

STATE OF OHIO, MAHONING COUNTY  
IN THE COURT OF APPEALS  
SEVENTH DISTRICT

|                          |   |                   |
|--------------------------|---|-------------------|
| TED MESMER & SONS, INC., | ) |                   |
|                          | ) | CASE NO. 09 MA 36 |
| PLAINTIFF-APPELLEE,      | ) |                   |
|                          | ) |                   |
| - VS -                   | ) | O P I N I O N     |
|                          | ) |                   |
| DAVID RUTANA, et al.,    | ) |                   |
|                          | ) |                   |
| DEFENDANTS-APPELLANTS.   | ) |                   |

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court,  
Case No. 07CV4750.

JUDGMENT: Affirmed.

APPEARANCES:  
For Plaintiff-Appellee:

Attorney David Powers  
20 South Main Street  
Columbiana, Ohio 44408

For Defendants-Appellants:

Attorney Matthew Giannini  
1040 South Commons Place, Suite 200  
Youngstown, Ohio 44514

JUDGES:  
Hon. Joseph J. Vukovich  
Hon. Cheryl L. Waite  
Hon. Mary DeGenaro

Dated: November 4, 2009

VUKOVICH, P.J.

¶{1} Defendant-appellant David Rutana appeals the decision of the Mahoning County Common Pleas Court which denied his motion to vacate the court's prior judgment entered in favor of plaintiff-appellee Ted Mesmer & Sons, Inc. The issue on appeal is whether the trial court's prior judgment must be vacated as a void judgment. Appellant urges that a judgment is void where it discharged third party liens in what appellant believes is wholly an equitable quiet title action. He reasons that a quiet title action only concerns adverse interests in real property but a lien is not an interest in land. For the following various reasons, appellant's argument is without merit. Thus, the judgment of the trial court is affirmed.

#### STATEMENT OF THE CASE

¶{2} On April 4, 2001, the parties entered a land installment contract, whereby appellant agreed to purchase 42 acres of unimproved land from appellee. Appellant was to make monthly payments of \$2,400 to be applied first toward real estate taxes and then toward the principal balance of \$172,000 which bore a ten percent interest rate. After three years, a balloon payment for the remaining principal would be due, at which time appellee would provide appellant with title to the realty. The contract provided for forfeiture if a payment was more than thirty days late.

¶{3} On March 3, 2004, the parties extended the contract for two more years. When this extended time period expired, appellant did not tender the balloon payment. He then made some monthly payments in 2006 but missed some as well. He made no monthly payments after April 12, 2007.

¶{4} On December 19, 2007, appellee filed suit against appellant (and his wife in case she asserted any dower rights in the property) alleging these facts and attaching the contracts. Appellee asked that the court declare the contract forfeited, cancel all rights to the realty appellant may claim, quiet title to the realty in the name of appellee, and release all liens upon the realty caused by appellant.

¶{5} Due to the latter request, appellee joined various lienholders of appellant as defendants. Specifically, Keybank had recorded an "Assignment of Buyer's Beneficial Interest" executed by appellant. Judgment liens had been recorded by Tire

Center for approximately \$6,000, by Commercial Truck and Trailer for approximately \$4,400, and by Terry's Tire Town for approximately \$2,300. Judgment liens had also been recorded by the Bureau of Worker's Compensation (BWC) for over \$50,000 and the Department of Job and Family Services (DJFS) for over \$10,000. Finally, the United States of America had recorded federal tax liens against appellant totaling over \$300,000.

¶{6} Answers were filed by Commercial Truck and Trailer, Terry's Tire Town, the BWC, the DJFS, and the United States. They essentially stated that they were without knowledge of the substantive averments in the complaint and asked that their liens against appellant be paid out of any judicial sale. The other defendants did not answer; nor did appellant.

¶{7} On April 7, 2008, appellee filed a motion for default judgment against those who did not answer and a motion for summary judgment as well. Appellee asserted that the lienholders' interests were based only on the equitable interest of appellant, if any, and that where appellant forfeits his interest under the land installment contract, the liens do not remain on the property whose title should be quieted to appellee free of appellant's liens. Appellee pointed to Supreme Court law that an equitable interest in a land contract cannot be levied upon or sold. Appellee also attached an affidavit of its corporate officer attesting to the facts of the case. No party responded to this motion.

¶{8} On June 26, 2008, the trial court found that all parties had been properly served. The court entered default judgment against appellant, his spouse and Keybank. The court noted the answers of the other defendants which set up only their claims against the interest of appellant in the realty. The court concluded that no genuine issue of material fact existed and that appellee was entitled to judgment as a matter of law. The court thus declared that the land installment contracts were rescinded and all rights of appellant were forfeited. The court further declared that the defendants' liens against the equitable interest of appellant were unenforceable against appellee's realty.

¶{9} Over four months later, on November 3, 2008, appellant filed a motion to vacate as void the portion of the June 26, 2008 judgment which discharged the liens

on the realty. Appellant did not contest the quieting of title to appellee or the judgment forfeiting his interest for breach of the land installment contract. The only ground for the motion was the allegation that an equitable action for quiet title is not the appropriate vehicle for discharging liens as a quiet title action determines interests in land and a lien is not an interest in land.

