

IN THE STATE COURT OF
FULTON COUNTY, GEORGIA

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STEVENS & COOPER, LLC and)
FIDELITY NATIONAL TITLE)
INSURANCE CO.,)
)
Plaintiffs,)
)
v.)
)
DONALD MORELAND and)
MORELAND & LERMAN, PC,)
)
Defendants,)
)
v.)
)
CHASE HOME FINANCE, LLC,)
)
Third-Party Defendant.)
_____)

CIVIL ACTION FILE
NO. 05 VS 088745-F

ORDER GRANTING SUMMARY JUDGMENT

This matter is before the Court on "Defendants' Motion for Summary Judgment Against Plaintiffs Stevens & Cooper, LLC and Fidelity National Title Insurance Co." ("Defendants' Motion for Summary Judgment"), filed January 8, 2007, and argued orally on April 17, 2007. Plaintiff's Complaint seeks recovery for an alleged negligent misrepresentation. Having considered the evidence filed of record, the pleadings, the parties' oral arguments, and all applicable law, the Court finds that Defendants are entitled to summary judgment. As a matter

of law, Plaintiff cannot demonstrate reasonable reliance on Defendant Moreland's alleged negligent misrepresentation.

I. UNDISPUTED FACTS.

There is no genuine issue with respect to the following facts.

Plaintiff Stevens & Cooper and Defendant Moreland & Lerman, PC ("Moreland & Lerman") are both real estate closing firms, and Defendant Donald Moreland ("Moreland") is a real estate closing attorney and a partner in Moreland & Lerman. Mr. Charles R. Burditt is a real estate closing attorney and a partner in Plaintiff Stevens & Cooper.

The crux of Stevens & Cooper's Complaint is that, in connection with its effort to certify marketable title and close the sale of a parcel of improved real property located at 2270 Polar Rock Avenue, Atlanta, Georgia 30315 (the "Polar Rock Property"), Stevens & Cooper relied upon an alleged misrepresentation of Defendant Moreland, who had closed a prior sale of the same property, regarding the status of a Deed to Secure Debt ("Security Deed").

The Security Deed was originally held by Advanta National Bank ("Advanta") to secure a \$45,000.00 debt owed by a former owner of the Polar Rock Property, Janet W. Williams. (Def. Ex. 8, p. 2.) The Security Deed was acquired by Third-Party Defendant Chase Manhattan Mortgage Corporation n/k/a Chase Home Finance, LLC ("Chase") when Chase purchased Advanta's

mortgage business. On June 11, 2004, Chase filed and recorded a Lost Note Affidavit, stating that Chase had lost the actual Security Deed but desired to assign the indebtedness to a third party. The Lost Note Affidavit is within the Chain of title for the Security Deed and may be found by a search of the Fulton County public land records in Deed Book 37769, page 92. On May 20, 2004, Chase assigned the Security Deed and its underlying indebtedness to Heath W. Williams, LLC, which, on June 10, 2004, assigned the Security Deed and underlying indebtedness to Emanuel Walker by a document denominated "Corporate Assignment of Mortgage". A copy of the Corporate Assignment of Mortgage is within the Chain of title for the Security Deed and may be found by a search of the Fulton County public land records in Deed Book 37769, page 101.

On about February 28, 2005, after Janet Williams had died, and after all assignments of the Security Deed had occurred and been recorded, Janet Williams' estate transferred the Polar Rock Property to Roshanda Denise Williams by Administrator's Deed. Roshanda Williams sold the Polar Rock Property to New Hope Realty Investments, Inc. ("New Hope") on the same day. Defendant Moreland closed this sale in the office of his law firm, Moreland & Lehrman.

Subsequently, on March 9, 2005, New Hope conveyed the Polar Rock Property to Polar Rock Trust, which conveyed the property to Atlas Realty, Inc. ("Atlas"). Charles Burditt handled these closings in the office of Plaintiff Stevens & Cooper.

