

CAUSE NO. 2021-77947

BYRONICA CONLEY,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
vs.	§	
	§	152ND JUDICIAL DISTRICT
	§	
ALL ABOUT HOMES, LLC; FIRST	§	
AMERICAN NATIONAL, LLC; and	§	
STATEBRIDGE COMPANY, LLC,	§	OF HARRIS COUNTY, TEXAS
<i>Defendants.</i>	§	

ALL ABOUT HOMES, LLC’S AMENDED COUNTERCLAIMS AND CROSS CLAIMS

COMES NOW Defendant, All About Homes, LLC (“AAH”), and files this its First Amended Counter-Claims against Plaintiff, Byronica Conley (“Conley”), and First Amended Cross-Claims against First American National, LLC (“First American”), and would show the court:

I. INTRODUCTION

BYRONICA CONLEY is an individual residing in Harris County, Texas.

FIRST AMERICAN NATIONAL, LLC is a limited liability company doing business in Harris County, Texas.

On July 6, 2021, First American foreclosed on their junior lien that encumbered the homestead property (the “Property”) of the Plaintiff, Byronica Conley. At this sale, AAH purchased the Property for the highest bid of \$87,000. Exhibit 1 – Substitute Trustee’s Deed to AAH.

On November 30, 2021, Conley brought this suit against First American and AAH. Plaintiff claims that the foreclosure sale was invalid and that AAH's attempted evictions after the sale were unlawful.

On April 13, 2023, Plaintiff filed her First Amended Petition alleging for the first time that the foreclosure sale violated the statute of limitations to foreclose.

Conley has resisted AAH's attempts to evict her and she has continued to reside at the Property post-sale and has been the full beneficiary of its use, to AAH's exclusion.

II. AAH'S AMENDED CROSS CLAIMS AGAINST FIRST AMERICAN:

A. Breach of Warranty in Trustee's Deed

The Substitute Trustee's Deed states that the Property was "for amount of sale paid by buyer as consideration, grant[ed], [sold], and convey[ed] to Buyer. . . without any expressed or implied warranties, **except as to warranties of title** and hereby conveys the property to the purchaser[.]"

AAH asserts that the foreclosure sale was valid and that AAH is the rightful owner. However, if valid title to the Property did not pass to AAH in the Substitute Trustee's deed, then First American breached the warranty provided for in said deed. The breach has caused AAH damages in an amount to be proven at trial and within the jurisdiction limits of this court.

In addition to actual damages, AAH requests that the Court award special damages for the lost rents accruing from July 6, 2021, to the resolution of this dispute, in an amount to be proven at trial and within the jurisdiction limits of this court.

To the extent required, AAH pleads the discovery rule, which tolls the Texas statute of limitations applicable to this claim. Although AAH exercised reasonable diligence in attempting

to discover this claim, its legal injury was inherently un-discoverable due to First American's conduct, and application of the discovery rule would not disserve public policy.

B. Quantum Meruit

Quantum meruit is an equitable theory of recovery when there is an implied agreement between the parties. *Indus. III, Inc. v. Burns*, No. 14-13-00386-CV, 2014 WL 4202495, *5 (Tex. App.—Houston [14th Dist.] Aug. 26, 2014).

AAH provided funds to First American with the expectation to obtain valid title to the Property.

These funds were provided for First American, as it was First American's lien being foreclosed.

First American accepted these funds.

First American had a reasonable notice that AAH expected the foreclosure sale to be valid and for valid title to pass to AAH.

AAH asserts that the foreclosure sale was valid and that AAH is the rightful owner. However, if valid title to the Property did not pass to AAH in the Substitute Trustee's deed, then AAH requests it recover \$87,000 from First American.

To the extent required, AAH pleads the discovery rule, which tolls the Texas statute of limitations applicable to this claim. Although AAH exercised reasonable diligence in attempting to discover this claim, its legal injury was inherently un-discoverable due to First American's conduct, and application of the discovery rule would not disserve public policy.

