

SANDRA KURT
IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO
2016 JUL -5 PM 2:31

STATE OF OHIO EX REL. MICHAEL DEWINE, ATTORNEY GENERAL)	CASE NO.: CV2014-10-4644
)	JUDGE PAUL J. GALLAGHER
Plaintiff,)	
)	
vs.)	
)	
JOEL HELMS, et al.,)	<u>JUDGMENT ENTRY</u>
)	
Defendants.)	

This matter is before the Court upon Plaintiff State of Ohio ex rel. Michael DeWine's and Defendant City of Green's Motion for Summary Judgment. Defendant Joel Helms has responded in opposition.

FACTUAL & PROCEDURAL HISTORY

Defendants Joel Helms and the Estates of James J. Helms and Mildred A. Helms (collectively, "the Helms Defendants") own real property located at 5001 Massillon Rd., North Canton, Ohio, known as the Countryview South Apartments. In 2008, the State of Ohio obtained a Certificate of Judgment against Defendants (*State of Ohio ex rel. Nancy Rogers v. Joel Helms, dba Countryview South Apartments, et al.* Summit County Court of Common Pleas Case No.: CV2007-07-4998).

On October 10, 2014, the State of Ohio filed the above-captioned case to foreclose upon the real property pursuant to its Certificate of Judgment. The State of Ohio asks for a declaration that its Certificate of Judgment is a valid lien on the property; that the Certificate be foreclosed; that all liens be marshaled; that the property be sold free and clear of all claims and interest of Defendants; that the proceeds of the sale be applied to the payment of the Certificate of Judgment in the order of priority; and that the State recover its costs and be awarded any and all legal and/or equitable relief to which it may be entitled. The State of Ohio's Complaint named other defendants who may have an interest in the property at issue, including the City of Green. Defendant the City of Green answered and stated it has a valid lien on the property filed on August 15, 2011 (JL2011-6431). The City of Green also requested a foreclosure of its lien, marshalling of all liens, and sale of the property.

Defendant Joel Helms, *pro se*, filed an Answer and Counterclaim. Mr. Helms admitted the State had a Certificate of Judgment but denied the validity of the Certificate of Judgment. Defendants Estate of James J. Helms and Mildred A. Helms moved to dismiss the case as barred by the statute of limitations under R.C. 2117.906. The Court overruled the Motion to Dismiss.

Defendant Helms, *pro se*, served Requests for Admissions on the State of Ohio. The Requests sought certain admissions concerning the underlying action in which the Certificate of Judgment had issued (Case No: CV2007-07-4993). The issues raised in the Requests were matters and issues that were either raised and determined, or not raised and thereby waived in the underlying action. The State of Ohio moved for a Protective Order to prevent the rehashing of such issues and to prevent otherwise irrelevant discovery in this foreclosure action. The Court granted the State of Ohio's Motion for Protective Order.

On December 17, 2015, the State of Ohio moved for Summary Judgment of the foreclosure action. The City of Green joined in the State of Ohio's Motion for Summary Judgment.

Defendant Helms obtained counsel and moved to amend his answer and counterclaim. Leave to amend was granted over the State of Ohio's objection and the summary judgment proceedings were held in abeyance.

Defendant Helms' Amended Answer set forth a counterclaim for Declaratory Judgment and Injunctive Relief. Defendant Helms asserts the underlying Certificate of Judgment was rendered invalid by a December 1, 2008 amendment to the Ohio Constitution in Section 19b of Article I, providing a private property owner has the right to the reasonable use of groundwater underlying his or her property. Defendant Helms claimed that the effect of the Constitutional amendment had not been determined in the underlying action (Case No. CV2007-07-4993) so his rights and responsibilities under the 2008 amendment present a legitimate controversy. Defendant Helms also seeks to enjoin the State of Ohio from illegally interfering with his rights to use his property's groundwater by foreclosing on his property with an invalid lien.

On February 5, 2016, Defendant Helms filed a memorandum in opposition to the pending Motions for Summary Judgment. Defendant Helms asserted the State of Ohio did not execute on the judgment in the time permitted by R.C. 2329.02; and, that the amendment to Section 19b of Article I changed the law in Ohio regarding the use of groundwater on private property invalidating the underlying judgment.

