

SEAL

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

MIDDLESEX, ss.

10 SBQ 02508 03-001 (JCC)

MARGARITA ALVAREZ,
Plaintiff,

v.

GINA D. FIGUEIREDO,
Defendant,

and

COUNTRYWIDE HOME LOANS, INC. and
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.

Interested Parties.

DECISION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

INTRODUCTION

In this action the Plaintiff, Margarita Alvarez ("Alvarez"), petitions this court under G.L. c. 185, § 114 to "correct error in entering a certificate of title" issued for a parcel of registered land located in Somerville, MA, shown as Lot 2 on Land Court Plan 2508B (the "Subject Parcel" or "Lot 2"). Alvarez filed her "S-Petition"¹ on March 8, 2010, claiming that title to the Subject Parcel was incorrectly certified in Defendant Gina Figueiredo ("Figueiredo") and in her predecessors, due to an error committed at the Middlesex South Registry District (the "Registry District") in 1997. Alvarez requests that this court: (1) cancel Figueiredo's certificate of title insofar as it certifies her title to the Subject Parcel; (2) strike Figueiredo's deed, which was submitted for registration, insofar as it purports to convey title to the Subject Parcel; (3) order that certain mortgage encumbrances favoring Interested Parties *Countrywide Home Loans, Inc. and Mortgage Electronic Registration Systems, Inc.*, be stricken

¹ A so-called "S-Petition" or "Subsequent Petition" is a petition under Sections 114 and 115 of G.L. c. 185, seeking to amend the registration book subsequent to the issuance of the original registration judgment.

insofar as they purport to encumber the Subject Parcel; and (4) order that Alvarez be permitted to submit for registration her 2002 deed to the Subject Parcel. On August 11, 2010, Figueiredo filed her answer, asserting defenses of laches, estoppel, waiver, and failure to state a claim upon which the requested relief can be granted.²

On August 25, 2011, Alvarez filed her Motion for Summary Judgment. She contends that, despite an obviously ambiguous property description contained in a deed submitted for registration in 1997, the transfer certificate issued to Figueiredo's predecessors erroneously included the Subject Parcel. Permitting such an error to go uncorrected, Alvarez argues, is inconsistent with the purpose of the Registration Statute. Alvarez further argues that correction of the error is, moreover, not inconsistent with the Defendant's statutory protections as a certificate holder because the error would have been apparent to Figueiredo if she had fulfilled her duty as a purchaser of registered land to investigate the registration record.

On September 22, 2011, Figueiredo filed her Opposition and Cross-Motion for Summary Judgment, in which she argues that, as a purchaser for value and in good faith, her title is protected by G.L. c. 185, § 46, even if, as the Plaintiff contends, a mistake was made by the Registry District in 1997. Figueiredo also argues that the doctrine of laches bars Alvarez's claim. Alvarez replied to Figueiredo's Cross-Motion, by arguing that her action is not barred by laches because any delay in bringing the instant proceeding was reasonable in light of the circumstances, and because the Defendant has not suffered any prejudicial or irreparable harm as a result of the six-year delay.³

² The Interested Parties did not file an answer with the court but did participate in the Case Management Conference Joint Statement, in which they asserted that their security interests should attach to such real property as is held by Figueiredo under her certificate.

³ Defendant Figueiredo also moved to strike Exhibit 28 of Alvarez's Summary Judgment Appendix. Exhibit 28 is a copy of Figueiredo's title insurance policy, covering the Subject Parcel. Figueiredo argues that such evidence is irrelevant, prejudicial, and inadmissible, and therefore should be stricken from the record. Exhibit 28 is not relevant to the status of the Defendant's title; therefore, the Motion to Strike is **ALLOWED**.

A hearing on the parties' cross-motions was held on February 2, 2012. Now, for the reasons explained more fully below, Alvarez's Motion for Summary Judgment is **DENIED**, and Figueiredo's Cross-Motion for Summary Judgment dismissing the S-Petition is **ALLOWED**.

UNDISPUTED MATERIAL FACTS

Based upon the pleadings, the parties' respective statements of undisputed material facts, and the admissible materials submitted in support of the summary judgment motions, I find the following material facts are not in dispute.

