

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:)	
)	
ROBIN POE AND DENISE POE,)	CASE NO. 01-14918-WSS
)	
Debtors.)	Chapter 7
)	
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ROBIN POE, DENISE POE and)	
THEODORE L. HALL, as Trustee of the)	
Bankruptcy Estate of ROBIN POE and)	
DENISE POE,)	
)	
Plaintiffs,)	
)	
v.)	ADV. PROC. NO. 07-01036
)	
COMMONWEALTH LAND TITLE)	
INSURANCE COMPANY AND UNION)	
PLANTERS BANK, NATIONAL)	
ASSOCIATION,)	
)	
Defendants.)	

ORDER AND JUDGMENT

This matter came before the Court on the motion for summary judgment filed by Commonwealth Land Title Insurance Corporation (“Commonwealth”). The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b) (2). The Court has, by prior Order (Doc. 9) denying Plaintiffs’ motion to remand, determined that the case was properly removed from state court pursuant to 28 U.S.C. §

1452. Having considered the evidence, pleadings, and submissions of counsel, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

This is the latest of a series of cases that have related in one way or another to a one-acre tract of property located in Baldwin County, Alabama. The Court will set out only the facts that are material to the pending motion by Commonwealth.¹

The Debtors, Robin and Denise Poe, filed their chapter 7 petition on September 28, 2001. On that same date, Commonwealth filed an adversary proceeding styled *Commonwealth Land Title Insurance Company v. Robin Poe, et al*, Adv. Proc. No. 01-01199 (the “Redemption Action”), requesting a declaratory judgment to determine Commonwealth’s right to redeem a one-acre piece of property located in Baldwin County, Alabama and the redemption price. In its Complaint in the Redemption Action, Commonwealth alleged that the one-acre tract had been sold at foreclosure, and Commonwealth had acquired the Alabama statutory right of redemption originally conferred on Clell and Krystine Hobson, the mortgage debtors.

At the time that Commonwealth commenced the Redemption Action, the pertinent record title to the property was as follows (with all recording references being to the Baldwin County Probate Records):

-- Warranty deed, describing the one-acre tract, from Sidney and Doris Dorgan to Clell and Krystine Hobson, dated May 18, 1995 and recorded in Real Property Book 629,

¹ For a full recitation of the pertinent facts of the prior litigation, see the Court’s opinion dated July 10, 2003 in Adv. Proc. No. 01-01199.

page 1972.

-- Mortgage, describing the one-acre tract, from Clell Hobson and Krystine Hobson to Long Beach Mortgage Company, dated October 16, 1997 and recorded in Real Property Book 785, page 86. This mortgage was later assigned to First Union National Bank.

-- Following the subdivision of the one-acre tract into two parcels, warranty deed, describing Parcel 1, from Clell Hobson and Krystine Hobson to Dale Zuehlke, dated January 7, 2000 and recorded as Instrument 528245.²

-- Foreclosure deed, describing the one-acre tract, from Clell Hobson and Krystine Hobson to First Union National Bank, dated November 28, 2000 and recorded as Instrument 572677.

-- Special warranty deed, describing the one-acre tract, from Ocwen Federal Bank, FSB, to Robin Poe, dated March 20, 2001 and recorded as Instrument 592872 (the "Ocwen deed").

-- Mortgage from Robin and Denise Poe to Union Planters Bank, describing the one-acre tract, and dated April 9, 2001 recorded as Instrument 592873.

In their Answer to Commonwealth's Complaint in the Redemption Action, the Poes stated as an affirmative defense: "Plaintiff cannot recover as it has failed to follow the statutory scheme for obtaining, executing or redeeming a right of redemption."³

Commonwealth filed a motion for summary judgment in Adv. Proc. No. 01-01199. The Court granted that motion on July 10, 2003, finding that Commonwealth had a valid

² Concurrently with this transaction, Parcel 1 was released from the Hobson mortgage to Long Beach Mortgage Company, but the release document was not recorded until April 21, 2001.

