclaim. This Court will assess whether Plaintiffs or Defendants are entitled to summary judgment on the Complaint or the Counterclaim.

A. Counts I and II of Counterclaim - Reformation

In their Counterclaim, Maryland at Five and 4005 S. Calumet, LLC seek to reform the 2008 warranty deed to correspond with the 4007 S. Calumet, Unit 3S property. According to

UNOFFICIAL COPY

Maryland at Five and 4005 S. Calumet LLC, because the 2008 deed resulted from a mutual mistake, reformation is permissible.

The law in Illinois is well-settled that “the party seeking reformation must prove [by clear and convincing evidence] that there has been a meeting of the minds which resulted in an actual agreement between the parties, and that when the agreement was reduced to writing and executed, an agreed-upon provision was omitted or one not agreed upon was inserted as a result of the mutual mistake of the parties” or as a result of a unilateral mistake accompanied by fraud. *LaSalle National Bank v. 850 De Witt Condominium Ass’n*, 211 Ill.App.3d 712, 716 (1st Dist. 1991). Thus, a party seeking to reform a contract must technically establish: (a) the existence and substance of an agreement between the parties and the identity of the parties to that agreement, (b) that the parties agreed to reduce their agreement to writing, (c) the substance of the written agreement, (d) that a variance exists between the parties’ original agreement and the writing, and (e) the basis for reformation. *Briarcliffe Lakeside Townhouse Owners Ass’n v. City of Wheaton*, 170 Ill. App. 3d 244, 252 (2nd Dist. 1988).

Defendants contend that Plaintiffs have stipulated that Antoine Drink intended to purchase 4007 S. Calumet, Unit 3S and 4005 S Calumet LLC intended to sell 4007 S. Calumet, Unit 3S. (Defendants Response Exhibit F ¶4.) Therefore, according to them, no issue of fact impacts this Court’s ability to reform the 2008 deed. In support of their belief that Plaintiffs have stipulated, Defendants cite an email and a reference to a pleading from Plaintiffs stating they are potentially willingness to stipulate. However, in their response, Plaintiffs acknowledge that they once discussed the possibility of stipulating to such facts, but did not formally agree to a stipulation. As questions surrounding the intention of the party remain, reformation is not

UNOFFICIAL COPY

permissible, as there has not been shown an agreement between the parties to the 2008 transaction.

Notwithstanding, reformation is not permissible even with the alleged stipulation because this Court is unable to reform the tax buyer's deed to the 4007 S. Calumet, Unit 3S property. Defendants argue that the subsequent tax buyer has no bearing on this Court's ability to reform the deed. According to Defendant the tax buyer did not purchase the property for "valuable consideration" and the notice associated with the tax sale was not proper. Defendants argue, as the tax purchaser did not purchase the property for value and did not provide proper notice of the tax sale, this Court should reform the 2008 deed.

Equity will not reform a deed against subsequent bona fide purchasers for value who have no notice of the mistake or of facts that "should put them on inquiry." *Pulley v. Luttrell*, 13 Ill.2d 355, 148 N.E.2d 731, 733 (1958). A purchaser is not a *bona fide* purchaser if he had constructive notice of an outstanding title or right in another person." *In re in re Cook County Collector*, 228 Ill. App. 3d 719 (1st Dist. 1991). In addition, a purchaser having notice of facts that would put a prudent person on inquiry is chargeable with knowledge of other facts the person might have discovered by diligent inquiry. *In re in re Cook County Collector*, 228 Ill. App. 3d 719, 734 (1st Dist. 1991). A purchaser is placed on "inquiry notice" when facts revealed in the title search process would cause a reasonable individual to think twice about completing the transaction. *Devon Bank v. Miller (In re County Collector)*, 397 Ill. App. 3d 535, 549 (1st Dist. 2009).