¶{10} Appellee responded by arguing that appellant failed to establish the elements to be entitled to relief from judgment under Civ.R. 60(B). Appellee pointed out that appellant did not establish a merit defense, he did not state why he allowed default to be entered, he did not explain the timeliness of his motion (noting that appellant only filed his motion after becoming angry that appellee would not sell the property to appellant's friend), and he did not refer to any of the five grounds within Civ.R. 60(B).

¶{11} Appellee then asked how appellant would have a right to complain on behalf of the lienholders, who did not contest appellee's motion or appeal the trial court's judgment. Finally, appellee reiterated that the liens were against appellant, who held only an equitable interest in the realty which had been extinguished by the court's forfeiture judgment, meaning that no liens survived against the realty itself. Appellee noted that the court's entry did not affect the validity of the liens against appellant and could be recorded against any property for which he has *legal* title.

¶{12} On February 4, 2009, the trial court denied appellant's motion to vacate the court's June 26, 2008 judgment. Appellant filed a timely appeal from the February judgment.

#### ASSIGNMENT OF ERROR

¶{13} Appellant's sole assignment of error provides:

¶{14} "THE TRIAL COURT ERRED IN GRANTING AN ORDER DISCHARGING AND CANCELLING OF RECORD THIRD PARTY LIENS WITHIN THE PLAINTIFF'S QUIET EQUITABLE QUIET TITLE ACTION."

¶{15} R.C. 5303.01, entitled "Action to quiet title," provides:

¶{16} "An action may be brought by a person in possession of real property, by himself or tenant, against any person who claims an interest therein adverse to him, for the purpose of determining such adverse interest. Such action may be brought

also by a person out of possession, having, or claiming to have, an interest in remainder or reversion in real property, against any person who claims to have an interest therein, adverse to him, for the purpose of determining the interests of the parties therein.”

¶{17} Appellant argues that “interest” as used in the statute does not include a lien and thus liens cannot be discharged in an equitable quiet title action but rather their validity should be tested in a legal action regarding a clouded title. Appellant cites an old case out of this district, which he claims supports this proposition. See *Gustafson v. Buckley* (1953), 96 Ohio App. 115 (from a time when our district covered different counties).

¶{18} Appellee initially responds by arguing that appellant is improperly attempting to appeal the June 26, 2008 judgment by appealing the denial of the motion to vacate. Appellee then proceeds to address how appellant failed to satisfy Civ.R. 60(B). Finally, appellee reiterates the prior arguments that the liens were against appellant, who only held an equitable interest in the realty and who lost that interest through forfeiture, resulting in liens that never attached to the property.

¶{19} Pursuant to Civ.R. 55(B), a court may set aside a default judgment in accordance with Civ.R. 60(B). As appellee points out, appellant failed to establish that Civ.R. 60(B) relief should have been granted. Appellant did not set forth a merit defense to the claim of forfeiture due to breach of a land installment contract or the request for quiet title as a result of said breach and forfeiture; he did not set forth an argument as to how the motion was timely or why he failed to file and answer; and, he did not point to entitlement to relief under any ground within Civ.R. 60(B)(1) through (5). See *GTE Automatic Elec., Inc. v. ARC Indus., Inc.* (1976), 47 Ohio St.2d 146, 150.

¶{20} However, appellant was not seeking relief from judgment under Civ.R. 60(B). Rather, appellant filed a motion to vacate a void judgment, which is not subject to Civ.R. 60(B). A court has inherent power to vacate a void judgment. *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 70. See, also, Staff Notes to Civ.R. 55(B) and Civ.R. 60(B). A void judgment can be challenged at any time, directly or collaterally.

Thus, appellee's initial concern, that this appeal is an improper attempt to file an untimely appeal from the June 26, 2008, is not dispositive.

¶{21} This leaves us to answer the question of whether the trial court issued a void judgment on June 26, 2008. First, we point out that appellant challenges only the portion of the judgment discharging liens of other defendants, not the portion of the judgment concerning his breach, forfeiture, and loss of an equitable interest in the realty. Thus, his standing to challenge the judgment is suspect.

¶{22} Second, appellant's contentions of trial court error are not sound. For instance, appellant places too much emphasis on the *Gustafson* holding. *Gustafson* did say that a lien was not an interest in the land as is required for a quiet title action. *Gustafson*, 96 Ohio App. at 118. However, the quiet title action in that case involved solely a claim that a lien was fraudulent, and the court was concerned with which county was the proper statutory place to institute the action. See *id.* at 120. The point of the holding was that the action was not a suit for quiet title at all and thus had been venued in the wrong county. *Id.* at 116-117, 120. In fact, the court specifically stated that the action to cancel a lien is ancillary to the main issue. *Id.* at 119. Since the main issue in that case was the validity of the debt, the court found that an equitable quiet title action was improper. *Id.*

¶{23} Unlike *Gustafson*, the validity of the liens against appellant was not contested. Regarding these liens, there was a pure question of law, undisputed by the lienholders, as to whether a valid lien against an equitable interest remained attached to the land after the equitable interest had been forfeited. See *Basil v. Vinallo* (1990), 50 Ohio St.3d 185, 191-192 (lien recorded against buyer with only equitable interest not valid against property as equitable interests in real estate cannot be levied upon and sold under execution), quoting *Bank of Ohio v. Lawrence* (1954), 161 Ohio St. 543 (judgment does not attach as lien on equitable interest of judgment debtor in land under land contract); R.C. 2329.01 (subjecting only "legal" interests in land to execution).