C. Unjust Enrichment

Unjust enrichment is an implied contract claim based on the principle that one should make restitution when it would be unjust to retain benefits received. *Indus. III, Inc. v. Burns* at *5. "A

party may recover under an unjust enrichment theory when one person has obtained a benefit from another by fraud, duress, or the taking of an undue advantage.” *Reg'l Specialty Clinic, P.A. v. S.A. Randle & Assocs., P.C.*, 625 S.W.3d 895, 904 (Tex. App.—Houston [14th Dist.] 2021), *reh'g denied* (Aug. 3, 2021).

At the foreclosure auction, AAH made the highest bid for the Property in the amount of \$87,000. In exchange for this payment, AAH expected valid title to the Property to pass to them.

As mortgagee, First American was the party with authority and control to properly notice the Property for sale in accordance with Texas law and the relevant Deed of Trust.

AAH asserts that the foreclosure sale was valid and that AAH is the rightful owner. However, if valid title to the Property did not pass to AAH in the Substitute Trustee's deed, then First American would have received an improper benefit from AAH in the amount of the \$87,000 purchase price. This would provide an improper windfall to First American.

AAH therefore requests it recover \$87,000 for unjust enrichment.

To the extent required, AAH pleads the discovery rule, which tolls the Texas statute of limitations applicable to this claim. Although AAH exercised reasonable diligence in attempting to discover this claim, its legal injury was inherently un-discoverable due to First American's conduct, and application of the discovery rule would not disserve public policy.

D. Money Had and Received

Money had and received is an equitable doctrine applied to prevent unjust enrichment. *Merry Homes, Inc. v. Luc Dao*, 359 S.W.3d 881, 883 (Tex. App.—Houston [14th Dist.] 2012, no pet.).

AAH paid \$87,000 to First American with the expectation that valid title to the Property would pass to them at the foreclosure sale. Upon information and belief, First American currently holds this money.

AAH asserts that the foreclosure sale was valid and that AAH is the rightful owner. However, if valid title to the Property did not pass to AAH in the Substitute Trustee's deed, then that money belongs to AAH in equity and good conscience.

AAH therefore requests it recover \$87,000 from First American.

To the extent required, AAH pleads the discovery rule, which tolls the Texas statute of limitations applicable to this claim. Although AAH exercised reasonable diligence in attempting to discover this claim, its legal injury was inherently undiscoverable due to First American's conduct, and application of the discovery rule would not disserve public policy.

E. Common Law Fraud

AAH asserts that the foreclosure sale was valid and that AAH is the rightful owner. However, if valid title to the Property did not pass to AAH in the Substitute Trustee's deed, then AAH brings this cause of action against First American.

Representation: First American represented to AAH that they had the right and authority to foreclose on the Property on or about July 6, 2021.

Materiality: This representation was material as it pertained directly to First American's legal authority to sell the Property.

Falsity: The representation was false because the statute of limitations to foreclose on the Property had already expired prior to the date of foreclosure.

Knowledge or Recklessness: First American either knew this representation was false or recklessly disregarded its truth, as it had access to and responsibility for managing all pertinent legal and financial documents related to the Property.

Intent: First American made this representation with the intention that AAH would rely upon it to bid on and purchase the Property at the foreclosure auction.

Reliance: AAH relied on this false representation by bidding on and purchasing the Property.

Injury: As a result of relying on this false representation, AAH has suffered injuries, including but not limited to, financial losses and liabilities, in an amount to be proven at trial and within the jurisdiction limits of this court.

To the extent required, AAH pleads the discovery rule, which tolls the Texas statute of limitations applicable to this claim. Although AAH exercised reasonable diligence in attempting to discover this claim, its legal injury was inherently un-discoverable due to First American's conduct, and application of the discovery rule would not disserve public policy.