In preparation for the Stevens & Cooper closings, Mr. Burditt hired a title search firm called Traditional Title Company ("Traditional Title") to search title for the Polar Rock Property. On about March 3, 2005, Traditional Title provided Mr. Burditt with a title abstract, listing possible exceptions to marketable title. Along with the title abstract, Traditional Title provided Mr. Burditt with documents within the chain of title for the Polar Rock Property and the Security Deed. The title abstract showed the June 10, 2004 assignment of the Security Deed to Emanuel Walker. Actual copies of the original Security Deed, Chase's June 11, 2004 Lost Note Affidavit reflecting Chase's ownership of and desire to assign the Security Deed, and the June 10, 2004 assignment to Emanuel Walker were attached to the title abstract. In other words, not only did the Fulton County public land records demonstrate the assignment of the Security Deed from Chase to Heath Williams and from Heath Williams to Emanuel Walker, but Plaintiff Stevens & Cooper has admitted that actual evidence of those assignments was in their possession prior Stevens & Cooper's March 9, 2005 closings of the Polar Rock Property. Furthermore, Plaintiff

Stevens & Cooper has admitted that it reviewed the documents in its possession, that it had not found any evidence that the Security Deed had been satisfied, and that it understood that title to the Polar Rock Property might not have been marketable.

In response to the evidence of the unsatisfied Security Deed, Plaintiff Stevens & Cooper did not make any independent investigation of the status of that instrument. Plaintiff made no attempt to contact Emanuel Walker, who was shown by Plaintiff's records as well as Fulton County's public land records to be the last known holder of the Security Deed. Further, Plaintiff made no effort to contact either Heath Williams or Chase. Instead, Plaintiff Stevens & Cooper simply contacted Defendant Moreland to inquire how he had closed his February 28, 2005 sale of the Polar Rock Property, given the apparent existence of the unsatisfied Security Deed. Defendant Moreland responded both orally and in writing that, in late February 2005, he had spoken with a representative of Chase,¹ who had informed him that the Security Deed had been paid off and that an official cancellation could be issued within 90 to 120 days of the submission

¹ The parties agree that Defendant Moreland believed Chase to be the last holder of the Security Deed because his title search had missed the subsequent assignments of the Security Deed from Chase to Williams and from Williams to Walker.

of a written request.² This representation clearly contradicted the information available through the Fulton County public land records and the information available in Plaintiff Stevens & Cooper's own file. Both correctly showed that

² Plaintiff Stevens & Cooper has attempted to create an issue of fact by filing the Affidavit of Charles R. Burditt, which swears that Defendant Moreland never told Mr. Burditt that the information he provided concerning the Security Deed came from a representative of Chase. (Burditt Aff. ¶ 27.) Mr. Burditt further swears that, if Defendant Moreland would have told him that the information came from Chase, "that would have been a red flag", because Mr. Burditt knew about the subsequent assignments of the Security Deed to Heath Williams and Emanuel Walker. (*Id.*) This "evidence" is insufficient to withstand summary judgment because Mr. Burditt's Affidavit is contradicted by several prior admissions that Burditt and Plaintiff Stevens & Cooper knew that Defendant Moreland's belief concerning the Security Deed was based on Chase's mistaken representation that the Security Deed had been paid off as opposed to assigned. (*See, e.g.*, Pl. Stevens & Cooper, LLC's Resp. to Def. Donald Moreland's First Request for Admissions ¶ 11 (admitting that "Prior to the Stevens Closings, Defendant Moreland informed you that Chase Manhattan Mortgage Corporation had represented to Defendant Moreland that the Open Loan Deed had been paid off"); Resp. of Stevens & Cooper, LLC to Chase's First Continuing Interrog. ¶ 9 (stating, "Defendant communicated that information verbally to Mr. Burditt and by providing a marked up title policy showing that he had contacted Chase showing a cancellation. He provided a fax in his own handwriting in which he confirmed again that Chase was providing a cancellation"); Burditt Dep., pp. 67-68 (answering, "[t]hat is correct, yes", to the question, "somehow [Moreland] represented to you that he obtained information from Chase concerning the loan; is that correct?").) *See also Sherrill v. Stockel*, 252 Ga. App. 276, 278 (2001) (holding that a self-serving, conclusory affidavit that is not supported by fact or circumstance is insufficient to raise a genuine issue of material fact). No satisfactory explanation for Plaintiff's contradiction appears in the record, and none was offered at oral argument. Thus, the Court is bound to ignore the Burditt Affidavit in favor of Plaintiff's prior admissions. *Gentile v. Miller, Stevenson & Steinchen, Inc.*, 257 Ga. 583 (1987); *Liles v. Innerwork, Inc.*, 279 Ga. App. 352-53 (2006); *Walker v. Brannon*, 243 Ga. App. 235, 237 (2000).

