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BANKRUPTCY - FLORIDA

In re BVM The Bridges LLC

United States Bankruptcy Court, M.D. Florida - December 16, 2022 - Slip Copy - 2022 WL 17730743

Plaintiff, Pallardy LLC ("Pallardy"), was the successful bidder at a prepetition tax deed sale of a parcel of property located in Hillsborough County, Florida ("Parcel 10"). BVM The Bridges LLC ("Debtor") is the former owner of Parcel 10; the Debtor operates an assisted living facility constructed on Parcel 10 and two adjacent parcels of property. CPIF Lending LLC ("CPIF") holds a mortgage on Parcel 10 and the two adjacent parcels.

The Debtor's acquisition of Parcels 10, 30, and 70 was funded through industrial revenue bonds. CPIF holds 100% of the bonds, and U.S. Bank is the bond trustee. As bond trustee, U.S. Bank is the named mortgagee on the mortgage encumbering Parcels 10, 30, and 70 (the "Mortgage").

U.S. Bank escrowed money to pay the insurance and property taxes for Parcels 10, 30, and 70. In 2017, the Debtor paid the property taxes with funds that were held in escrow by U.S. Bank. But, for reasons that are unclear, neither the Debtor nor U.S. Bank paid the 2018 real estate taxes for Parcels 10, 30, and 70 before they became delinquent on April 1, 2019.

On September 23, 2021, the Clerk of Court conducted a public tax deed auction. Pallardy was the successful bidder. And on September 24, 2021, the Clerk of Court issued a tax deed to Pallardy (the "Tax Deed").

Pallardy subsequently filed a state court lawsuit against the Debtor and CPIF to quiet title to Parcel 10, and CPIF counterclaimed for a declaration that Pallardy's tax deed was invalid. After the Debtor filed for Chapter 11 bankruptcy, Pallardy removed its quiet title action to the Bankruptcy Court.

In its summary judgment motion, Pallardy asked the Court to confirm the validity of its tax deed and to quiet title to Parcel 10 in Pallardy as a matter of law. CPIF and the Debtor opposed Pallardy's summary judgment motion, and in their own summary judgment motions, asked the Court to invalidate Pallardy's tax deed as a matter of law.

The Bankruptcy Court held that:

- The Tax Collector and Clerk of Court strictly complied with Chapter 197's notice provisions;
- The Clerk of Court properly mailed the Tax Deed Warning Notice to the Debtor;
- The Clerk of Court properly mailed the Tax Deed Warning Notice to U.S. Bank;
- The notice given by the Clerk of Court satisfied constitutional due process requirements;
- The Clerk of Court took additional reasonable steps to ensure notice;
- The Debtor had actual notice of the tax deed sale;
- U.S. Bank had actual notice of the tax deed sale;
- The Bankruptcy Court did not have the equitable power to invalidate the Tax Deed. "In essence, what CPIF asks is for this Court to create a new equitable ground for challenging a tax deed: the usage of Parcel 10 as an assisted living facility. But although the bankruptcy court is a court of

equity with broad remedial powers, its powers are not “unlimited.” And CPIF has not cited any legal authority for the proposition that a bankruptcy court—or any court for that matter—may use its equitable powers to invalidate a tax deed; and
- Even if the Bankruptcy Court had authority to invalidate the Tax Deed based on the use of Parcel 10, the equities did not warrant invalidating the Tax Deed.

The Court concluded that Pallardy met his burden on summary judgment to show that there was no genuine issue as to any material fact and that it was entitled to judgment as a matter of law, and that the Debtor and CPIF failed to meet their burdens.

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