On May 17, 1909, Plan 2508A, entitled "Plan of Land in Somerville" ("Plan 2508A" or the "A Plan") was registered with Certificate of Title No. 2450. The A Plan shows a single, undivided parcel of land, accessed from Cottage Place. On August 15, 1979, Transfer Certificate of Title No. 158848 was issued to Manuel A. L. Raposo and Cremilde C. Raposo, as tenants by the entirety (the "Raposos"), certifying their title to the single parcel shown on Plan 2508A, including an appurtenant right to use Cottage Place.⁴

On December 30, 1986, the Land Court approved the subdivision of the Raposos' parcel into two lots, Lot 1 and Lot 2,⁵ as shown on Plan 2508B, entitled "Subdivision of Plan of Land in Somerville" ("Plan 2508B" or the "B Plan").⁶ Although the Land Court approval of Plan B expressly allowed for issuance of separate certificates for each of the two Lots, separate certificates were not issued at that time or subsequently. Also on December 30, 1986, the Raposos unaccountably recorded a deed at the

⁴ As shown on Plan 2508A, the parcel is described in Certificate of Title No. 158848 as follows: "Northwesterly by lands now or formerly of Margaret Breen, of Michael E. Doran, of John A. Lawrence et al and of John P. Bradbury, one hundred twenty-eight and 38/100 feet; Northeasterly by land now or formerly of John H. Smith et al, forty-three and 75/100 feet; Southeasterly by lands now or formerly of Charles F. Robinson, of John Wilson and of James S. Mullen, one hundred thirty and 50/100 feet; and Southwesterly by the end of Cottage Place and by land now or formerly of Eliza A. McCleary, fifty feet."

⁵ Lot 2 is the subject of this lawsuit.

⁶ The subdivision divided the single parcel into two roughly equal halves. The distances shown on Plan 2508B, for the subdivided lots are as follows: Lot 1 – Northwest: 73.86, Northeast: 43.75, Southeast: 74.96, Southwest: 47.33; Lot 2 – Northwest: 54.52, Northeast: 47.33, Southeast: 55.57, Southwest: 50.00. Plan 2508B also identifies the owners of the parcels abutting each lot, as follows: Lot 1 – Northwest: John A. Lawrence et al and John P. Bradbury, Northeast: John H. Smith et al, Southeast: Charles F. Robinson, Southwest: Lot 2; Lot 2 – Northwest: Margaret Breen and Michael E. Doran, Northeast: Lot 1, Southeast: Charles F. Robinson, John Wilson, and James S. Mullen, Southwest: Cottage Place and Eliza A. McCleary.

Middlesex South Registry of Deeds, in Book 17748, Page 74 (the "1986 Deed"), in which they purported to grant to themselves a portion of the land shown on Plan 2508B, including the appurtenant right to use Cottage Place.⁷ The 1986 Deed was not registered.⁸ Thus, as of December 30, 1986, the records in the Land Court Registration System would have shown that the Raposos held title to all of the land shown on the B Plan, under the Certificate of Title No. 158848 issued to them in 1979.

On September 25, 1997, for consideration of seventeen thousand dollars (\$17,000.00), the Raposos executed a quitclaim deed which purported to convey a parcel of land, "shown as lots 1 and 2 on plan hereinafter mentioned (Pl. 2508B)," to James DiCarlo (the "DiCarlo Deed"). However, the property line distances described in the DiCarlo Deed correspond only with the distances for Lot 1, as shown on Plan 2508B, while some of the abutters' calls include abutters shown on Plan 2508B for Lot 2.⁹ On summary judgment, it is uncontested that, notwithstanding the statement in the DiCarlo Deed that the land is shown on Plan 2508B as Lots 1 and 2, the intent of the Raposos and DiCarlo was to include only Lot 1.¹⁰ In addition to the Plan 2508B reference, the DiCarlo Deed contains a reference to Certificate of Title 2450 (the certificate with which Plan 2508A was filed in 1909) and then a handwritten notation reading, "For my title see Certificate of title # 158848."

Just days after receiving his deed from the Raposos, DiCarlo executed a quitclaim deed to Pedro L. Pineda and Ingrid M. Cordova Pineda (the "Pinedas"), dated October 1, 1997 (the "Pineda Deed"). For the recited consideration of one hundred and eighty thousand dollars (\$180,000.00), the Pineda Deed purports to convey two parcels of registered land. One of the two parcels is located at 19

⁷ The 1986 Deed does not reference any lot number. The written description itself is ambiguous since the boundary line distances recited correspond with the distances shown on Plan 2508B for Lot 2, but some of the abutters' calls extend to include Lot 1.