³ Doc. 20 in Adv. Proc. 01-01199 at Sixth Affirmative Defense.

right of redemption regarding the one-acre tract and had properly exercised that right. The Court's findings of fact included the following passage: "Although there is no conveyance of record from First Union National Bank, the purchaser at foreclosure, to Ocwen Federal Bank, FSB, the parties agree that Ocwen is the servicing agent of First Union for disposition of foreclosed properties, hence the gap in the record title between First Union and Ocwen is a formal matter not material to this action." The Court's amended order and judgment of March 24, 2004 set the redemption price, ordered Union Planters to cancel its note and mortgage related to the property, and directed all other defendants to execute a statutory warranty deed conveying the one-acre tract to Commonwealth.

The Poes appealed the amended order and judgment to the U.S. District Court for the Southern District of Alabama (the "District Court"), which affirmed in part and reversed in part this Court's order, finding that Commonwealth was entitled to redeem only Parcel 2. Commonwealth then appealed the District Court's order to the Eleventh Circuit Court of Appeals, which reversed the District Court's order and remanded, holding that Commonwealth was entitled to redeem the entire one-acre tract. On April 10, 2007, the District Court in turn remanded the case to this Court for proceedings necessary to reinstate the amended order and judgment of March 24, 2004.

Shortly before the Redemption Action was remanded to this Court, Robin Poe obtained the following instrument from Wachovia Bank, N.A., successor to First Union

National Bank:

-- Correction special warranty deed, describing only Parcel 2, from Wachovia Bank, N.A., f/k/a First Union National Bank to Robin Poe, dated April 3, 2007 and recorded as Instrument 1041950. This deed (the "Wachovia deed") recites that it is given "to correct the grantor and the legal description" in the deed from Ocwen Federal Savings Bank, FSB.

On April 13, 2007, the instant quiet title action was filed in the Circuit Court of Baldwin County as Civil Action No. CV-2007-260. From the complaint it appears that Robin and Denise Poe, along with the Trustee, seek to quiet title to Parcel 2 only, as against Commonwealth and Union Planters Bank. "Parcel 2" is legally described as follows:

From the iron pipe corner marker at the Southeast corner of the North Half of the Northeast Quarter of the Southwest Quarter of Section 19, Township 6 South, Range 2 East, run West 255.3 feet; thence run North 206.5 feet to the Northeast corner of a 2-acre lot sold to Littleton by Nelson; thence run West along Littleton's North line, which is the South line of a 60-foot wide deeded public road, a distance of 140 feet; thence run North 60 feet to a point on the North side of said deeded road, for a POINT OF BEGINNING. From said Point of Beginning, run West 168 feet; thence run North 160.6 feet; thence run N 73° 17' E, 195.9 feet; thence run South 16° 43' E, 141.6 feet to a point situated North 63.2 feet and N 73° 17' E, 63.2 feet, from the Point of Beginning; from said point run Southwestwardly along a curve to the right having a radius of 63.2 feet, a distance of 117.7 feet to the Point of Beginning. Lot contains 1.0 acre, more or less, and lies in the N 2 of the NE 1/4 of the SW 1/4 of Section 19, Township 6 South, Range 2 East, Baldwin County, Alabama.

LESS AND EXCEPT the following described property:

From an iron pipe corner marker at the Southeast corner of the North half of the Northeast Quarter of the Southwest Quarter of Section 19, Township 6 South, Range 2 East, run West 255.3 feet; thence run North 206.5 feet to the Northeast corner of a 2-acre lot sold to Littleton by Nelson; thence run West along Littleton=s North line which is the South line of a 60 foot wide deeded public road, a distance of 140 feet; thence run North 60 feet to a point on the North side of said deeded road, for a point of beginning; from said point of beginning, run South 89 degrees 59 minutes 21 seconds West, 28.2 feet to a point; thence run North 02 degrees 28 minutes 40 seconds East, 86.2 feet to a point; thence run North 16 degrees 43 minutes 00 seconds West, 112.61 feet to a point; thence run North 73 degrees 17 minutes 00 seconds East, 80.0 feet to a point on the West right of way line of Liberty Street; thence run South 16 degrees 43 minutes 00 seconds East along said right of way line, 141.6 feet to a point situated North 63.2 feet and North 73 degrees 17 minutes 00 seconds East, 63.2 feet from the point of beginning; from said point run Southwestwardly along a curve to the right having a radius of 63.2 feet, a distance of 117.7 feet to the point of beginning. Lot lies in the North 2 of the Northeast Quarter of the Southwest Quarter of Section 19, Township 6 South, Range 2 East, Baldwin County, Alabama.

On May 14, 2007, this Court entered an order in the Redemption Action compelling the Poes and the Chapter 7 Trustee to execute and deliver a statutory warranty deed conveying the one-acre tract to Commonwealth. That deed has been executed and recorded:

-- Statutory warranty deed, describing the one-acre tract, from Robin and Denise Poe and Theodore Hall, as Trustee of the Bankruptcy Estate to Commonwealth, dated in May, 2007 and recorded as Instrument 1059925.

By another order in the Redemption Action, this Court on May 21, 2007 instructed the Clerk of the Court to disburse part of the redemption funds paid by Commonwealth to Union Planters in satisfaction of the Poes' mortgage to Union Planters. That is now

evidenced by the following:

-- Discharge of mortgage by Regions Bank, successor by merger with Union Planters Bank, National Association, reciting that the mortgage recorded as Instrument 592873 has been paid, satisfied, and discharged; this release is dated June 13, 2007 and recorded as Instrument 1056982.

This latest quiet title case was removed by Commonwealth from state court to this Court on May 30, 2007. Plaintiffs filed a motion to remand, which the Court has denied.

In this quiet title action Plaintiffs claim a title superior to that of Commonwealth under (in the alternative) both the Ocwen and Wachovia deeds. Commonwealth answers that it has redeemed the property at issue from foreclosure and therefore owns it; Commonwealth also pleads the affirmative defense of *res judicata*, alleging that Plaintiffs' present claims are barred by the prior judgment in the Redemption Action.

CONCLUSIONS OF LAW

Summary judgment is proper when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. Pro. 56(c); *Irby v. Bittick*, 44 F.3d 949 (11th Cir. 1995). The Court must examine the substantive law at issue to determine which facts are material and resolve all reasonable doubts as to the facts in favor of the non-movant. *Irby*, 44 F.3d at 953 (citing *Mulhall v. Advance SEC, Inc.*, 19 F.3d 586, 589-90 (11th Cir. 1994) *cert. denied*, 130 L.Ed.2d 212 (1994); *Browning v. Peyton*, 918 F.2d 1516, 1520 (11th Cir. 1990)).

As a preliminary consideration, the Court is aware that Union Planters Bank is named as a defendant in the instant case yet has never been served with process nor has it appeared of record. But as evidenced by the Discharge of Mortgage executed by Regions Bank as successor to Unions Planters, Union Planters Bank has released its mortgage lien upon receipt of its portion of the redemption proceeds. As it is apparent that Union Planters has no further claim upon Parcel 2, this case may proceed to a conclusion without it.

As set out in the statement of facts, Plaintiffs assert alternative title claims based first on the Ocwen deed, and alternatively on the deed from Wachovia. The Court will consider the impact of these two deeds separately.

Of course, the Ocwen deed comprises the last link in the chain of title into Robin Poe from which Commonwealth was allowed to redeem in the Redemption Action. On appeal, the Eleventh Circuit Court of Appeals observed as much: “The Poes ... own title derives only from the foreclosure sale.” *In re Poe*, 477 F.3d 1317, 1323 (11th Cir. 2007). For that reason alone under state redemption law, Robin and Denise Poe could not question Commonwealth’s right to redeem, and accordingly, ought not now impugn Commonwealth’s redemption title. 477 F.3d at 1324. But this Court need not again decide whether the Ocwen deed can support a claim by Plaintiffs, because it has already traveled that road.