In addition, the purchaser is charged with notice of all items in the chain of title appearing in the grantor-grantee index maintained by the recorder of deeds. *Landis v. Miles Homes, Inc.* 1 Ill. App. 3d 331, 334. In other words, if the tax deed grantees had notice of the

UNOFFICIAL COPY

owner's claim to the property, then they stand in no better position than the tax purchaser and are subject to relief against them. *In re in re Cook County Collector*, 228 Ill. App. 3d at 735.

While Defendants repeatedly diminish the importance of the tax buyer. This Court is not permitted to void or contest the tax sale in the context of this case. Section 22-45 of the Property Tax Code, 35 ILCS 200/1-1 et seq. (2006) (Tax Code) provides that once the trial court issues a tax deed pursuant to the Tax Code, a party cannot contest the order except by direct appeal or by a 735 ILCS 5/2-1401 (2006) petition, 35 ILCS 200/22-45 (2006). The Tax Code provides for four grounds upon which relief may be granted through a section 2-1401 petition: (1) the taxes were paid prior to the sale; (2) the property was exempt from taxation; (3) the tax deed had been procured by fraud or deception; and (4) a party holding a recorded interest in the property was not given proper notice of the tax deed litigation, 35 ILCS 200/22-45 (2006). *Chicago Title Insurance Co. v. Bass*, 2015 IL App (1st) 140948, ¶ 1.

Here, if this Court were to find merit to the Defendants' purchaser for value and notice arguments, the only acceptable way to challenge the tax deed is by direct appeal or by petition pursuant to 735 ILCS 5/2-1401. As this action is neither a direct appeal or a 2-1401 petition, this Court cannot reform the tax deed procured by the tax buyer. Further, in their quest to reform the 2008 deed, Defendants would have this Court adjudicate the rights and interests of the tax buyer (or their successor), Fair Deal, when they are not even a party to this litigation and have no notice or opportunity to be heard. Additionally, according to the record in the tax deed case, no interested party filed to challenge the judgment in that case.

B. Count I of the Complaint – Quiet Title

In their Complaint, Plaintiffs seek to quiet title, the ejectment of tenants occupying 4005 S. Calumet, Unit 3N, and a declaration that Antoine Drink is the record owner of 4005 S.

UNOFFICIAL COPY

Calumet, Unit 3N, subject only to CitiMortgage's interest. Plaintiffs argue that their ownership is undisputed, as established by the 2008 deed. According to Plaintiffs, Mr. Drink was the first to record the 2008 deed for the 4005 S. Calumet, Unit 3N and has never relinquished his title. Therefore, the subsequent 2014 and 2015 deeds are clouds upon his title, and Mr. Drink is entitled to quiet title to 4005 S. Calumet, Unit 3N.

An action to quiet title in property is an equitable proceeding in which a party seeks to remove a cloud on his title to the property. *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 52 (2009). "A cloud on title is the semblance of title, either legal or equitable, appearing in some legal form but which is, in fact, unfounded or which it would be inequitable to enforce." *Id.* To prevail in an action to quiet title, the plaintiff must actually have title, though it need not be perfect. *Id.* The plaintiff must recover on the strength of his own title rather than on defects in the defendant's title. *Diaz v. Home Federal Savings & Loan Ass'n*, 337 Ill. App. 3d 722, 726 (2nd Dist. 2002); *Hoch v. Boehme*, 2013 IL App (2d) 120664, ¶ 41. To prevail in a quiet title action, plaintiffs must establish title superior to that of defendants." *Marlow v. Malone*, 315 Ill. App. 3d 807, 812 (2000); *Dudley v. Neteler*, 392 Ill. App. 3d 140, 143 (4th Dist. 2009).

