



“2. For judgment quieting title to the SUBJECT PROPERTY as of February 13, 2012, in favor of PLAINTIFF, senior to and free and clear of any claims of defendants, and each of them, and free and clear of all unknown defendants.”

(See, Complaint for Declaratory Relief and Quiet Title, Prayer, p. 5 (filed 1/2/20).)

In the Answer to this Complaint filed by AVTWO, it expressly “denies that Plaintiffs are entitled to any of the relief asserted in the Prayer, or that Plaintiffs are entitled to any relief whatsoever, against them.” (See, Answer, Prayer, pp. 4-5.)<sup>1</sup>

Plaintiff proffers several legal theories as to why this Court should issue the specific declarations sought by them in this action, including but not limited to adverse possession, bona fide purchasers and/or estoppel. This Court finds that any and all theories put forth by the Plaintiff are without merit and/or the Plaintiff failed to meet her burden of proof as to those theories. In short, the Plaintiffs were not “adverse possessors” under these facts and applicable law. Additionally, they were not “bona fide purchasers” of the actual real property upon which the home was built.

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<sup>1</sup> Interestingly enough, AVTWO does not request that this Court declare that their ground lease is still in full force and effect as against the Plaintiffs. Nor does it make such a formal request in its Cross-Complaint. Be that as it may, inherent in the Plaintiffs’ Complaint is the issue of whether the ground lease at issue can be enforced against the Plaintiffs. As such, for this Court to determine the specific declarations sought by the Plaintiffs, it would have to necessarily adjudicate the issue of whether the ground lease is still valid and enforceable as to the Plaintiffs.

Indeed, this case presents a classic example on why we have a county recorder system, so that any intended purchaser of real property can easily conduct a title search on any property located within that county to determine any and all recorded claimed interests to that property. No one is *required* to do any such title search. That is certainly not a prerequisite to a valid purchase of real property. But the failure to conduct a proper and adequate title search has consequences, to wit, you will have *constructive* notice of any and all claims of interests which have been previously recorded as to that subject property. Such is the case here.

It is undisputed that AVTWO had duly recorded its ground lease as to the subject property many years before the Plaintiffs purchased same. Even a cursory title search would have revealed this fact. Unfortunately for the Plaintiffs, they failed to conduct such a search.

As to the issue of estoppel, this Court rejects same. A landlord is not generally required to collect and/or even demand any rent which may be owed to it under a lease. In other words, the failure to do so does not necessarily result in an automatic forfeiture of the landlord's ownership interest in the property. Of

course, a failure to do so may have some consequence in some respect once the landlord decides to sue and/or evict that tenant for failure to pay rent.<sup>2</sup>

The undisputed inaction by AVTWO to enforce its ground lease in this case does not rise to the level to estop it from asserting its rights under said lease, especially as to its ownership rights.<sup>3</sup> This is why we have a recording system. A party who has a valid ownership interest merely needs to record such an interest, so that everyone else has constructive notice of same.

Bottom line: For these reasons, as well as several of the arguments put forth by AVTWO, this Court declines to make the specific declarations requested by Plaintiffs in their Complaint. The short answer is “No” as to both requests. Additionally, this Court does affirmatively declare that the subject ground lease is still in full force and effect. AVTWO maintains is 100% ownership interests in the actual real property/ground/lot upon which the house is located, subject to the terms and conditions of said ground lease. Plaintiffs maintain their 100% ownership interest in the subject house/dwelling, subject to the ground lease.

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<sup>2</sup> For example, a three- day notice to pay rent or quit is expressly limited to a one-year period prior to the notice. CCP §1161 (2)

<sup>3</sup> However, it could have an impact in its request for unpaid rent, as discussed infra.

### On the Cross-Complaint

This is a single cause of action for breach of contract based upon the failure to pay the rent required on the ground lease. Recognizing the statute of limitations, AVTWO only seeks the unpaid rent within the four year period prior to the filing of its cross-complaint. They also seek the unpaid rent to date since the filing of this cross-action. AVTWO also seeks "late fees" and "prejudgment interest" on all of these claimed unpaid rent.

It is a simple and undisputed fact that the Plaintiffs have never paid any rent on the subject ground lease. In further point of fact, there is no evidence that anyone has ever paid any rent under this ground lease since its inception.

Cross-Defendant/Plaintiff contends for several reasons why she is not liable for this unpaid rent. Her first line of defense is that there has been no "breach" of the lease, per its own terms, and as such, AVTWO is not allowed to sue for such unpaid rent. This Court agrees with that rather simple defense.

The subject lease does, in fact, require a 10 day written notice to "cure" any unpaid rent, before a "default" occurs and a resulting cause of action can be asserted for the unpaid rent. (See, Exhibit 4, Section 14.1(a) of the Ground Lease.)

There simply is no evidence whatsoever that AVTWO complied with that requirement of its own lease. No *formal* “breach” has been established, hence, no right to sue at this time for any damages.<sup>4</sup>

Since this particular defense is a complete defense to the only cause of action in the Cross-Complaint, there is no need for this Court to adjudicate any of the other possible defenses asserted by the Cross-Defendant.

Accordingly, judgment is in favor of the Cross-Defendant, and the Cross-Complainant shall take nothing from the Cross-Complaint.

Issue of “Prevailing Party”

On its face, it appears that AVTWO is the “prevailing party” on the Complaint, and that Ms. WHITE is the “prevailing party” on the Cross-Complaint. This is not a formal finding at this time.

How these findings affect any party’s right to seek costs and/or attorney’s fees is not being adjudicated at this time. Any party who seeks and award of costs and/or attorney’s fees, is to file a Memorandum of Costs and/or a Motion for

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<sup>4</sup> Of course, this ruling does not necessarily prevent or preclude AVTWO from serving any such notice to cure in the future, which may be allowed under the terms of the lease. When and if AVTWO properly declares a “breach” of the ground lease, it is free at that time to pursue any legal remedies it may have under the applicable law.

Attorney's Fees. Of course, any party can move to strike and/or challenge those claimed costs by motion or opposition, as provided by law. Then and only then will this Court determine who the "prevailing party" may be, if any, and the merits of any claimed costs or attorney's fees. The parties should keep in mind that this Court is inclined to find that there was no "prevailing party" based upon the litigation goals and/or the totality of the circumstances. See, CCP § 1032 (a)(4). Whether this inclination becomes a formal finding remains to be seen.

Plaintiffs' counsel is hereby ordered to file and serve a proposed Judgment, consistent with this decision.

Clerk is ordered to send notice of this decision to all interested parties.

IT IS SO ORDERED.

Dated: March 29, 2023



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Randolph M. Hammock  
Judge of the Superior Court

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