Application of the claim preclusion aspect of *res judicata* requires the

following: (1) a prior judgment from a court of competent jurisdiction, (2) on the merits, (3) involving substantially identical parties to both suits, and (4) involving the same cause of action in both the prior and current suits. *Adams v. Southern Farm Bureau Life Ins. Co.*, 493 F.3d 1276, 1289 (11th Cir. 2007) (citing *Twigg v. Sears & Roebuck & Co.*, 153 F.3d 1222, 1225 (11th Cir. 1998)).

When these required elements are met, “ ‘the judgment or decree upon the merits in the first case is an absolute bar to the subsequent action or suit between the same parties...not only in respect of every matter which was actually offered and received to sustain the demand, but also as to every [claim] which might have been presented.’ ” *In re Coleman*, 2007 WL 1526651, *8 (Bkrtcy. N.D.Ala. May 24, 2007) (quoting *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316, 319 (1927) and citing *Eastman Kodak Co. v. Atlanta Retail, Inc. (In re Atlanta Retail, Inc.)*, 456 F.3d 1277, 1284-85 (11th Cir. 2006), *cert. denied*, 127 S. Ct. 836 (2006); *Universal Am. Mtg Co. v. Bateman (In re Bateman)*, 331 F.3d 821, 830 (11th Cir. 2003)).

One of the findings that supported the judgment in the Redemption Action was based on a stipulation or agreement of the parties, i.e., that the gap in title between First Union and Ocwen was not material to the issues affecting Commonwealth’s right to redeem. In *Baptiste v. Commissioner of Internal Revenue*, 29 F.3d 1533 (11th Cir. 1994) the Eleventh Circuit found that a prior tax court ruling, although based on an agreement between the parties as opposed to a finding at trial on the merits, was a final judgment for

purposes of *res judicata*. *Id.* at 1539-40. The tax court decision was a final judgment on the merits despite its stipulated nature. *Id.* at 1540; *see also Kairys v. Immigration and Naturalization Serv.*, 981 F.2d 937, 941 (7th Cir. 1992) (acknowledging that “factual determinations made by a judge or jury in a case that is actually litigated are not deprived of collateral estoppel effect merely because the determinations rest in part on admissions or stipulations” and citing 1B James William Moore, Jo Desha Lucas & Thomas S. Currier, *Moore’s Federal Practice* ¶ 0.444[4], at p. 817 (1992)). Therefore, the Eleventh Circuit opined, the tax court’s use of *res judicata* to bind Mr. Baptiste to its prior order was proper. *Id.* at 1541.

In the prior Redemption Action the Poes challenged Commonwealth’s statutory right of redemption and asserted as an affirmative defense that Commonwealth had failed to properly exercise that right. This Court considered the pleadings of the parties, addressing that issue and determining that Commonwealth did in fact have a right to redeem. Moreover, in its further Order in the Redemption Action, dated May 14, 2007, this Court again ordered the Poes and the Trustee to execute and deliver a statutory warranty deed to Commonwealth, which they have done.

Here, every element of claim preclusion is satisfied. This Court has rendered a prior final decision and is a court of competent jurisdiction. This matter involves all of the same parties as were involved in the previous case, namely Robin and Denise Poe and Trustee Ted Hall, as Plaintiffs, and Commonwealth and Union Planters Bank, as

Defendants. Moreover, in the current quiet title action, Plaintiffs are advancing essentially the same claims litigated in the earlier proceeding before this Court, i.e., whether Commonwealth had a valid right of redemption, and whether it properly exercised that right. There is no way for the Court to reconcile the proceedings in the Redemption Action with any presently-viable claim by Plaintiffs under the Ocwen deed. Accordingly, Plaintiffs' claim to a superior title that derives from the Ocwen deed is unquestionably barred.

