

OAKLAND COUNTY 05-071288-CK



JUDGE SHALINA KUMAR
SOUTH LYON CI v DEMARIA BLDG

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CITY OF SOUTH LYON,

Plaintiff,

Case No. 05-071 288 CK
Hon. Shalina Kumar

v.

DeMARIA BUILDING COMPANY, INC.,
a Michigan corporation, ST. PAUL TRAVELERS
COMPANY, INC., a Minnesota corporation and
UNITED STATES FIDELITY AND GUARANTY
COMPANY, a Maryland corporation,
jointly and severally,

Defendants.

and

DeMARIA INVESTMENTS, a Michigan
Co-partnership,

Counter-Plaintiff,

v.

CITY OF SOUTH LYON,

Counter-Defendant,

and

DeMARIA INVESTMENTS, a Michigan
co-partnership,

Third-Party Plaintiff,

v.

TROTTERS' POINTE HOMEOWNERS
ASSOCIATION, a Michigan non-profit
corporation,

Third-Party Defendant.

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OPINION & ORDER

At a session of said Court held in the
Courthouse, City of Pontiac, Oakland County,
Michigan, on AUG 26 2008

PRESENT: THE HONORABLE SHALINA D. KUMAR, CIRCUIT COURT JUDGE

This matter is before the Court on Third-Party Defendant/Counter Plaintiff Trotters Pointe Homeowners Association's ("Trotters Pointe") Motion for Clarification and Renewed Motion for Summary Disposition in lieu of trial. See MCR 2.116 (C)(10) and (G). The Court dispenses with oral argument pursuant to MCR 2.119(E)(3). Still pending before this Court is a quiet title action between Trotters Pointe and Counter Plaintiff Demaria Investments ("Demaria") regarding ownership of the general common element open space area ("parcel") of the property in question located at Eleven Mile Rd and Pontiac Trail in the City of South Lyon ("South Lyon"). Demaria recorded a First and Second Amendment to the Master Deed in an attempt to split off the parcel for further development. Trotters Pointe claims that it retains ownership of the parcel. This Court granted South Lyon's motion for summary disposition in

an Opinion and Order dated July 18, 2008. The remaining matter before the Court is a quiet title action to determine ownership of the parcel.

Trotters Pointe's motion for clarification and summary disposition is based upon two components of the Court's July 18, 2008 Opinion and Order which may have a controlling effect on the quiet title action, thus, removing the necessity of a trial. The Court held that: (1) South Lyon objected to and never consented to Demaria's development plans to remove the four acres of open space from the original site plan; (2) Demaria's split-off of the four acres of open space "violated the open space ordinance and the Master Deed..." Trotters Pointe contends that a consequence of the July 18, 2008 Court holding is that Demaria's claim of title to the parcel through its Amendments to the Master Deed is no longer valid. Accordingly, Trotters Pointe again seeks summary disposition on its quiet title action still pending before this Court. The following opinion & order only addresses whether the Court's findings in the July 18, 2008 opinion & order obviates the need for a trial in the quiet title action.

Trotters Pointe argues that the doctrine of collateral estoppel requires that this Court render a judgment as a matter of law in the remaining quiet title action. Collateral estoppel applies to subsequent matters when: (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full and fair opportunity to litigate the issue; and (3) there must be mutuality of estoppel. *Monat v. State Farm Ins Co*, 469 Mich 679 (2004).

As to the first element, Trotters Pointe argues that the issue of whether Demaria changed title to the disputed parcel has already been litigated and decided upon by this Court in the July 18, 2008 Opinion and Order. The Court concluded that in order to split off the open spaces parcel of property through Amendments to the Master Deed, South Lyon must consent in

accordance with the open spaces ordinance. (South Lyon City Code 102-459 (10)(d). As the Court noted in the July 18, 2008 opinion and order, the city ordinance provides:

“Once established and reserved as open space no part of any open space so established shall thereafter be converted to land for development or for any other use without the express approval of the city and the residents living within the development. South Lyon City Code 102-459 (10)(d).”

In addition, the Court previously held that the Amendments were invalid because Demaria attempted a split off the parcel in violation of the open spaces ordinance:

The Court holds that the because the split off violated the open spaces ordinance and the Master Deed and Demaria failed to obtain approval from the city, South Lyon was under no obligation to issue separate parcel identification numbers for the property. (Opinion & Order, July 18, 2008, pp. 9-10, emphasis added).

Trotters Pointe argues that the effect of the July 18, 2008 opinion and order is that the Amendments to the Master Deed that split off the parcel were deemed invalid because South Lyon did not approve of the change. Further, because the Court has already held that the Amendments are invalid they cannot serve as a mechanism to convey change in title from Trotters Pointe to Demaria. *See Monat, supra*. Thus, Trotters Pointe argues that the first element of collateral estoppel has been met because the issue of ownership of the parcel has been fully litigated by this Court. *Id.*

Demaria argues instead that this Court did not determine ownership of the property in the July 18, 2008 opinion and order. Demaria points out that the Court ruled on the issue of the proper use of the property and not the ownership of the property. Demaria suggests that it is wrong to confuse the concepts of “use” and “ownership.” Moreover, Demaria contends that they are not required to obtain the approval of the city for changes in ownership of the property. Demaria further contends that it has complied with the requirements of the Master Deed with respect to obtaining Amendments. However, in its response brief Demaria agreed that the

Court held that Demaria could not unilaterally change the use of the property to that of commercial development after it had been reserved for open space in violation of the South Lyon open spaces ordinance. Demaria, nevertheless, asserts that this Court did not hold that Demaria is not entitled to ownership of the disputed parcel in the July 18, 2008 Opinion and Order.