⁸ It is not clear what the Raposos intended to accomplish with the 1986 Deed, as they already held the described land and the appurtenant easement, as tenants by the entirety under Certificate of Title No. 158848. In any event, as an unregistered deed it has no legal effect.

⁹ The DiCarlo Deed did not purport to grant an appurtenant right to use Cottage Place.

¹⁰ This intent is stated in two uncontested affidavits submitted as part of Alvarez's summary judgment record – an affidavit of the Raposos, and an affidavit of DiCarlo.

Knowlton Street, a residential property adjacent to Lot 1 and Lot 2.¹¹ The second parcel is described by importing precisely the same ambiguous property description used in the DiCarlo Deed. The DiCarlo Deed and the Pineda Deed were both submitted for registration on October 2, 1997.

The Registry District first issued DiCarlo Transfer Certificate of Title No. 209616, certifying DiCarlo's title to *both Lot 1 and Lot 2 on Plan 2508B*, including the appurtenant right to use Cottage Place. The Transfer Certificate issued to DiCarlo does not repeat the ambiguous description contained in the DiCarlo Deed. Instead it describes Lots 1 and 2 separately, using the distances and abutters' calls for each lot as shown on the B Plan (the "Registry District Description"). When DiCarlo was issued his Certificate, the Raposos' Certificate No. 158848 was cancelled in its entirety.¹² DiCarlo's Transfer Certificate No. 209616 was, in turn, cancelled when Transfer Certificate of Title No. 209617 was issued to the Pinedas. The Pinedas' Certificate repeats the Registry District Description of Lots 1 and 2.¹³

On June 25, 2002, for the recited consideration of one dollar (\$1.00), the Raposos executed a quitclaim deed to Alvarez (the "Alvarez Deed"), purporting to convey to her the same parcel of land described in the recorded, but unregistered, 1986 Deed.¹⁴ The Alvarez Deed does not reference the Raposos' Certificate of Title No. 158848 (which had already been cancelled in its entirety at the time of this attempted conveyance to Alvarez). Rather, the Alvarez Deed references only the recorded 1986 Deed as the source of the Raposos' title. The Alvarez Deed does not reference Plan 2508B and does not describe the parcel by reference to a lot number. It does reference Plan 2508A (the original 1909 plan

¹¹ Defendant Figueiredo currently resides at 19 Knowlton Street.

¹² Upon conveyance of a parcel of registered land, the deed is noted on the memorandum sheet of the grantor's certificate of title, which is then cancelled with reference to the new certificate of title issued to the grantee (the "transfer certificate of title"). See G.L. c. 185, § 64.

¹³ The Pineda's Certificate also separately describes the parcel of registered land located at 19 Knowlton Street.

¹⁴ Also on June 25, 2002, the Raposos executed a second quitclaim deed to Alvarez, for an unregistered property known as 13 Knowlton Street, Somerville, Massachusetts, for consideration of four hundred and thirty-six thousand dollars (\$436,000.00). The property at 13 Knowlton Street is adjacent to Lots 1 and 2, and contains a multi-family residence. The 13 Knowlton Street deed was recorded in the Middlesex South Registry of Deeds at Book 35768, Page 484. Although conveyed by separate deeds, both parcels were negotiated under a single purchase and sale agreement. The purchase and sale agreement does not refer to Plan 2508B, Plan 2508A, a specific lot number, or a certificate of title.

showing the undivided parcel), and recites where the A Plan is registered.¹⁵ The Alvarez Deed was never recorded, and it has never been submitted for registration.

On March 24, 2005, for consideration of five hundred thousand dollars (\$500,000.00), the Pinedas executed a quitclaim deed to Figueiredo (the "Figueiredo Deed"), purporting to grant two separate parcels of land. The first parcel described is the 19 Knowlton Street parcel. The second parcel is described using the same description used in both the DiCarlo and Pineda Deeds, including the statement that the land is shown as lots 1 and 2 on the B Plan.

It is uncontested that when Figueiredo entered into the purchase and sale agreement with the Pinedas, she believed that the Pinedas held title to both Lot 1 *and* Lot 2, and it was her intent to purchase the same, together with the property at 19 Knowlton Street. The Figueiredo Deed was filed with the Registry District on March 25, 2005 as Document No. 1368938, and has been assigned Certificate of Title No. 233451.