While the deed, real estate contract, mortgage documents, and statements made by the parties all conflict and are riddled with inconsistencies and errors, Antoine Drink is entitled to quiet title to the 4005 S. Calumet, Unit 3N property. First, the real estate contract between Antoine Drink and 4005 S. Calumet LLC includes the PIN for the property located at 4005 S. Calumet, Unit 2N and not Unit 3N. (Plaintiffs' Response Exhibit C.) Furthermore, in Antoine Drinks' answer to Maryland at Five Counterclaim, he denies the allegation that the parties to the 2008 real estate transaction intended to sell and purchase 4007 S. Calumet, Unit 3S. (Answer to

UNOFFICIAL COPY

Counterclaim ¶23.) The 2008 deed also lists the common address as 4005 S. Calumet, Unit 3S which is an impossibility given the southern units of the building at 4005-4007 S. Calumet bear the 4007 address and the northern units bear the 4005 address. Furthermore, the 2008 deed has the legal description and PIN corresponding to Unit 3N (Plaintiffs' Motion for Summary Judgment Exhibit 2.) and Mr. Drink paid the taxes for Unit 3N. (Plaintiffs' Motion for Summary Judgment Exhibit 8.)

More errors occurred as the mortgage agreement between CitiMortgage and Mr. Drink lists the address as 4005-4007 S. Calumet, Unit 3S (*Id.* at Exhibit 3.). At the same time, it has the PIN and the legal description correspond with Unit 3N. (*Id.* at Exhibit 2). After the closing, Plaintiff Antoine Drink ultimately moved into and currently lives at 4007 S. Calumet, Unit 3S.

Although the deed and surrounding documents are riddled with errors, Drink still has superior title by virtue of the 2008 warranty deed subject to CitiMortgage's mortgage lien against the property. According to the deposition testimony of Dennis Elahi, Mr. Elahi was the designated corporate representative of both the 4005 S. Calumet LLC and Maryland at Five. See Elahi Deposition at Page 6: 3-6. Therefore, Defendant cannot say they didn't have notice of the 2008 deed when they were a party to both transactions. Additionally, Azam Khan, testified during his deposition that he received the units to satisfy a debt and that he conveyed the units back for nothing. See Azam Khan Deposition at page 69: 5-16.

A purchaser is charged with constructive notice of what appears in the chain of title. *St. John v. Conger*, 40 Ill. 535, 536 (1866). In particular, the prospective purchaser of an interest in real estate is charged with knowledge of what appears in the grantor-grantee index, the legal record required to be maintained by the recorder of deeds. It is not chargeable with notice of that which appears in other records which may be kept as a convenience, such as a tract index. *Landis*

UNOFFICIAL COPY

v. Miles Homes Inc. of Illinois, 1 Ill. App. 3d 331, 334-35 (1971); *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, ¶ 56.

Any search of the grantor grantee index, would have shown that Mr. Drink was the record owner of Unit 4005-3N subject only to the lien held by CitiMortgage and subordinate security interest held by Neighborhood Assistance Corp of America (“NACA”). While the 2008 deed is riddled with errors and inconsistencies, the 2008 deed still identifies the proper pin and legal description associated with 4005 S. Calumet, Unit 3N and any search of the record of 4005 S. Calumet, Unit 3N would have shown that Mr. Drink was the record owner of 4005 S. Calumet, Unit 3N.

Defendants seek to reform the deed to give Drink 4007 S. Calumet, Unit 3S, however that unit has since been purchased by a tax buyer and is untouchable in this proceeding. Antoine Drink is entitled to an order quieting title to the property located at 4005 S. Calumet, Unit 3N, as Maryland at Five is not a bona fide purchaser for value and Maryland at Five had notice of Drink’s interest in the property. For the preceding reasons, Plaintiff Antoine Drink is entitled to quiet title to the property 4005 S. Calumet, Unit 3N by virtue of his established ownership under the 2008 warranty deed.

C. Count II of the Complaint - Declaratory Relief

In Count II of their Complaint, Plaintiffs seek a declaration that Antoine Drink is the title owner of 4005 S. Calumet, Unit 3N, subject only to CitiMortgage’s lien. As shown, Plaintiffs are entitled to 4005 S. Calumet, Unit 3N by virtue of their 2008 warranty deed. Accordingly, Plaintiffs are entitled to an order declaring Antoine Drink as the title owner of 4005 S. Calumet, Unit 3N, Chicago, Illinois.