Emanuel Walker was the current holder of the Security Deed, having received it from Heath Williams, who had been assigned it by Chase.

Despite the evidence in their file, Plaintiff Stevens & Cooper failed to investigate further. Instead, Plaintiff chose to rely on the statements of Defendant Moreland and close the two March 9, 2005 sales of the Polar Rock Property. In conjunction with the closing, Plaintiff Stevens & Cooper, as an agent of Fidelity National Title Insurance Company ("Fidelity"), issued a \$64,000.00 title insurance policy on the Polar Rock Property to Atlas, the final purchaser.

Subsequent to the March 9, 2005 closings, Emanuel Walker foreclosed on the Security Deed and sold the Polar Rock Property out from under Atlas on the Courthouse steps. Atlas made a title insurance claim, and Plaintiffs Stevens & Cooper and Fidelity paid \$64,000.00 to Atlas. Thereafter, Plaintiffs sued Defendants claiming that Defendants had negligently misrepresented that the Security Deed had been paid off.

II. CONCLUSIONS OF LAW.


Reasonable reliance is a required element of a negligent misrepresentation claim. *Hattaway v. Conner*, 635 Ga. App. 330, 330 (2006). Summary judgment must be granted if, as a matter of law, the court finds that a plaintiff cannot offer evidence of reasonable reliance. *Dyer v. Honea*, 252 Ga. App. 735, 740 (2001).

In Georgia, the one "bright-line rule" concerning reasonable reliance is this: "when the falsity of the representation could have been revealed by a search of the county land records, a failure to search those records makes the reliance on the representation unjustified as a matter of law". *Id.*

III. ANALYSIS.

In this case, Plaintiff Stevens & Cooper could not reasonably rely on Defendant Moreland's representation concerning the Security Deed. The Fulton County public property records accurately reveal that the last known holder of the Security Deed at the time of the parties' communication was Emanuel Walker, not Third-Party Defendant Chase. Moreover, the undisputed facts show that Plaintiff had both actual knowledge and record notice of this fact. This notwithstanding, Plaintiff made no effort to investigate the contradiction between Defendant Moreland's belief that the Security Deed would be cancelled by Chase and the public land records, which demonstrated that, nine months before Chase represented that the Security Deed had been paid off, Chase had actually assigned the Security Deed to Heath Williams, who had subsequently assigned it to Emanuel Walker. The undisputed facts show that Plaintiff made no attempt to contact Chase, Williams, or Walker to determine the actual status of the Security Deed. Instead, Plaintiff chose to rely blindly upon the representation of Defendant Moreland.

Prepared and Presented By:

By: 

JAMES L. PAUL

Georgia State Bar No. 567600

F. BEAU HOWARD

Georgia State Bar No. 142641

*Counsel for Defendant Donald Moreland
and Moreland & Lerman, PC*

Chamberlain, Hrdlicka, White, Williams & Martin

191 Peachtree Street, N.E. – Thirty-Fourth Floor

Atlanta, Georgia 30303

(404) 659-1410

(404) 659-1852 (Facsimile)

james.paul@chamberlainlaw.com

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