DISCUSSION

Summary judgment is appropriate when there are no genuine issues of material fact, and viewing the evidence in the light most favorable to the nonmoving party, the moving party is entitled to judgment as a matter of law. *Opara v. Massachusetts Mut. Life Ins. Co.*, 441 Mass. 539, 544 (2004); Mass. R. Civ. P. 56(c). In moving for summary judgment, a party is required to first demonstrate by reference to the pleadings, depositions, answers to interrogatories, admissions, or affidavits that there are no genuine issues of material fact, and to further demonstrate entitlement to judgment on those undisputed facts as a matter of law. *Ng Brothers Construction, Inc. v. Cranney*, 436 Mass. 638, 633-644 (2002); Mass. R. Civ. P. 56(c). When appropriate, summary judgment may enter against the moving party. Mass. R. Civ. P. 56(c). For the reasons discussed more fully below, the undisputed material facts in the instant case support entry of summary judgment in favor of Defendant Figueiredo.

¹⁵ Registration Book 13, Page 513, with Certificate of Title No. 2450.

There is no dispute that the property description employed in the DiCarlo, Pineda, and Figueiredo Deeds contain identical inconsistencies relative to boundary distances, abutters' calls, and lot number references. Moreover, through uncontested affidavits from the Raposos and DiCarlo, Alvarez has established that the reference in the DiCarlo Deed to "lots 1 and 2" does not accurately reflect the intent of the parties, which was conveyance of the Raposos' interest in Lot 1 only. Alvarez contends that since the DiCarlo Deed was facially inconsistent and ambiguous, the Registry District should have made a more thorough examination of that Deed, Plan 2508B, and all other relevant sources of information in order to uncover the parties' intent. If this had been done, Alvarez insists, the Registry District would have issued a transfer certificate to DiCarlo (and later to the Pinedas) for *Lot 1 only*.¹⁶

It is on the basis of her unsupported claim of Registry District error, that Alvarez asks this court to use its power under G.L. c. 185, § 114 to amend Figueiredo's Certificate, and her predecessors' certificates to remove all references to Lot 2. Her argument fails for several reasons, not the least of which is that she has failed to demonstrate that any of the certificates were issued in error.¹⁷ However, even if Alvarez had been able to establish that the Registry District erred when it issued DiCarlo a transfer certificate for both Lot 1 and Lot 2, such an error would be of no consequence at this juncture, because the undisputed facts demonstrate that Figueiredo holds her registered title as a purchaser for value and in good faith. As such, she is protected under G.L. c. 185, § 114 from any order which would impair that title without her consent – a consent which she has not given.¹⁸

¹⁶ The summary judgment record is devoid of any evidence that the Registry District did not, in fact, make the appropriate examinations before issuing DiCarlo his transfer certificate.

¹⁷ While the Supreme Judicial Court has recognized that the validity of a transfer certificate of title is open to review where the certificate is alleged to have been issued in error and that error is apparent on the face of the certificate, *Doyle v. Commonwealth*, 444 Mass. 686, 691-696 (2005), here the intent of the parties to the DiCarlo Deed (asserted some fifteen years after the fact) is not plainly evident on the face of that Deed, and it is telling that neither party to the DiCarlo Deed ever sought to have the Registry Description amended to reflect that intent at or around the time the error was allegedly made.

¹⁸ By contrast, Alvarez has demonstrated no basis for her own claim of superior title to Lot 2, which relies entirely on her off-record deed, which itself is based upon the Raposos' unregistered 1986 Deed to themselves. However, an unregistered deed to registered land is treated only as an enforceable contract; it does not convey title or impose a burden on the land. G.L. c. 185, § 57. Moreover, if Alvarez had duly investigated the Raposos' title prior to accepting a deed to Lot 2, she would have learned that the Raposos' Certificate of Title for Lot 2 had been cancelled several years earlier. It should be noted, as well, that the Alvarez Deed recites only \$1.00 in consideration.

It is the intent and purpose of the Massachusetts' land registration system "to provide a method for making titles to land certain, indefeasible, and readily ascertainable" and "[t]he finality and unassailability of registered title is a cornerstone of the registered land system." *Feinzig v. Ficksman*, 42 Mass. App. Ct. 113, 116 (1997) (citations omitted). Thus, holders of certificates of title hold their interests in the registered land "free from all encumbrances except those noted on the certificate." G. L. c. 185, § 46. And a subsequently issued transfer certificate bears the same conclusive effect as the original certificate. *Michaelson v. Silver Beach Imp. Ass'n., Inc.*, 342 Mass. 251 (1961).

