

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: June 20, 2019

527570

FRANK J. PARILLO,
Respondent,

v

RONALD O. MOREHOUSE SR.,
Defendant,
and

MEMORANDUM AND ORDER

RICHARD C. WOODCOCK JR.
et al.,
Appellants.

Calendar Date: April 29, 2019

Before: Egan Jr., J.P., Lynch, Clark and Mulvey, JJ.

Farer Law Firm, PC, Latham (Steven D. Farer of counsel),
for appellants.

Whiteman Osterman & Hanna LLP, Albany (Robert L. Sweeney
of counsel), for respondent.

Lynch, J.

Appeal from an order and judgment of the Supreme Court
(Nolan Jr., J.), entered January 31, 2018 in Saratoga County,
which, among other things, granted plaintiff's cross motion for
summary judgment.

In September 2013, plaintiff entered into a contract with
defendant Ronald O. Morehouse Sr. to purchase a five-acre

commercially zoned parcel of real estate located at 241 Ballard Road in the Town of Wilton, Saratoga County for \$175,000. Plaintiff owned property nearby at 215 Ballard Road, where he maintained his office. The contract required a \$1,000 deposit and provided for a closing on or about December 2, 2013. The parties' signatures were witnessed and acknowledged by plaintiff's brother, James Parillo, a notary public. In October 2013, Morehouse met defendant Richard C. Woodcock Jr. (hereinafter Woodcock) at the property. Morehouse showed him either the original or a copy of plaintiff's deposit check and advised him that there was no agreement with plaintiff unless Morehouse cashed the check – albeit there was no such qualifier in the contract. According to Woodcock, Morehouse proceeded to rip up either the check or the copy of the check, and the two verbally agreed that Woodcock would purchase the property for \$200,000. No written contract was signed and the transaction closed on November 6, 2013, with Morehouse deeding the property to Woodcock and his spouse, defendant Denise A. Woodcock (hereinafter collectively referred to as defendants). On November 12, 2013, plaintiff attempted to record his contract with Morehouse in the Saratoga County Clerk's office. Due to deficiencies in the acknowledgment, the clerk declined to record the contract, but provided an acknowledgment form that conformed with Real Property Law § 309-a. That same day, Parillo completed the new acknowledgment with plaintiff but not Morehouse present, and the contract was recorded. A week later, two deeds conveying the property to defendants were recorded.

In March 2014, plaintiff commenced this action against Morehouse and defendants seeking a judgment canceling the deeds to defendants and a directive requiring Morehouse to complete the sale of the property to plaintiff. After discovery was completed, defendants and Morehouse separately moved for summary judgment dismissing the complaint and plaintiff cross-moved for summary judgment against Morehouse only. Supreme Court, as relevant here, granted summary judgment in plaintiff's favor canceling the deeds and directing Morehouse to complete the sale and to refund the \$200,000 purchase payment made by defendants. Defendants appeal.

We affirm. The recording act (see Real Property Law § 290 et seq.) protects a subsequent good-faith or bona fide purchaser for value from a prior unrecorded interest in real property (see Vanderbilt Brookland, LLC v Vanderbilt Myrtle, Inc., 147 AD3d 1106, 1109-1110 [2017]; T & V Constr., Inc. v Calapai, 90 AD3d 908, 908 [2011]). An executory contract for the sale or purchase of real property, duly acknowledged, may be recorded in the office of the county clerk to accord the purchaser protection under the recording act (see Real Property Law § 294 [1]). Pertinent here, an executory contract for the purchase of real estate that is not properly recorded "shall be void as against" a subsequent good faith purchaser (Real Property Law § 294 [3]). This dispute centers on whether plaintiff properly recorded his contract prior to the recording of defendants' deeds and, more particularly, on whether Parillo's correction of the acknowledgment was valid.

Real Property Law § 309-a (1), enacted in 1997, provides that a certificate of acknowledgment "must conform substantially" with the specific language set forth in the statute. Upon our review, it is clear that the initial certificate of acknowledgment completed by Parillo "contained the former boilerplate language that had commonly been used prior to the [enactment of] the statute" (Galetta v Galetta, 21 NY3d 186, 194 [2013]). Even so, the initial acknowledgment included all the substantive elements of an acknowledgment, i.e., that each signer made the required oral acknowledgment and that the notary ensured that the signers were the individuals described in the document (see id. at 192). The point made is that the deviation in verbiage was one of form not substance, and the initial acknowledgment was in substantial compliance with Real Property Law § 309-a (see id. at 194; Weinstein v Weinstein, 36 AD3d 797, 798 [2007]). It follows that Parillo's use of the acknowledgment provided by the County Clerk's office to comply with that office's requirements does not undermine the viability of the contract recording. Because plaintiff's contract interest was duly recorded prior to the recording of defendants' deeds, Supreme Court properly determined that plaintiff was entitled to enforcement of his contract under the recording act. Correspondingly, the court properly voided the

deeds and directed the refund of defendants' purchase funds. This is all the more so given that there is no question that the signatures are authentic and there is no claim of fraud or duress. We take note that Woodcock knew that plaintiff's name was on the deposit check, and yet quickly closed with Morehouse without discussing any terms of sale, just price. We find defendants' remaining contentions unavailing.

Egan Jr., J.P., Clark and Mulvey, JJ., concur.

ORDERED that the order and judgment is affirmed, with costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court