F. Statutory Fraud

AAH asserts that the foreclosure sale was valid and that AAH is the rightful owner. However, if valid title to the Property did not pass to AAH in the Substitute Trustee's deed, then AAH brings this cause of action against First American.

Transaction Involving Real Estate: The claim involves a transaction pertaining to the foreclosure and sale of real estate.

False Representation or Promise: During the transaction, First American made false representations concerning its legal authority to foreclose on the Property.

Purpose of Inducement: These false representations were made for the purpose of inducing AAH to enter into the contract through bidding at the auction.

Reliance: AAH relied on these false representations by purchasing the Property.

Injury: As a result of relying on the false representation, AAH has suffered injuries, including but not limited to, financial losses and liabilities, in an amount to be proven at trial and within the jurisdiction limits of this court.

To the extent required, AAH pleads the discovery rule, which tolls the Texas statute of limitations applicable to this claim. Although AAH exercised reasonable diligence in attempting to discover this claim, its legal injury was inherently un-discoverable due to First American's conduct, and application of the discovery rule would not disserve public policy.

G. Fraud by Nondisclosure

AAH asserts that the foreclosure sale was valid and that AAH is the rightful owner. However, if valid title to the Property did not pass to AAH in the Substitute Trustee's deed, then AAH brings this cause of action against First American.

Concealment of Facts: First American failed to disclose that the statute of limitations to foreclose on the Property had expired.

Duty to Disclose: First American had a duty to disclose this fact as it directly related to the legality of the foreclosure sale and their authority to sell the Property.

Materiality: The fact was material to the transaction.

Knowledge of Ignorance and Opportunity: First American knew or should have known that AAH was not aware of this fact and that AAH did not have an equal opportunity to discover this information.

Silence with Duty to Speak: First American was deliberately silent when it had a duty to disclose the expiration of the statute of limitations.

Intent to Induce: This nondisclosure was intended to induce AAH to purchase the Property.

Reliance: AAH relied on the absence of this disclosure in deciding to purchase the Property.

Injury: As a result of the reliance, AAH has suffered injuries, including but not limited to, financial losses and liabilities, in an amount to be proven at trial and within the jurisdiction limits of this court.

To the extent required, AAH pleads the discovery rule, which tolls the Texas statute of limitations applicable to this claim. Although AAH exercised reasonable diligence in attempting to discover this claim, its legal injury was inherently un-discoverable due to First American's conduct, and application of the discovery rule would not disserve public policy.

H. Negligent Misrepresentation

AAH asserts that the foreclosure sale was valid and that AAH is the rightful owner. However, if valid title to the Property did not pass to AAH in the Substitute Trustee's deed, then AAH brings this cause of action against First American.

Representation in Business: First American, in the course of its business, made representations regarding its legal authority to foreclose on the Property.

False Information: First American supplied false information to AAH regarding the status of the statute of limitations.

Lack of Reasonable Care: First American did not exercise reasonable care or competence in obtaining or communicating this information.

Justifiable Reliance: AAH justifiably relied on this information when deciding to purchase the Property.

Proximate Cause of Injury: This negligent misrepresentation by First American proximately caused AAH financial injuries and damages in an amount to be proven at trial and within the jurisdiction limits of this court.

To the extent required, AAH pleads the discovery rule, which tolls the Texas statute of limitations applicable to this claim. Although AAH exercised reasonable diligence in attempting to discover this claim, its legal injury was inherently un-discoverable due to First American's conduct, and application of the discovery rule would not disserve public policy.

I. Declaratory Relief

A controversy exists as to the validity of the foreclosure sale and the ownership of the Property.

The Court is vested with the power to declare and adjudicate the rights and other legal relationships of the parties to this action. Each party's status will determine the rights and duties between them as it relates to the loan and the Property. Therefore, AAH, as record owner of the Property, is a proper party to seek this relief.

AAH requests a declaration that the foreclosure sale was in all things valid and that AAH is the lawful owner of the Property pursuant to its trustee's deed.