The State of Ohio responded that Defendant Helms' arguments under R.C. 2329.02 lacked merit, and that his arguments concerning the 2008 amendment to the Ohio Constitution were already considered and rejected by the Ninth District Court of Appeals.

On May 5, 2016, this Court conducted a status conference with counsel for the parties. During the status conference, the Court quashed Defendant Helms' additional proposed discovery efforts (for again attempting to re-litigate irrelevant issues in these proceedings).¹

On May 13, 2016, the State of Ohio renewed its original Motion for Summary Judgment and filed a Memorandum to establish that Defendant Helms' counterclaims are barred by the doctrine of res judicata. The State attached an Order from Judge Robert Gippin in Summit County Court of Common Pleas Case No. CV2007-07-4993 resolving Motions for New Trial and/or to Vacate Judgment, and; February 9, 2011 decision from the Ninth District Court of Appeals in *State v. Helms*, 9th Dist. Summit App. No. 24754.

On May 27, 2016, Defendant Helms responded in opposition attaching his own affidavit in support and copies of certain post-trial filings from Case No. CV2007-07-4993.

The State of Ohio and the City of Green were granted leave to authenticate their evidence in support of their arguments that the doctrine of res judicata bars Defendant Helms' counterclaims.

LAW & ANALYSIS

Standard of Review – Summary Judgment

Civ.R. 56(C) provides that summary judgment may be granted only when a court is satisfied that there is no genuine issue as to any material facts, that the moving party is entitled to judgment as a matter of law, and that reasonable minds can come to one conclusion that, even viewing the evidence most strongly in favor of the non-moving party, is adverse to the non-moving party. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). The substantive law involved controls which facts are considered material; those factual disputes that have the potential to affect the outcome of the lawsuit are material and would preclude summary judgment, while factual disputes that cannot affect the outcome are determined irrelevant and will not affect summary judgment. *Orndorff v. Aldi, Inc.*, 115 Ohio App.3d 632, 635, 685 N.E.2d 1298, appeal not allowed 78 Ohio St.3d 1429, 676 N.E.2d 534 (1997), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505 (1986).

¹ Defendant Helms filed a Motion to Reconsider the Court's Oral Rulings Quashing Discovery. The Motion to Reconsider is overruled.

The Ohio Supreme Court has explained the burden allocation involved for moving and non-moving parties:

[A] party seeking summary judgment, on the ground that the non-moving party cannot prove its case, bears the burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the non-moving parties claims. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the non-moving party has no evidence to prove its case. Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) which affirmatively demonstrates that the non-moving party has no evidence to support the non-moving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. However, if the moving party has satisfied its burden, the non-moving party then has the reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing there is a genuine issue for trial and, if the non-movant does not so respond, summary judgment, if appropriate, shall be entered against the non-moving party. *Dresher, supra*, at 293.

City of Elyria v. Elbert, 143 Ohio App.3d 530, 532-33, 758 N.E.2d 689 (9th Dist. 2001).

R.C. 2329.02

Defendant Helms asserts the State of Ohio's Judgment Lien from case no.: CV2007-07-4993 became dormant on December 11, 2013, pursuant to R.C. 2329.02. Defendant Helms does acknowledge when a judgment is in favor of the State there is a broader timeframe for execution under R.C. 2329.07. However, Defendant Helms asserts the judgment in this case is held by the attorney general (a State agency) and not the State itself. Thus, Defendant Helms states the applicable limitations period remains R.C. 2329.02.

The State of Ohio demonstrated that Defendant Helms' interpretation of the phrases "state agency" and "State of Ohio" are misguided. The State of Ohio's Judgment Lien is in the name of "State of Ohio ex rel. Nancy Rogers" which is an abbreviation meaning 'upon relation or information.' Thus, it cannot be reasonably disputed that the lien in this case is "in the name and on behalf of" the State of Ohio.

