

TANGO PROPERTIES, LLC	*	IN THE
	*	CIRCUIT COURT
V.	*	FOR
MICHAEL S. GRIMM, ET AL	*	BALTIMORE CITY
DEFENDANTS	*	Case No.: 24-C-05-000839

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**MEMORANDUM OPINION**

On, or about, January 24, 2005, Plaintiff, Tango Properties, LLC, filed a Complaint to Foreclose the Right of Redemption with the Circuit Court for Baltimore City for the leasehold property known as 1310 Caroline Street. Plaintiff named several defendants in this action; however, Fairway Woods, LLC, the ground rent owner of the property, was not included as a defendant. After Plaintiff serving all named parties, posting notice, and filing an affidavit of compliance in this action, this Court issued a Final Judgment Foreclosing Right of Redemption (J. Stewart) on October 24, 2006.

On, or about, May 31, 2007, Fairway Woods, LLC filed a Motion to Strike the Final Judgment Foreclosing the Right of Redemption and to Set Redemption Amount. Plaintiff filed a Response to the Motion to Strike on, or about, June 18, 2007 requesting that the Motion be denied. On October 26, 2007, this Court issued an Order denying the Motion to Strike Judgment and Set Redemption Amount on the grounds that (1) the Court may only exercise its revisory power on a motion of any party within thirty (30) days after entry of judgment, (2) Plaintiff may choose not to name a ground rent owner as a defendant under Maryland Tax-Property Section 14-836(b)(2), and (3) if the ground rent owner is not named as a party to the action, he is not entitled to service from Plaintiff of the foreclosure action pursuant to Maryland Rule 14-503(a). (J. Holland).

Currently pending before this Court is A Motion for Reconsideration of the Order dated October 26, 2007 filed by the ground rent owner, Fairway Woods, LLC. In its Motion Fairway Woods, LLC argues the following: (1) The Court has revisory power over a foreclosure judgment for up to one (1) year after the final judgment is entered on the grounds of constructive fraud. (2) Constructive fraud is present when a Plaintiff fails to provide notice of a foreclosure proceeding to a ground rent owner; and (3) Fairway Woods, LLC was injured by Plaintiff's failure to give it notice of the foreclosure proceeding. For these reasons, Fairway Woods, LLC asks that the Court vacate the judgment and allow it to redeem the property. Each of Movant's arguments is examined below in depth:

Movant first argues that pursuant to Md. Code Ann., Tax-Property (TP), Section 14-845, this Court has revisory power over a final judgment in a foreclosure proceeding for up to one (1) year from the date that the judgment is entered on the grounds of "constructive fraud". This is different from the Court's standard revisory period of thirty (30) days in these cases where there is no fraud present. TP, Section 14-845 states:

A court in the State may not reopen a judgment rendered in a tax sale foreclosure proceeding **except on the ground of lack of jurisdiction or fraud in the conduct of the proceedings to foreclose**; however, no reopening of any judgment on the **ground of constructive fraud** in the conduct of the proceedings to foreclose shall be entertained by any court unless an application to reopen a judgment rendered is **filed within 1 year from the date of the judgment**.

Movant argues that, in this case, there is "constructive fraud" due to the failure on the part of Plaintiff to provide notice to Movant of the foreclosure action. Plaintiff responds to Movant's argument stating that, under the statute, it has a right not to name the ground rent owner as a party to the action and thus, it is not required to give notice to the ground rent owner.

Turning to the statute, it is clear that TP, Section 14-836 (b)(2) does state that Plaintiff may choose not to include the ground rent owner of the property as a defendant; however, it does not state

Plaintiff does not have to *notify* the ground rent owner of the foreclosure action. In fact, TP, Section 14-836 (b)(4)(i)(1) specifically states that ... “Plaintiff **shall** send written notice of the proceeding to all persons having a recorded interest, claim or lien, including a judgment, **who have not been made a defendant** in the proceeding..” Thus, it is clear that Plaintiff should have notified Movant/ ground rent owner of the foreclosure action because a ground rent owner has a recorded interest in the property. Thus, although Plaintiff had a right not to name Movant/ ground rent owner as a party to this action, it still had a statutory obligation to *notify* Movant of the foreclosure action, which was not fulfilled here.

The next issue this Court must consider is whether the failure on the part of Plaintiff to provide notice to Movant constitutes “constructive fraud” for the purposes of reopening the judgment. In *Scheve v. McPherson*, 44 Md. App. 398, 405 (1979), the Court points out that fraud has been found in tax foreclosure proceedings where there has been a failure to give “proper and legally required notice of the proceedings. . . to the former owner” and “as a result the former owner has been prejudiced in some way.” The Court noted that constructive fraud is similar to the concept of “irregularity”:

To the extent that it may arise from the failure to do that which ought to be done in the course of a judicial proceeding, it seems to be somewhat akin to, though clearly not synonymous with, the traditional concept of an “irregularity”; namely, “the doing or not doing of that, in the conduct of a suit at law, which, conformable with the practice of the court, ought or ought not to be done.”

*Id.* at 406 (citations omitted). The Court found the most acceptable definition of fraud as that stated in 37 C.J.S. Fraud s 2c, pp. 211-212:

Constructive fraud is a breach of legal or equitable duty which, irrespective of the moral guilt of the fraud feisor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests. Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud.

The key element of fraud is the breach of a legal or equitable duty. *Id.* at 406. *See also Jannenga v. Johnson*, 243 Md. 1, 5 (1966); *Arnold v. Carafides*, 282 Md. 375, 381 and 384(1978); *Brooks v. McMillan*, 42 Md. App. 270, 275 (1979).

In the present case, Plaintiff clearly had a legal duty, as set out in TP, Section 14-836 (b)(4)(i)(1), to provide Movant with notice of the foreclosure action and Plaintiff clearly breached this duty by failing to provide the notice. Thus, constructive fraud is present in this case.

\_\_\_\_\_In conclusion, this Court finds that a ground rent owner is entitled to notice of a foreclosure proceeding by a Plaintiff whether or not the ground rent owner is named as a defendant to the action. The failure to provide such notice to a ground rent owner, or any other interested party, is a breach of legal duty and thus is considered constructive fraud. As a result, Movant's Motion to Strike Judgment and Set Redemption Amount was filed timely, within one (1) year of the date that the original Judgment was entered, and therefore, the Motion to Reconsider the Motion to Strike Judgment and Set Redemption Amount will be granted.

Dated: May 6, 2008

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Judge Evelyn Omega Cannon