Nevertheless, Trotters Pointe argues that the Court's holding on July 18, 2008 applied to both use and ownership of the disputed parcel. Further, the Court reiterates that Demaria failed to comply with the requirement of the Master Deed to obtain the approval of South Lyon prior to splitting off the open space parcel. In addition, the attempted proposed split-off of the parcel also sought to change the fee simple title of the property. Moreover, the attempted conveyance of title involved rights of both ownership and lawful use. *See Degalan v. Barak, 223 Mich 328 (1923)*. If the Amendments were invalid because they violated the open spaces ordinance they could not be utilized to also convey title to the parcel. *Id.*

Based upon the July 18, 2008 Opinion and Order, the Court recognizes that the Amendments which violated the open spaces ordinance are invalid. Furthermore, since the Amendments are invalid, there has been no change in ownership status of the disputed parcel from the Master Deed. In other words, the status quo remains unchanged from the Master Deed and the title to the parcel stays with Trotters Pointe per the Master Deed. The Court holds that the issue of the validity of the Amendments to alter the open spaces and convey title to the parcel was actually litigated and determined by a valid and final judgment as set forth in the July 18, 2008 Opinion and Order. See MCR 2.116 (C)(10). Accordingly, this Court finds that the first element of collateral estoppel has been met. *Monat, supra.*

As to the second requirement for collateral estoppel, that the same parties must have had a full and fair opportunity to litigate the issue, Trotters Pointe contends that both parties fully litigated the issue during the June 18, 2008 summary disposition hearing. Trotters Pointe filed

a concurrence brief in support of South Lyon's Motion for summary disposition. This Court points out that Trotters Pointe and Demaria were present at the July 18, 2008 summary disposition hearing and fully participated in the oral argument regarding the issue of whether the split off of the property via the Amendments to the Master Deed required the approval of South Lyon. Therefore, the Court finds that the second element of collateral estoppel has been met. *Monat, supra.*

As to the third requirement regarding mutuality of estoppel, Trotters Pointe argues that the element of mutuality has been established. Trotters Pointe avers that if the Court had ruled the opposite way against South Lyon that Demaria did not need consent from the city to split off the parcel, it is clear that Trotters Pointe would have been estopped from arguing that the Amendments to the Master Deed were invalid because the City of South Lyon's consent had not been obtained. *Monat, supra.* In this regard, if the Court had ruled differently, Demaria would have sought an order from this Court determining the issue of ownership to the parcel in its favor. The Court finds this to be persuasive in demonstrating that the element of mutuality of estoppel has been met. *Id.*

Upon further review of this matter, this Court holds that the Amendments to the Master Deed which attempted to split off the open spaces parcel were invalid without the consent of South Lyon. In addition, the Court holds that the invalidity of the Amendments renders the ability to convey title null and void and, thus, Trotters Pointe retains title to the open space parcel per the Master Deed. Therefore, this Court is persuaded that the doctrine of collateral estoppel applies to the quiet title action between Demaria and Trotters Pointe. *Monat, supra.*

Accordingly, the Court finds that there is no genuine issue of material fact remaining on the quiet title action between Demaria and Trotters Pointe. See MCR 2.116 (C)(10). The Court's holding is based on the finding of fact from the July 18, 2008 Opinion and Order that the

Amendments to the Master Deed splitting off the open space parcel in question by a change in title are invalid because they were done without the consent of South Lyon.¹
Id.

Accordingly, the Court grants Trotters Pointe's renewed motion for summary disposition on the remaining quiet title action. MCR 2.116 (C)(10) & (G) and *Smith v. Globe Life Insurance Co*, 460 Mich 446 (1999).


WHEREFORE IT IS HEREBY ORDERED that Trotters Pointe's motion for clarification and renewed motion for summary disposition in lieu of trial is GRANTED.

IT IS FURTHER ORDERED that judgment is entered in favor of Trotters Pointe and against Demaria Investments on the remaining quiet title action.


SO ORDERED

THIS ORDER RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE.

Dated: AUG 26 2008

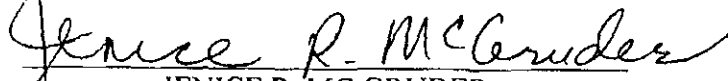

HONORABLE SHALINA D. KUMAR
Honorable Shalina D. Kumar

¹ In rendering this Opinion and Order, the Court is not making a determination that Demaria does not have the ability to make a change in title by a valid amendment of the Master Deed. That issue is not addressed in this Opinion and Order as it is not a ripe issue at this time. The Court has held only that the first and second Amendments as constructed in the case at bar were invalid and therefore could not effect a change in title.

A TRUE COPY
RUTH JOHNSON
Oakland County Clerk - Register of Deeds
By 
Deputy

Proof of Service

I certify that a copy of the above instrument was served upon the attorneys of record or the parties not represented by counsel in the above case by mailing it to their addresses as disclosed by the pleadings of record with prepaid postage on the 20th day of August, 2008.



JENICE R. MC GRUDER