Plaintiffs' second basis for their claim to a title superior to that of Commonwealth is founded in the Wachovia deed. As set out in the above statement of facts, the parties to the Redemption Action knew there was a gap in the chain of title between Ocwen and First Union (now Wachovia). Robin Poe has in April, 2007 obtained a "correction deed" to Parcel 2 from the successor to the record titleholder (First Union National Bank), and Plaintiffs now suggest Commonwealth's exercise of its redemption rights was somehow improper or invalid based on the record title, or that Plaintiffs otherwise have a superior title as a consequence of the deed from Wachovia. Yet this argument again overlooks this Court's previous determination, based on the parties' stipulation in the Redemption Action, that any such gap in the chain of title was immaterial to Commonwealth's right of redemption; and Commonwealth has prevailed in the Redemption Action both in the trial court and on appeal. Hence *res judicata* considerations also apply to bar Plaintiffs' title claim as predicated on the Wachovia correction deed.

But there is another, if ancillary, reason why Plaintiffs cannot prevail under the Wachovia deed. Where a grantor conveys land to which he has no right, with a warranty of title, and then afterward acquires a good title, that good title automatically passes to the grantee as if the grantor had good title at the time of conveyance. *Turner v. Lassiter*, 484 So. 2d 378, 380 (Ala. 1986) (citing *Porter v. Henderson*, 203 Ala. 312, 82 So. 668 (1919); *Floyd v. Andress*, 246 Ala. 301, 20 So.2d 331 (1944)). This concept is known as the “doctrine of after-acquired title.”

This Court’s judgment in the Redemption Action pre-dates the Wachovia deed, but specifically required delivery of a statutory warranty deed to Commonwealth; such a deed has been executed and delivered in satisfaction of that judicial requirement. A statutory warranty deed warrants the title as to claims against the grantor and conveys an after-acquired title. *State v. Mobile & O.R. Co.*, 201 Ala. 271, 78 So. 47 (1918). The Court’s judgment in the Redemption Action, which specified a conveyance with statutory warranties, contemplated that any after-acquired title of the Poes or the Trustee would vest in Commonwealth. As a result and as a matter of law, whatever title Robin Poe has obtained under the deed from Wachovia inures to the benefit of Commonwealth, and cannot be used by Plaintiffs to support an adverse claim. The Alabama Supreme Court has observed this concept “is based upon principles of the highest morality.” 78 So. at 49. For this additional reason, Commonwealth holds a title superior to that of Plaintiffs, notwithstanding the deed from Wachovia to Poe.

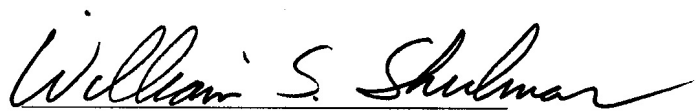
ORDER AND JUDGMENT

The Court finds that there is no genuine issue of material fact, and that Commonwealth is entitled to judgment as a matter of law with respect to Plaintiffs' cause of action herein. It is therefore

ORDERED that the motion for summary judgment by Commonwealth be, and hereby is, GRANTED. The Court further ORDERS, ADJUDGES AND DECREES AS FOLLOWS:

1. Plaintiffs shall have and recover nothing;
2. The Court finds for Commonwealth on all the issues between the parties, and declares and determines that title to Parcel 2, as more specifically described above, is quieted in favor of Commonwealth as against all Plaintiffs;
2. The claims against Union Planters Bank are dismissed as moot; and
3. This judgment disposes of all claims in the Adversary Proceeding and no other relief is granted to any party; the parties shall bear their own costs.

Dated: September 27, 2007

A handwritten signature in black ink, reading "William S. Shulman". The signature is fluid and cursive, with a horizontal line drawn underneath the name.

WILLIAM S. SHULMAN
CHIEF U.S. BANKRUPTCY JUDGE