Accordingly, the Court finds the State of Ohio holds the Certificate of Judgment in this case and the State is afforded a broader time frame for execution under R.C. 2329.07. Defendant Helms' argument that the lien at issue is dormant pursuant to R.C. 2329.02 is without merit.

Amendment to Section 19b of the Ohio Constitution, effective December 1, 2008

Defendant Helms states the amendment to Section 19b of the Ohio Constitution renders this foreclosure action moot. Defendant Helms states the trial court in Case No.: CV2007-07-4993 did not consider the impact of the constitutional amendment on the rights and responsibilities of the various parties.

The State of Ohio asserts the challenge to the validity of its Judgment Lien is barred by the doctrine of res judicata.

The doctrine of res judicata holds that “a final judgment or decree rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction * * * is a complete bar to any subsequent action on the same claim or cause of action between the parties or those in privity with them.” *Grava v. Parkman Township*, 73 Ohio St.3d 379, 381, 653 N.E.2d 226 (1995).

The State of Ohio’s Motion for Summary Judgment and authenticated evidence demonstrates that the original trial court (Case No. CV2007-07-4993) addressed Defendant Helms’ argument concerning the constitutional amendment. Specifically, the court held that the constitutional amendment “did not disturb the right of the government to regulate ground water and non-navigable waters under or flowing through privately owned land.” January 12, 2009 Entry & Order denying Defendant Helms’ Motion to Vacate. Further, the Ninth District Court of Appeals addressed this issue and also rejected it:

It is doubtful that the amendment touched the Helms’ wetlands. Although the wetlands may be fed by ground water, they are not groundwater themselves. * * * Even if the amendment recognizes the Helms’ property rights in the wetlands, including their right to make reasonable use of them, we conclude that it does not give the Helms’ the right to pollute the wetlands with improperly treated sewage. The Helms’ third assignment of error is overruled.

State v. Helms, 192 Ohio App.3d 426, 435, 2011 Ohio 569, 949 N.E.2d 522 (9th Dist).

Having considered the State of Ohio’s and City of Green’s Motions for Summary Judgment, and the opposition materials filed by Defendant Helms, there are no genuine issues of material fact and the Plaintiff State of Ohio and Defendant City of Green are entitled to judgment as a matter of law for foreclosure of their liens.

By virtue of the Certificate of Judgment, and as shown in the Preliminary Judicial Report, the State of Ohio has a valid lien on the property of the Helms Defendants in the amount of \$500,000.00 plus interest pursuant to R.C. 1343.03.

By virtue of another Certificate of Judgment the City of Green has a valid lien on the property of the Helms Defendants filed on August 15, 2011.

The Ohio Department of Taxation and the Ohio Department of Jobs and Family Services have had their liens satisfied.

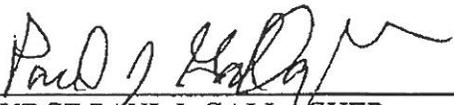
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that summary judgment is entered in favor of the State of Ohio and the City of Green against the Helms Defendants.

IT IS ORDERED that the Defendant City of Green has a valid Judgment Lien against the Helms Defendants in the amount of \$15,000.

IT IS ORDERED that the State of Ohio shall recover from the Helms Defendants the principal sum of \$500,000 plus interest pursuant to its Certificate of Judgment.

IT IS ORDERED that, unless the Helms Defendants, within five days of the entry of this judgment, pay or cause to be paid to the State of Ohio (or the City of Green) the sums found above to be due to the State of Ohio (and the City of Green), together with interest, and to the Clerk of Court the costs of this action, the equity of redemption of the Helms Defendants, and all persons claiming through the Helms Defendants, shall be foreclosed. Further, an Order of Sale shall be issued for the property directing the Sheriff of Summit County, Ohio, to appraise, advertise and sell the property, as upon execution, free of all claims and interests of any and all Defendants in this action, and to report this proceeding to the Court for further order.

IT IS SO ORDERED.



JUDGE PAUL J. GALLAGHER

cc: Assistant Attorney General Michael E. Idzkowski
Attorney Steven Pruneski
Attorney David Weimer
Attorney Melanie Cornelius
Attorney Alan Medvick