AAH requests a declaration that Conley and all other occupants of the Property are wrongfully occupying the Property as AAH's tenant(s) at sufferance and that AAH is entitled to immediate possession of the Property.

To the extent required, AAH pleads the discovery rule, which tolls the Texas statute of limitations applicable to this claim. Although AAH exercised reasonable diligence in attempting

to discover this claim, its legal injury was inherently un-discoverable due to First American's conduct, and application of the discovery rule would not disserve public policy.

III. AAH'S AMENDED COUNTER CLAIMS AGAINST CONLEY:

A. Mesne Profit

If the foreclosure sale is upheld, Plaintiff seeks money damages for the benefits Conley has obtained during her period of possession while AAH has been owner. Mesne profits encompass the net profits that the possessor has actually received or could have received from the property if it was rented.

Should the Court determine that AAH legally acquired the Property and that the sale and transfer were valid, then Conley's continued occupancy or benefit from the Property constitutes wrongful possession from the time her claim was contested.

AAH pleads for damages as the actual profits received by Conley, and/or the reasonable rental value of the Property from July 6, 2021, to the present, in an amount to be proven at trial and within the jurisdiction limits of this court.

To the extent required, AAH pleads the discovery rule, which tolls the Texas statute of limitations applicable to this claim. Although the AAH exercised reasonable diligence in attempting to discover this claim, its legal injury was inherently un-discoverable due to Conley's actions, and application of the discovery rule would not disserve public policy.

B. Equitable Subrogation to First American's Lien

AAH asserts that the foreclosure sale was valid and that AAH is the rightful owner. However, if valid title to the Property did not pass to AAH in the Substitute Trustee's deed, then AAH pleads for an equitable lien to be placed on the Property in AAH's favor in the amount of

\$87,000 plus past-due interest at a rate to be determined upon a hearing on the merits, plus all taxes and HOA dues AAH has paid to date.

“Where a foreclosure sale under a power in a deed of trust is void, the purchaser has the rights of an equitable assignee of the debt and lien. That is, he is entitled to be subrogated to the rights of the trust creditor.” *Johnson v. Frierson*, 133 S.W.2d 594, 597 (Tex. App.—Waco 1939).

In purchasing the Property at foreclosure auction, AAH paid off First American’s lien.

This lien was security for a note executed by Conley.

Conley will be unjustly enriched if subrogation is denied. AAH did not pay off the lien as a mere volunteer, but with the legitimate expectation that AAH would obtain title to the Property through the Trustee’s Deed.

AAH therefore requests that if title to the Property did not pass to AAH via the Trustee’s Deed, that the Court enter a judgment awarding AAH a lien by equitable subrogation against the Property in the amount of \$87,000 plus interest accruing from July 6, 2021.

Also, since AHH bought the Property at the foreclosure sale, AHH has paid some or all outstanding taxes and HOA dues for the Property. AAH did not pay these as a mere volunteer, but with the legitimate expectation that AAH would obtain title to the Property through the Trustee’s Deed

AAH therefore requests that if title to the Property did not pass to AAH via the Trustee’s Deed, that the Court enter a judgment also awarding AAH a lien for all taxes and HOA dues AAH has paid.

To the extent required, AAH pleads the discovery rule, which tolls the Texas statute of limitations applicable to this claim. Although the AAH exercised reasonable diligence in

attempting to discover this claim, its legal injury was inherently un-discoverable due to Conley's actions, and application of the discovery rule would not disserve public policy.

C. Quantum Meruit

AAH asserts that the foreclosure sale was valid and that AAH is the rightful owner. However, if valid title to the Property did not pass to AAH in the Substitute Trustee's deed, AAH asserts Quantum meruit against Conley.

Quantum meruit is an equitable theory of recovery when there is an implied agreement between the parties. *Indus. III, Inc. v. Burns*, No. 14-13-00386-CV, 2014 WL 4202495, *5 (Tex. App.—Houston [14th Dist.] Aug. 26, 2014).

