DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Greenwich Association, Inc. v. Greenwich Apartments, Inc. and Alliance TD Limited Partnership

979 So. 2d 1116 (Fla. 3d DCA 2008) · No. No. 3D07-1771 · Decided April 9, 2008

SUMMARY

The Florida Third District Court of Appeal affirmed dismissal of an action seeking reformation or cancellation of a settlement agreement incorporated into a 2001 final judgment. The court held that the judgment was voidable, not void, and that the alleged misconduct constituted intrinsic rather than extrinsic fraud, requiring a timely motion under Florida Rule of Civil Procedure 1.540(b) in the original trial court.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Rothenberg, J.; Cope, J.; Wells, J.
JURISDICTION	Florida
DECIDED	April 9, 2008
DOCKET	No. 3D07-1771
DISPOSITION	affirmed
PROCEDURAL POSTURE	Greenwich Association appealed a final order dismissing its claims after the trial court granted the defendants' motion for partial summary judgment on the claim seeking reformation or cancellation of a settlement agreement and the plaintiff voluntarily dismissed its remaining injunctive-relief count.
STANDARD OF REVIEW	De novo review of a final summary judgment.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Greenwich Association, Inc. v. Greenwich Apartments, Inc., Alliance TD Limited Partnership

TOPICS

summary judgment · civil procedure · standard of review · appellate procedure · remedies

PRACTICE AREAS

civil procedure · appellate procedure · summary judgment · judgment enforcement and relief · contracts

QUESTIONS PRESENTED

1. Whether the 2001 final judgment incorporating the settlement agreement was void because the association's president allegedly acted ultra vires.
2. Whether Greenwich Association could pursue an independent action based on alleged fraud without first filing a timely motion under Florida Rule of Civil Procedure 1.540(b).
3. Whether the trial court properly entered summary judgment and dismissed the action.

HOLDINGS

1. The 2001 judgment was voidable, not void, because the court had subject-matter and personal jurisdiction; an alleged error in the judgment did not deprive the judgment of validity.
2. The alleged fraud was intrinsic, not extrinsic fraud upon the court, and therefore could not support an independent action filed years after the judgment; relief had to be sought by a timely Rule 1.540(b) motion in the original trial court.

KEY QUOTATIONS

> *"The plaintiff first argues that the 2001 judgment must be stricken as void because the settlement agreement that it incorporated was the result of a void, ultra vires act of the plaintiff's president. We disagree, and hold that the 2001 judgment was voidable, not void."* (1118)

> *"Assuming that such an allegation rises to the level of fraud, we conclude that the fraud alleged was intrinsic in nature, and therefore, to seek relief from the 2001 judgment upon that basis, the plaintiff was required to file a rule 1.540(b) motion within one year of the rendering of the judgment."* (1119)

FACTUAL BACKGROUND

Greenwich Association, a Florida not-for-profit corporation, sued a neighboring residential complex in 1999 concerning the use of a two-story parking structure owned by the association. In 2001, the parties entered into a settlement granting Greenwich Apartments the exclusive use of one story of the structure, and the agreement was incorporated into a final circuit-court order dismissing the case. The association later alleged that its president lacked authority to enter the agreement without a vote of the unit owners and filed an independent action seeking reformation or cancellation, asserting that the agreement resulted from an ultra vires act and fraud.

PROCEDURAL HISTORY

The parties entered into a 2001 settlement agreement that was incorporated into a final circuit-court judgment dismissing the earlier action. In 2005, Greenwich Association filed an independent action seeking reformation or cancellation of the settlement agreement and injunctive relief. The trial court granted partial summary judgment, concluding that challenges to the judgment had to be brought by appeal or under Florida Rule of Civil Procedure 1.540(b); after the second count was voluntarily dismissed, the court entered final judgment for the defendants. The appellate court affirmed.

DISPOSITION

affirmed

CASES CITED

- Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000)
- Sheikh v. Coregis Ins. Co., 943 So. 2d 242, 243 (Fla. 3d DCA 2006)
- Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n, 968 So. 2d 658, 666 (Fla. 2d DCA 2007)
- Dep't of Health & Rehab. Servs. v. Morley, 570 So. 2d 402, 404 (Fla. 5th DCA 1990)
- Alexander v. First Nat'l Bank of Titusville, 275 So. 2d 272, 274 (Fla. 4th DCA 1973)
- Parker v. Parker, 950 So. 2d 388, 391-92 (Fla. 2006)
- DeClaire v. Yohanan, 453 So. 2d 375, 377 (Fla. 1984)

OPINION

PER CURIAM.

979 So. 2d 1116 (2008) GREENWICH ASSOCIATION, INC., Appellant, v. GREENWICH APARTMENTS, INC. and Alliance TD Limited Partnership, Appellees. No. 3D07-1771. District Court of Appeal of Florida, Third District. April 9, 2008. Rehearing Denied May 15, 2008. *1117 Hyman Spector & Mars and Michael L. Hyman and Marc A. Smiley, Miami, for appellant. Brinkley, Morgan, Solomon, Tatum, Stanley, Lunny & Crosby and Thomas R. Tatum and Stacy M. Schwartz, Fort Lauderdale, for appellees.

