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2018 IL App (3d) 170558-U

Order filed July 11, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

JODY D. and MICHAEL D. KIMBRELL,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Petitioners-Appellants,	)	Peoria County, Illinois
	)	
v.	)	
	)	Appeal No. 3-17-0558
BANK OF AMERICA, N.A., MORTGAGE	)	Circuit No. 16-CH-108
ELECTRONIC REGISTRATION SYSTEMS,	)	
INC., and GOVERNMENT NATIONAL	)	
MORTGAGE ASSOCIATION,	)	Honorable
	)	James A. Mack
Respondents-Appellees.	)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in dismissing petitioner's third amended complaint with prejudice where it failed to state a claim for either slander of title or to quiet title.

¶ 2 Petitioners Jody and Michael Kimbrell filed a complaint to quiet title and alleging slander of title against respondents Bank of America, N.A., Mortgage Electronic Registration Systems,

Inc., and Government National Mortgage Association. The trial court dismissed the Kimbrells' third amendment complaint with prejudice. They appealed. We affirm.

¶ 3

FACTS

¶ 4

Petitioners Jody and Michael Kimbrell (collectively Kimbrell) filed a complaint against respondents Bank of America, N.A. (BANA), Mortgage Electronic Registration Systems, Inc. (MERS) and Government National Mortgage Association (Ginnie Mae) asserting slander of title and seeking to quiet title. The respondents moved to dismiss, which the trial court granted, dismissing the complaint without prejudice. Kimbrell filed a first amended complaint in August 2016, asserting the same claims of quiet title and slander of title. The trial court dismissed the complaint without prejudice. Kimbrell filed a second amendment complaint, which the trial court also dismissed without prejudice. The court granted Kimbrell leave to file a third amended complaint but admonished her that if she did not substantially improve her claims, the court would dismiss the complaint with prejudice.

¶ 5

Kimbrell filed her third amended complaint for a declaratory judgment for slander of title (count I), to quiet title (count II), injunctive relief (count III), and damages (count IV). The complaint alleged BANA's mortgage lien was invalid. The introduction section asserted that Kimbrell bought the property at issue in 1977, executed a Federal Housing Administration (FHA) mortgage in 2008 on which she made payments to various servicers to whom the loan was transferred, finally landing with BANA. She further provided that she contacted BANA in October 2012 for a payoff amount so she could move the FHA loan to another lender and split the property. The complaint stated that BANA offered to lower the interest rate and correct the legal description on the property, that Kimbrell executed documents from BANA in October

2012 and that in June 2013, Kimbrell signed documents to lower the interest rate and to add Jody to the 2008 FHA mortgage.

¶ 6 The introduction also included claims that Kimbrell never agreed to or signed a mortgage with BANA, BANA was not licensed in Illinois to originate mortgages until 2016, the MERS number on the property terminated on June 11, 2013, Kimbrell continued to make payments on the mortgage until she discovered a release recorded on June 26 2013, and she paid more than \$20,000 on a mortgage released by MERS and Ginnie Mae. Finally, the introduction provided that the “new FHA mortgage” was not included in the Ginnie Mae or MERS databases, that Kimbrell filed bankruptcy in August 2014, and that an assignment of the mortgage from MERS to BANA included an incorrect property address, a nonexistent tax identification number and a legal description that had been retired in 2012, that BANA filed a claim in the bankruptcy proceedings in October 2014 for a \$197,315 mortgage and included a “ ‘purported’ new FHA mortgage-note (June 11, 2013) and assignment (September 14, 2014) as a debt against the bankruptcy estate.” Lastly, the introduction asserted the assignment was signed by a robo-signer who “posed prior as an asst secretary of MERS.”

¶ 7 Count I of the complaint, slander of title, incorporated the introduction paragraphs and set forth the elements of slander of title and malice. The complaint asked for a declaration that BANA slandered Kimbrell by filing a fraudulent mortgage evidenced by a fraudulent note created by “Defendant” and transferred to and held by them. It also stated that BANA continued to collect payments while aware the mortgage had been paid. Kimbrell sought costs and expenses.