¶{24} There were no factual questions regarding the liens. In fact, the lienholders here either failed to respond to the complaint or failed to respond to summary judgment. Thus, they apparently concurred in their inability to maintain a

lien caused by appellant once any property interests were forfeited to appellee due to a breached and then rescinded land contract. See *id.* See, also, *Carroll v. F-Meat* (July 26, 2005), 7th Dist. No. 94-C-66 (because vendee of land under land installment contract holds only equitable interest until purchase price paid, landowner is not obligated to pay lien on land due to vendee contracting for water well).

¶{25} We also note that *Gustafson* was reviewed by the Ohio Supreme Court. The Supreme Court affirmed but on other grounds, finding that an action seeking to *invalidate* a lien was not “for the recovery of real property” as used in the venue statute and thus whether a lien constituted an “interest” in real property was irrelevant. *Gustafson v. Buckley* (1954), 161 Ohio St. 160, 162-164. This leaves the appellate *Gustafson* case of less precedential value than appellant believes.

¶{26} As aforementioned, appellant does not contest that the quiet title action here was appropriate regarding the forfeiture of his interest. See *Norpac Realty Co. v. Schackne* (1923), 107 Ohio St. 425, syllabus (purchaser’s failure to pay installments on land contract permits forfeiture, and seller can bring action quieting his title and rescinding contract). See, also, R.C. 5313.02 (land installment contract statutes do not apply to real property that contains no dwelling); *DiYorio v. Porter* (June 24, 1981), 7th Dist. No. 81CA5 (chapter 5313 is entirely devoted to residential property).

¶{27} Notably, a plaintiff’s complaint can list multiple causes of action and seek various forms of relief. See Civ.R. 8(A) (short and plain statement showing entitlement to relief; demand for judgment for relief party claims to be entitled; relief in the alternative or of several different types may be demanded). Merely because the complaint here was labeled as an action for quiet title is not dispositive. *Funk v. Rental-All Mart, Inc.* (2001), 91 Ohio St.3d 78, 80 (look to the actual nature or subject matter pleaded in complaint, not the label). It is the substance of the complaint, not the caption, that determines the nature of the action. *Id.* See, also, *Samonas v. St. Elizabeth Health Ctr.*, 7th Dist. No. 05MA83, 2006-Ohio-671, ¶18.

¶{28} Appellee’s complaint alleged that appellant breached the land installment contract, asked for forfeiture under the terms of the contract, sought quiet title against appellant’s forfeited prior equitable interest, and asked for discharge of liens that related only to the equitable interest now forfeited. Thus, it was not merely an action

for quiet title. See *id.* See, also, *Kiriakis v. Fountas* (1924), 109 Ohio St. 553, 558-559 (if court in equity obtained jurisdiction, it retained it in order to administer full relief, legal and equitable, so far as it pertained to the same transactions or subject matter, even if it otherwise would have been beyond its authority).

¶{29} We next point out that because this case was adjudicated by default and uncontested summary judgment, ruminations on how the case would have proceeded had it gone to trial are irrelevant. In other words, contrary to appellant's suggestion, this cannot be considered a case where a defendant is denied the right to a jury trial. Moreover, no party filed a jury demand. See Civ.R. 38(B).

¶{30} Regardless, even if the trial court did somehow err, appellant's contentions do not establish a void judgment subject to vacation at any time under the court's inherent authority. A lack of subject matter can void a judgment and can be raised at any time without concerns of waiver. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶11. Subject matter jurisdiction deals with the power of the court to adjudicate the merits of a type of case. *Id.* at ¶11, 34.

¶{31} The Supreme Court has pointed out that the word "jurisdiction" is also sometimes used (or overused) to refer to a court's jurisdiction in a particular case. *Id.* at ¶12. This use of the word is common where a court makes an unauthorized ruling in a case which lies within the court's subject matter jurisdiction. *Id.* at 19-21. Errors in exercising this latter authority render a judgment voidable, not void. *Id.* at ¶12. That is to say, a lack of subject matter jurisdiction is different than an improper exercise of jurisdiction once conferred. *Id.* at ¶10 (failure to convene three-judge panel in death penalty plea made judgment voidable, not void, because common pleas court had authority over adult criminal case).

¶{32} As a matter of fact, there has actually been no contention presented here or below that the court lacked subject matter jurisdiction. Rather, appellant states that the court's judgment is void because the court erred in discharging liens in what appellant believes is wholly a quiet title action. Since a common pleas court has general subject matter jurisdiction to discharge liens, its judgment doing so would not be void ab initio.



¶{33} For the foregoing reasons, the judgment of the trial court is hereby affirmed.

Waite, J., concurs.

DeGenaro, J., concurs.