Before COPE, WELLS, and ROTHENBERG, JJ. ROTHENBERG, Judge. The plaintiff, Greenwich Association, Inc. ("plaintiff"), appeals a final order dismissing its claims against the defendants, Greenwich Apartments, Inc. and its successor in title, Alliance TD Limited Partnership (collectively, "the Alliance defendants").

We affirm. In 1999, the plaintiff, a not-for-profit Florida corporation, sued Greenwich Apartments, Inc., a neighboring residential complex, over the disputed use of a two-story parking structure owned by the plaintiff.

In April 2001, the parties entered into a settlement agreement that, in part, granted Greenwich Apartments, Inc. the exclusive right to use one story of the parking structure. The plaintiff's president signed the settlement agreement on behalf of the unit owners.

However, this action was not submitted to the unit owners for a vote. In May 2001, the settlement agreement was incorporated "as if set forth at length" into a final order of the circuit court dismissing the case. No appeal was filed.

In April 2005, the plaintiff filed the instant lawsuit seeking reformation or cancellation of the settlement agreement ("Count I"). The complaint included a second count seeking injunctive relief for failure to maintain the premises ("Count II").

The Alliance defendants moved for partial summary judgment on Count I. The trial court granted the motion, finding that the settlement agreement was subsumed into a court order, and therefore, the plaintiff was limited to an appeal from that judgment or to the rights provided by Florida Rule of Civil Procedure 1.540(b), which on the present facts, required the plaintiff to seek relief before the original trial court within one year of the judgment.

Thereafter, the plaintiff voluntarily dismissed Count II. The trial court issued its final judgment of dismissal, and this appeal followed. Our review of the trial court's final summary judgment is de novo. Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla.2000); Sheikh v. Coregis Ins. Co., 943 So. 2d 242, 243 (Fla. 3d DCA 2006).

After the time for appeal has passed, challenges to a final judgment, decree, order, or proceeding are generally brought in accordance with Florida Rule of Civil Procedure 1.540, which provides in relevant part: *1118 (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) that the judgment or decree is void; or (5) that the judgment or decree has been satisfied, released, or discharged, or a prior judgment or decree upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or decree should have prospective application.

The motion shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, decree, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment or decree or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, decree, order, or proceeding or to set aside a judgment or decree for fraud upon the court.

Fla. R. Civ. P. 1.540(b). The plaintiff first argues that the 2001 judgment must be stricken as void because the settlement agreement that it incorporated was the result of a void, ultra vires act of the plaintiff's president.

We disagree, and hold that the 2001 judgment was voidable, not void. See Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n, 968 So. 2d 658, 666 (Fla. 2d DCA 2007) (concluding that where a court has subject matter and personal jurisdiction, an error in that court's judgment renders it reversible or voidable, but not void); Dep't of Health & Rehab. Servs. v. Morley, 570 So.

2d 402, 404 (Fla. 5th DCA 1990) (holding that the incorporation of a void and unenforceable agreement into a final judgment does not render the judgment void). Accordingly, we uphold the trial court's conclusion that the 2001 judgment was not void.

In the alternative, the plaintiff argues that it was impermissibly denied the opportunity to amend its complaint and allege that fraud was perpetrated upon the court in 2001. We are equally unpersuaded by this argument. While Florida Rule of Civil Procedure 1.540(b) expressly preserves a court's independent power to set aside a judgment for fraud upon the court, that power must be narrowly applied.

See Alexander v. First Nat'l Bank of Titusville, 275 So. 2d 272, 274 (Fla. 4th DCA 1973) (concluding that a broad application of fraud upon the court would frustrate the law's policy favoring the termination of litigation and finality of judgments). Fraud upon the court is an extrinsic fraud which occurs where a party is prevented from "trying an issue before the court and the prevention itself becomes a collateral issue to the cause."

Parker v. Parker, 950 So. 2d 388, 391 (Fla. 2007). "Thus, where fraud is extrinsic, it is deemed independent of the action and, therefore, must be attacked independent of the action." Id. at 392. Conversely, intrinsic fraud is defined as "the presentation of misleading information on an issue before the court that was tried or could have been tried." Id. at 391 (citing DeClaire v. Yohanan, 453 So.

2d 375, 377 (Fla.1984)). A challenge to a final judgment based upon intrinsic fraud *1119 must be brought by filing a timely motion in the original trial court. See Parker, 950 So.2d at 391 ("Under rule 1.540(b), relief from a judgment based on intrinsic fraud must be sought by motion within one year of its entry.").

In support of its request for leave to amend its complaint, the plaintiff argued that its president fraudulently kept secret his ultra vires act, thus ensuring that the unit owners would be unaware of the 2001 settlement agreement's detrimental consequences. Assuming that such an allegation rises to the level of fraud, we conclude that the fraud alleged was intrinsic in nature, and therefore, to seek relief from the 2001 judgment upon that basis, the plaintiff was required to file a rule 1.540(b) motion within one year of the rendering of the judgment.

Therefore, because the 2001 judgment was not void, and the plaintiff did not allege an extrinsic fraud upon the court, the plaintiff's independent action cannot stand. Affirmed.