Consistent with the purpose of the Land Registration system, Massachusetts General Laws, Chapter 185, § 114, provides in pertinent part:

No erasure, alteration or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum... except by order of the court. A registered owner or other person in interest may apply by motion to the court upon the ground that... any error or omission was made in entering a certificate or any memorandum thereon... or upon any other reasonable ground; and the court may hear and determine the motion after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate... but this section shall not authorize the court to open the original judgment of registration, and nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent. [Emphasis added]

In order for a certificate holder to merit the protections of § 114 the title-holder must be a "good faith purchaser" and must not have actual knowledge of the claimed unregistered interest. *Commonwealth Electric Company v. MacCardell*, 450 Mass. 48, 51 (2007), citing *Calci v. Reitano*, 66 Mass. App. Ct. 245, 249 (2006). Furthermore, a certificate holder will not be deemed a "good faith purchaser" if inspection of the information contained on certificates in the registered property's chain of title, including other certificates of title, documents or plans which are referenced on existing certificates of title for the land, conducted prior to submitting her deed for registration, would have revealed a prior interest or encumbrance. *Jackson v. Knott*, 418 Mass. 704, 711 (1994); See also, *Colony of Wellfleet*,

Inc. v. Harris, 71 Mass. App. Ct. 522, 526 (2008) (defendant was not a purchaser in good faith where she had constructive notice that the seller's express corporate authority to sell the property had lapsed at the time of sale by virtue of the details listed in detail on the face of the certificate of title concerning that corporate authority).

Here, the Figueiredo Deed expressly states that the land described is shown as Lots 1 *and* 2 on Plan 2508B. Comparing the Figueiredo Deed to the Pinedas' Certificate of Title, which certifies title to Lot 1 *and* Lot 2, Figueiredo could reasonably conclude that her deed was intended to convey title to both lots, despite the inconsistent bounding description. And Figueiredo's review of the certificates of title, documents, and plans in the registration system would have shown that, based upon deeds using the same property description as used in her own deed, the Raposos' Certificate of Title for both Lots 1 and 2 was cancelled, a Transfer Certificate for Lots 1 and 2 was issued to DiCarlo, and a Transfer Certificate for both Lots was issued to the Pinedas. She also would have seen that both Lots 1 and 2 are shown on Plan 2508B (as stated in her Deed), and that there is no record of any separate certificate having been issued for Lot 2 to the Raposos or any other party. Further, there would have been no record in the registration system of either the recorded 1986 Deed or the unrecorded 2002 Alvarez Deed. And, since it is settled law that a purchaser of registered land is "obligated to review only documentation within the registration system," *Calci*, 66 Mass. App. Ct. at 249, citing *Knott*, 418 Mass. at 711, Figueiredo is not charged with constructive knowledge of either of those unregistered deeds. Nor is there anything in the summary judgment record to suggest that Figueiredo had actual knowledge of either the 1986 Deed or the Alvarez Deed.¹⁹

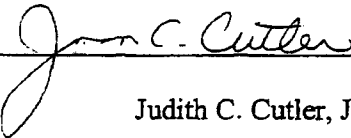
Thus, based upon the documentation available in the registration system pertaining to Lots 1 and 2 at the time she submitted her deed for registration, Figueiredo would have been entitled to conclude that the Pinedas held certified title to Lot 1 *and* Lot 2, free from any interest held by either of the

¹⁹ "Essentially, the standard for determining actual knowledge is whether there is '[i]ntelligible information of a fact, either verbally or in writing,' or in documentation that can be registered or not." *MacCardell*, 450 Mass. at 52, citing *Emmons v. White*, 58 Mass. App. Ct. 54, 65 (2003), quoting *George v. Kent*, 7 Allen 16, 18 (1863).

predecessor owners, DiCarlo and the Raposos. Further, Alvarez does not contest Figueiredo's status as a "purchaser for value." Accordingly, I find and rule that Figueiredo is a holder of a certificate of title purchased for value and in good faith. As a matter of law, therefore, her certificate of title is not subject to amendment by this court under G.L. c. 185, § 14 without her written consent.²⁰

CONCLUSION

Based on the foregoing, summary judgment shall enter in favor of Figueiredo, dismissing the Alvarez S-Petition.



Judith C. Cutler, Justice

Dated: March 26, 2013

²⁰ Since the issues in this action have been resolved in favor of Figueiredo, I do not reach Figueiredo's laches defense.