UNOFFICIAL COPY

D. Count III of the Complaint - Ejectment

Additionally, Plaintiffs argue by their ownership of 4005 S. Calumet, Unit 3N they are entitled to ejectment and the back payment of rent paid to Maryland at Five for 4005 S. Calumet, Unit 3N. In an action for ejectment, plaintiffs must allege (1) that they had possession of the subject premises after obtaining legal title, (2) that defendants subsequently took possession of the premises, and (3) that, at present, the defendants "unlawfully withhold from the plaintiffs the possession thereof. *Bulatovic v. Dobritchandin*, 252 Ill. App. 3d 122 (1st Dist. 1993). An ejectment claim does not require a plaintiff to have prior possession but proof of title creating a prima facie case that the defendant must refute. *Kissoon v. Vlcek*, 2022 IL App (1st) 210488, ¶ 32.

It is to be noted a plaintiff in ejectment must recover on the strength of his own title rather than the weakness of his adversary's title. *Old Salem Chautauqua Asso. v. Illinois District Council of Assembly of God*, 13 Ill. 2d 258, 265 (1958). A plaintiff must show proof of title under a deed sufficient to entitle him to possession of the premises otherwise defendant cannot be ejected from the property whether defendant has title or not. *Id.* In order to recover property in a claim for ejectment, plaintiff must have an interest in the premises which is "higher and better" than defendant's claim and which entitles him to present possession. *Bulatovic v. Dobritchandin*, 252 Ill. App. 3d 122, 128-29 (1st Dist. 1993).

Here Plaintiffs have sufficiently shown they are entitled to ejectment. Concerning the first element, Mr. Drink has an interest in the property given the 2008 warranty deed between Drink and 4005 S. Calumet LLC, which as shown above rightfully belongs to Mr. Drink. While Antoine Drink isn't currently in possession of 4005 S. Calumet, Unit 3N, he has a stronger claim to the property than Defendant Maryland at Five, under the recorded 2008 warranty deed.

UNOFFICIAL COPY

With respect to the second element Defendant Maryland at Five is currently in possession of 4005 S. Calumet, Unit 3N. As to the third element, Defendants have refused to return the 4005 S. Calumet, Unit 3N, as they assert they are the owners of the property. As shown, Plaintiffs have sufficiently proven that Mr. Drink is entitled to possession of the property.

In Count III, Plaintiffs also seek to collect all rents paid to Maryland at Five relating to the property 4005 S. Calumet, Unit 3N. While Plaintiffs claim to be entitled to rents distributed to Maryland at Five, Plaintiff cites no statute or case law permitting such rents to be awarded. Additionally, Plaintiff has wrongfully lived in 4007 S. Calumet, Unit 3S for years without paying rent. As such, equity requires Plaintiffs' request for rents be denied.

E. Laches

In response to Defendants' Motion for Summary Judgment, Plaintiffs argue that Defendants' Counterclaim is barred by laches. *Laches* is an equitable defense that bars recovery by a litigant whose unreasonable delay in bringing an action for relief prejudices the rights of the other party. *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 51. The applicability of *laches* depends on the facts and circumstances of each case. *Tillman v. Pritzker*, 2021 IL 126387, ¶ 25. Two elements must be established for laches to successfully defeat a claim: (1) lack of diligence by the party asserting the claim and (2) prejudice to the opposing party resulting from the delay. *PNC Bank, National Ass'n v. Kusmierz*, 2022 IL 126606, ¶ 26.

Concerning the Plaintiffs' argument of laches, the first element needed to establish a claim of laches is not a foregone conclusion. It is unclear, and Plaintiffs have not shown when Defendants learned about the issues relating to the property. It cannot be stated that Defendants had unreasonably delayed bringing the Counterclaim, as it is unclear when they first became aware of the issues relating to the deed and the subsequent tax buyer. As such additional material

UNOFFICIAL COPY

facts are imperative in establishing a claim of laches, barring Defendants' Counterclaim in a motion for summary judgment is inappropriate. However, given the other findings of the Court, this point is moot.