¶ 8 Count II of the complaint, quiet title, incorporated the preceding paragraphs and included the law to quiet title and the elements of forgery. Kimbrell requested entry of judgment against

the respondents for the relief sought in count I, sought a declaratory judgment to quiet title, and asked the court to void the “fraudulent mortgage/note held by Defendant Bank of America, N.A. who created the documents by forgery and recording a mortgage as a lien against Plaintiffs real property; and filed as a claim in Federal Bankruptcy Ct.” Kimbrell requested, among other things, that the court issue decrees that she was the prevailing party, and that that the respondents have “no estate, right, title, lien, or interest in or to the real property or any part of the property.” The complaint stated MERS and Ginnie Mae answered only that they had no record of “the fraudulent FHA mortgage” in their databases. Kimbrell sought an order that she was entitled to the exclusive possession of and owns the property in fee simple.

¶ 9 Count III sought injunctive relief, setting forth the law regarding permanent injunctions and asking for judgment against the respondents and for other relief as stated in count II. Count IV was for damages and included the law regarding punitive and compensatory damages. It stated that in, the alternative Kimbrell, would file a pretrial motion, request a hearing on punitive damages and seek to amend the complaint to request punitive damages.

¶ 10 Attached as exhibits to the complaint were the following: a 2014 tax bill for the property, parcel information from the Peoria County supervisor of assessments, a tax receipt for tax year 2014, parcel information for tax year 2017, a 2012 BANA letter, and “a forensic examination of real property record and circuit court records, Osceola County, FL,” dated December 2014, a July 12, 2013 assignment of mortgage from MERS to BOA, and a June 19, 2013 release of mortgage for the 2008 FHA loan.

¶ 11 Kimbrell filed a motion for summary judgment to quiet title. The respondents moved to dismiss the third amended complaint, asserting that Kimbrell executed a mortgage on June 13, 2013, in the amount of \$198,797, defaulted in September 2014, failed to make any payments

except one on July 29, 2015, and did not allege repayment. In response to the motion to dismiss, Kimbrell asserted claims of predatory lending practices. The trial court granted the motion to dismiss with prejudice, found Kimbrell's summary judgment motion moot, and adopted a 2014 order from the federal court which imposed Illinois Supreme Court Rule 137 sanctions against Kimbrell. The sanction order was based on Kimbrell's filing of frivolous lawsuits and enjoined her from filing new claims in the 10th circuit against the respondents without leave of court. Kimbrell moved to substitute the judge and to reconsider the dismissal. The trial court denied both motions. She also filed a request for admission of fact, which the trial court declared moot. Kimbrell timely appealed.

¶ 12

ANALYSIS

¶ 13

On appeal, Kimbrell argues her third amended complaint was improperly dismissed. She maintains her complaint contained sufficient information to inform the respondents of the nature of her claims, the respondents failed to support their motion to dismiss with an affidavit, the court's finding must be reversed because of bias, good faith recognizes banks are not above the law, the clean hands doctrine, the court's equity powers were broad, summary judgment requires a directed verdict, BANA lacks the necessary documents for a lien and created the mortgage, quiet title to remove fraud, BANA was unlicensed, and slander of title.

¶ 14

A section 2-615 motion to dismiss alleges the plaintiff's pleading is substantially insufficient in law. 735 ILCS 5/2-615 (West 2016). "The question presented by a section 2-615 motion is 'whether the allegations in the complaint, when taken as true and viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted.' " *Midwest Medical Records Ass'n, Inc. v. Brown*, 2018 IL App (1st) 163230, ¶ 12 (quoting *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499 (2009)). When considering a

section 2-615 motion to dismiss, the court takes all well-pleaded facts in the complaint and all reasonable inferences to be drawn from them as true and all allegations are construed in a light most favorable to the plaintiff. *C.O.A.L., Inc. v. Dana Hotel, LLC*, 2017 IL App (1st) 161048, ¶ 56. However, mere conclusions of law or facts that are not supported by specific factual allegations are not sufficient to sustain the complaint. *Midwest Medical Records Ass’n*, 2018 IL App (1st) 122155, ¶ 12 (quoting *Ranjha v. BJB Properties, Inc.*, 2013 IL App (1st) 122155, ¶ 9). This court reviews a section 2-615 motion to dismiss *de novo*. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009).

