

SUPREME COURT OF GEORGIA

CML-GA Smyrna, LLC v. Atlanta Real Estate Investments, LLC

294 Ga. 787 (2014) · No. S13A1475 · Decided March 17, 2014

SUMMARY

The Georgia Supreme Court affirmed confirmation of a receiver's proposed sale of a gas station free and clear of a restrictive covenant. The court held that the covenant was unenforceable because the individuals who executed it had never owned the property, and that the supplier received adequate notice and an opportunity to be heard, satisfying due process. The court also upheld the receiver's designation despite a corporate-name discrepancy and approved confirmation before execution of the sale contract.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hines, Presiding Justice
JURISDICTION	Georgia
DECIDED	March 17, 2014
DOCKET	S13A1475
DISPOSITION	affirmed
PROCEDURAL POSTURE	Premier Petroleum appealed the superior court's order confirming a proposed receiver's sale of a gas station free and clear of Premier's recorded restrictive covenant.
STANDARD OF REVIEW	Abuse of discretion for the superior court's confirmation of the receiver's sale; the due-process issue was reviewed under constitutional principles.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Georgia
PARTIES	Premier Petroleum, Inc. v. CML-GA Smyrna, LLC, Atlanta Real Estate Investments, LLC, Trigild, Inc., ALCS Properties, LLC

TOPICS

[civil procedure](#)[due process](#)[intervention](#)[real estate](#)[remedies](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Premier's due-process rights were violated when the superior court invalidated the restrictive covenant and approved a sale free and clear of it without formally joining Premier as a party.
2. Whether the receiver's designation as Trigild, Inc. was legally defective because the corporation had been administratively dissolved or was formally named Trigild, Incorporated.
3. Whether a superior court may confirm a receiver's proposed sale before the sale contract is executed or the sale has occurred.
4. Whether the court could confirm the sale despite a contractual provision making the sale contingent on CML-GA's approval.

HOLDINGS

1. Premier was not denied due process because it received reasonable notice of the motion and hearing and a full opportunity to present its arguments and evidence, even though it was not formally joined as a party.
2. The superior court properly treated the restrictive covenant as invalid because the persons who executed it had never owned the property and therefore lacked authority to encumber it.
3. The court did not abuse its discretion by confirming the sale despite the initial order's designation of the receiver as Trigild, Inc. rather than Trigild, Incorporated.
4. A receiver's proposed sale may be confirmed before the sale is executed, and the court did not abuse its discretion in confirming this sale after CML-GA approved the agreement at the hearing.

KEY QUOTATIONS

“The constitutionally-guaranteed right to due process of law is, at its core, the right of notice and the opportunity to be heard.” (at 788)

“Confirmation of a proposed receiver’s sale can, and sometime must, occur before the sale is executed.” (at 791)

FACTUAL BACKGROUND

CML-GA Smyrna held a first-priority security interest in AREI's gas station property after AREI defaulted on its loan. A restrictive covenant recorded against the property required that only Premier Petroleum products be sold there for ten years, but the covenant was signed by persons who had never owned the property. During the receivership, a proposed buyer was identified, and the receiver sought confirmation of the sale free and clear of the covenant. Premier received notice, filed a response, and participated fully in the hearing.

PROCEDURAL HISTORY

After AREI defaulted on a promissory note secured by the gas station property, CML-GA obtained appointment of Trigild as receiver. The superior court authorized marketing and sale of the property. When a recorded

restrictive covenant was discovered, Trigild moved to confirm a proposed sale free and clear of the covenant; the court granted the motion. Premier responded and participated in the confirmation hearing but did not formally intervene, then appealed.

DISPOSITION

affirmed

CASES CITED

- Cobb County School Dist. v. Barker, 271 Ga. 35, 37 (518 SE2d 126) (1999)
- Hafer v. Lowry, 320 Ga. App. 76, 78 (739 SE2d 84) (2013)
- CRS Serrine, Inc. v. Dravo Corp., 213 Ga. App. 710, 714 (1) (445 SE2d 782) (1994)
- Darling Intl., Inc. v. Carter, 294 Ga. 455, ___, n. 3 (___ SE2d ___) (2014)
- Hall v. Taylor, 133 Ga. 606 (66 S.E. 478) (1909)
- Penny v. Cash, 201 Ga. 215 (39 SE2d 397) (1946)
- Sims v. Ramsey, 186 Ga. 732 (2) (198 SE2 770) (1938)
- Hurt Bldg., Inc. v. Atlanta Trust Co., 181 Ga. 274 (182 S.E. 187) (1935)
- Smith v. Roberts, 106 Ga. 409 (32 S.E. 375) (1899)
- Leggett v. Ogden, 248 Ga. 403 (284 SE2d 1) (1981)