

Property owner prevails in St. Mary's fraudulent conveyance case

BY HEATHER COBUN

A Washington, D.C. man can keep a St. Mary's County home he purchased in 2014 after a judge found he had no knowledge that the transaction was made by a seller who was under court order not to sell or transfer property.

Matthew Ashburn purchased the Scotland property from a friend, Timothy Day, in the fall of 2014 for \$89,000 but was unaware of Day's legal woes, including a preliminary federal injunction prohibiting him from transferring any of his property.

Ashburn and Quicken Loans, his mortgage provider, were sued by District Title, a real estate settlement company, after it was discovered Day had sold the property. District Title had initiated several actions against Day related to the concealment of money mistakenly deposited into his mother's bank account then transferred to him, according to Martin H. Schreiber, a Baltimore solo practitioner who represented Quicken Loans in the St. Mary's dispute.

St. Mary's Circuit Court Judge Karen H. Abrams ruled in favor of Ashburn and Quicken Title on a motion for judgment last week after a three-day trial, according to Schreiber. Ashburn testified as an adverse witness as part of the plaintiff's case and Abrams found no evidence he or his mortgage provider knew of the fraud.

The circumstances surrounding the transaction appeared suspicious, according to Schreiber.

"It was not until I heard Ashburn's story in person that I realized he was telling the truth," he said.

District Title was represented by David Cox and Brian Thompson of Jackson & Campbell PC in D.C., who did not respond to requests for comment.

To Ashburn, the home had been on the market a long time when Day offered to sell it to him. The house needed repairs, and Ashburn negotiated a price that was well below what District Title's appraisers thought it was worth.

DISTRICT TITLE V. TIMOTHY DAY ET AL.

Court:
ST. MARY'S COUNTY CIRCUIT

Case No.:
18C15000820

Judge:
KAREN H. ABRAMS

Proceeding:
COURT TRIAL

Outcome:
JUDGMENT FOR DEFENDANTS

Dates:
Incident:
NOVEMBER 2014

Suit filed:
NOV. 5, 2014

Verdict:
DEC. 14, 2016

Plaintiff's Attorneys:
DAVID COX AND BRIAN THOMPSON
OF JACKSON & CAMPBELL PC IN
WASHINGTON, D.C.

Defense Attorneys:
RICHARD E. CRAIG AND MEGAN
ROACH OF BRIGILIA HUNDLEY PC
IN FALLS CHURCH, VIRGINIA FOR
MATTHEW ASHBURN; MARTIN H.
SCHREIBER II OF LAW OFFICE OF
MARTIN H. SCHREIBER II, LLC IN
BALTIMORE, MARYLAND FOR
QUICKEN LOANS INC.

"Mr. Day was the bad guy in the case," said Richard E. Craig, a Virginia lawyer who represented Ashburn. His client "was your really prototypical good faith buyer for value."

Ashburn plans to keep the house and start making repairs he was hesitant to perform when the property was the subject of litigation, according to Craig, of Brigilia Hundley PC in Falls Church, who tried the case along with colleague Megan Roach.

"He's utterly thrilled," he said. "He's just very, very happy."

Schreiber said Quicken Loans was pleased to have their mortgagee's right to the property be affirmed.

Ashburn is "current on the mortgage, he's a great customer," Schreiber said.

Underlying litigation

District Title first filed suit against Day in Washington in September 2014 to get back nearly \$300,000 which was mistakenly paid to his mother when she sold the property in July, according to court filings. The proceeds from the sale were supposed to be divided between Day's mother and the outstanding mortgage on the property.

A judge granted a preliminary injunction to prevent Day and his mother from further dissipating their assets or transferring real

property, and District Title also filed complaints in Worcester and St. Mary's counties, where Day owned properties, according to court filings. But the lawsuit was not filed in St. Mary's until after Ashburn had contracted to purchase the house there and a title search had been run.

"Basically it was all a matter of notice with him and there was nothing in the plaintiff's case that ever indicated he had any notice," Craig said. "There was a lot of smoke but no fire."

Schreiber said he could understand why District Title believed Ashburn was involved in Day's fraud.

"You had to hear Ashburn tell the story to realize that though it looked fishy he is extremely honest and a good guy as well and that he had no idea what Day was up to," he said.

Day did not appear at the trial and his attorney in other legal proceedings could not be subpoenaed in time as an out of state witness, Schreiber said. Others have testified Day is in hospice care with terminal cancer.

Since the St. Mary's case was filed, District Title has either settled or obtained judgments in other litigation with Day, according to Schreiber.