¶ 15 To sustain a cause of action for slander of title, the plaintiff must prove (1) the defendant made a false and malicious publication; (2) that disparaged title to the plaintiff’s property; and (3) damages resulted from the publication. *Chicago Title & Trust Co. v. Levine*, 333 Ill. App. 3d 420, 424 (2002). The plaintiff must also prove that the defendant acted with malice. *Id.* A plaintiff establishes malice by proving that the defendant knew the disparaging statements were false or recklessly disregarded whether they were true or false. *Id.* Maliciously recording a document casting cloud upon another’s title is actionable as slander of title. *Whildin v. Kovacs*, 82 Ill. App. 3d 1015, 1016 (1980).

¶ 16 An action to quiet title is an equitable proceeding whereby a party attempts to remove a cloud on the title to his property. *Hoch v. Boehme*, 2013 IL App (2d) 120664, ¶ 41. “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.” *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 52 (2009). In order to prevail on a claim to quiet title, the plaintiff must actually hold title to the property. *Hoch*, 2013 IL App (2d) 120664, ¶ 41. A valid

property interest does not constitute a cloud on title. *Illinois District of American Turners, Inc. v. Rieger*, 329 Ill. App. 3d 1063, 1072 (2002).

¶ 17 Kimbrell's third amended complaint is insufficient to state a claim for slander of title, quiet title, injunctive relief or damages. Beginning with the slander of title claim, the complaint does not identify any false publication made by the respondents or how such a publication disparaged or damaged her. BANA established it held a mortgage on the property, Kimbrell signed a note before a notary of public for a mortgage in favor of BANA, defaulted on the loan in September 2014, last made a payment in July 2015, and did not claim repayment. BANA's lien was valid and its recording was not a false, disparaging or damaging publication.

¶ 18 The complaint does not assert any claims against MERS and Ginnie Mae. It stated only that they did not have a record of the mortgage in their databases. It did not assert they published anything concerning the property. The mortgage was held by MERS as nominee for BANA and it assigned the mortgage to BANA. The mortgage was a valid security interest, and until MERS assigned the mortgage to BANA, MERS's interest was also valid. MERS does not claim any current recorded interest in the property. The complaint does not establish any connection between Ginnie Mae and the property and its mortgage. Because BANA held a valid lien, it does not cloud title and Kimbrell cannot allege her purported property interest was superior to BANA's interest.

¶ 19 The complaint also includes counts for injunctive relief and damages. Neither count includes the elements of an independent cause of action. Because the slander of title and quiet title allegations are insufficient, the claims for an injunction and damages cannot stand either. Without providing the elements of a cause of action for slander of title or for a cloud on title,

Kimbrell's complaint was insufficient to state a claim. We find the trial court did not err in dismissing with prejudice Kimbrell's third amended complaint.

¶ 20 Lastly, we find that the court did not err when it denied Kimbrell's motion to reconsider the dismissal.

¶ 21 A motion to reconsider presents to the court (1) newly discovered evidence previously unavailable; (2) changes in the existing law that alter the decision; and (3) error in the court's application of the existing law. *Bank of New York Mellon v. Rogers*, 2016 IL App (2d) 150712, ¶ 73. A motion to reconsider must present specific grounds warranting the requested relief. *Sho-Deen, Inc. v. Michel*, 263 Ill. App. 3d 288, 291 (1994). We review a trial court's denial of a motion to reconsider for an abuse of discretion. *TCF National Bank v. Richards*, 2016 IL App (1st) 152083, ¶ 41.

¶ 22 On appeal, Kimbrell fails to make any argument regarding the denial of her motion to reconsider. The notice of appeal mentions the order where the trial court denied her motion. She did not present any law or offer any argument that the motion to reconsider was improper. In her motion to substitute judge and to reconsider, Kimbrell did not provide new evidence or point out changes in the existing law. She did not address any purported errors the trial court made in dismissing her complaint. She presents several claims regarding an apparent federal case she brought against Fannie Mae and argues the trial court was biased against her. Kimbrell failed to specify any grounds warranting relief. We find the trial court did not abuse its discretion when it denied the motion for reconsideration.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 25 Affirmed.