Since AHH bought the property at the foreclosure sale, AHH has paid some or all outstanding taxes and HOA dues for the Property.

These funds were provided for Conley's benefit.

Conley accepted these funds.

Conley had a reasonable notice that AAH expected a refund if Conley was declared the owner.

If valid title to the Property did not pass to AAH in the Substitute Trustee's deed, then AAH requests it recover damages from Conley in an amount to be proven at trial and within the jurisdictional limits of this court.

To the extent required, AAH pleads the discovery rule, which tolls the Texas statute of limitations applicable to this claim. Although the AAH exercised reasonable diligence in attempting to discover this claim, its legal injury was inherently un-discoverable due to Conley's actions, and application of the discovery rule would not disserve public policy.

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Unjust enrichment is an implied contract claim based on the principle that one should make restitution when it would be unjust to retain benefits received. *Indus. III, Inc. v. Burns* at *5. "A party may recover under an unjust enrichment theory when one person has obtained a benefit from another by fraud, duress, or the taking of an undue advantage." *Reg'l Specialty Clinic, P.A. v. S.A. Randle & Assocs., P.C.*, 625 S.W.3d 895, 904 (Tex. App.—Houston [14th Dist.] 2021), *reh'g denied* (Aug. 3, 2021).

Since AHH bought the property at the foreclosure sale, AHH has paid some or all outstanding taxes and HOA dues for the Property.

If valid title to the Property did not pass to AAH in the Substitute Trustee's deed, then AAH requests it recover damages from Conley in an amount to be proven at trial and within the jurisdictional limits of this court.

To the extent required, AAH pleads the discovery rule, which tolls the Texas statute of limitations applicable to this claim. Although the AAH exercised reasonable diligence in attempting to discover this claim, its legal injury was inherently un-discoverable due to Conley's actions, and application of the discovery rule would not disserve public policy.

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Since AHH bought the property at the foreclosure sale, AHH has paid some or all outstanding taxes and HOA dues for the Property.

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AAH requests a declaration that the foreclosure sale was in all things valid and that AAH is the lawful owner of the Property pursuant to its trustee's deed.

AAH requests a declaration that Conley and all other occupants of the Property are wrongfully occupying the Property as AAH's tenant(s) at sufferance and that AAH is entitled to possession of the Property.

To the extent required, AAH pleads the discovery rule, which tolls the Texas statute of limitations applicable to this claim. Although the AAH exercised reasonable diligence in attempting to discover this claim, its legal injury was inherently un-discoverable due to Conley's actions, and application of the discovery rule would not disserve public policy.

IV. ATTORNEY'S FEES

AAH has retained the services of the undersigned counsel of record. AAH requests reasonable and necessary attorney's fees from First American and Conley pursuant to Tex. Civ. Prac. & Rem. Code § 38.001 and Tex. Civ. Prac. & Rem. Code § 37.009.

V. PRAYER

WHEREFORE, AAH prays it be awarded the following:

- Judgment in favor of All About Homes, LLC;
- Actual damages;
- Special damages;
- All costs of court;
- Pre- and post-judgment interest at the applicable rate;
- The equitable relief requested above;
- A writ of possession for the Property in favor of AAH;
- Reasonable and necessary attorney's fees; and
- Such other and further relief to which All About Homes, LLC may be justly entitled.

Respectfully submitted,

JEFFREY JACKSON & ASSOCIATES, PLLC

/s/ Jeffrey C. Jackson
JEFFREY C. JACKSON

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CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing document was served via e-service or facsimile, on May 9, 2024 pursuant to the Texas Rules of Civil Procedure.

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Myra Nguyen on behalf of Jeffrey Jackson

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Filing Code Description: Amended Filing

Filing Description: All About Homes, LLC's Amended Counterclaims and Cross Claims

Status as of 5/9/2024 3:27 PM CST

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