IV. Conclusion

In summary:

To err is human, however, with all of the checks and balances built into closing a real estate transaction, it boggles the mind how this calamity could occur. Here you have seller, buyer, real estate agents, attorneys, title company, and lender all asleep at the wheel. Perhaps the seller and buyer likely intended an agreement with respect to Unit 4007-3S. Yet, they drafted a contract for sale for a property with the common address of Unit 4005-3S (an address that does not exist), the PIN for Unit 4005-2N (that does exist) and no legal description (which is not uncommon for a real estate contract). Then the deal goes into attorney review, title review and mortgage clear to close yet no one catches the discrepancies in the sales contract.

Instead, the deal closes on or about June 30, 2008 with a deed tendered by the seller to the buyer for the common address of 4005 S. Calumet Ave., Unit 3S (which does not exist), with the PIN for Unit 3N (that does exist) and a legal description for Unit 4005-3 (which corresponds to Unit 3N). Upon closing, the lender issued a mortgage which indicated a common street address of 4005-07 South Calumet Avenue #3S (which corresponds to Unit 3S), the PIN for Unit 4005-3N (that does exist) and a legal description for Unit 4005-3 (which corresponds to Unit 3N). Transfer tax declarations were also prepared for a common address of Unit 4005-3S (an address that does not exist) and the PIN for Unit 4005-2N (that does exist) and the legal description referenced therein as attached which was not in the copies provided to the Court.

UNOFFICIAL COPY

On or about August 5, 2014, the property commonly known as Unit 4007-3 (Unit 3N) is sold by the County for back taxes. On or about September 14 2017, the tax buyer received a judgment and tax deed for Unit 3N. On April 4, 2018, the tax buyer received an order for possession from the Circuit Court. A review of the record in the Tax Deed Case: In re Fair Deal of Illinois, Inc., Case No. 2017 COTD 000637 does not show where any interested party filed a motion to vacate or 2-1401 petition challenging the Tax Deed. Instead, on March 16, 2018, almost ten years later after the closing but within two years of the tax deed judgment order we get this case.

Based on the preceding discussion, this Court finds that Plaintiffs have shown they are entitled to judgment as a matter of law with respect to the Complaint and Counterclaim.


IT IS HEREBY ORDERED:

1. Plaintiffs CitiMortgage and Antoine Drink's Motion for Summary Judgment as to Counts I and II of the Complaint and their Motion for Summary Judgment on the Counterclaim are **GRANTED**.
2. Plaintiffs CitiMortgage and Antoine Drink's Motion for Summary Judgment as to Count III of the Complaint is **GRANTED** in part and **DENIED** in part.
 - a. Plaintiffs' request for rent in Count III is **DENIED**.
 - b. Plaintiffs' request for ejectment in Count III is **GRANTED**. However, ejectment and transfer of possession is stayed until further of Court pending a hearing for possession.
3. Defendants Maryland at Five and 4005 S. Calumet LLC's Motion for Summary Judgment as to the Complaint is **DENIED**.

UNOFFICIAL COPY

4. Judgment is entered in favor of Plaintiffs CitiMortgage and Antoine Drink and against Defendants Maryland at Five LLC and 4005 S. Calumet LLC but enforcement thereof is stayed until further order of Court.
5. Title to 4005 S. Calumet, Unit 3N in Chicago, Illinois is quieted and vested in Plaintiff Antoine Drink pursuant to the 2008 special warranty deed delivered and recorded with the Cook County Recorder's Office. All other claims thereto are extinguished except for the CitiMortgage's Mortgage and subordinate security interest held by Neighborhood Assistance Corp of America.
6. This matter is continued to **August 28, 2023, at 11:00 a.m.** for further **post-judgment proceedings**. The parties may either appear in-person in Courtroom 2307 or appear remotely via Zoom, unless otherwise ordered by the Court. [Zoom Meeting ID: 876 8729 8501 / Passcode: 926987]
7. Pursuant to Illinois Supreme Court Rule 304(a) there is not just reason to delay the appeal of this order.

ENTERED

 1976

Judge Thaddeus L. Wilson

