

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA

Case No.: CACE23017075 (18)

RICHARD SMITH,

Plaintiff,

v.

CYPRESS TREE CONDOMINIUM
ASSOCIATION, INC.,

Defendant.

FINAL JUDGMENT

THIS CAUSE, having come to the Court for a non-jury trial on May 8, 2024, at which both parties were present and represented by counsel. The Court having heard the testimony; assessed the demeanor and credibility of the witnesses; considered the evidence presented, and considered all the briefs and legal arguments of counsel provided, finds as follows:

1. Plaintiff Richard Smith (“Smith” or “Plaintiff”) filed this action for declaratory relief and to quiet title on August 16, 2023. In his Verified Complaint, Smith alleges that Defendant Cypress Tree Condominium Association, Inc. (the “Association” or “Defendant”) is improperly encumbering his property located at 2451 NW 41st Ave., Apt. 409, Lauderhill, FL 33313 (the “Property”) with a June 16, 2022 default final judgment (the “Default Final Judgment”) that was entered against Smith and in the Association’s favor in a separate, unrelated lawsuit.

2. Smith presented undisputed evidence and testimony that he has owned the Property since August 2015, claimed homestead status for the Property, and has continuously lived at the Property since 2015. Both Smith’s Florida driver’s license and voter’s registration are associated with the Property’s address.

3. From 2016 to 2019, Smith served as a director for the Association. At one time, the directors were sued and a default final judgment was entered against him, individually.

4. In March 2023, Smith attempted to sell the Property to a third party purchaser. The Association provided Smith with an estoppel certificate for the sale showing an assessment of \$2,999,030.75. This amount purportedly represents the amounts owed by Smith to the Association relating to the Default Final Judgment. No other liens or judgments were recorded against the Property.

5. After having considered the testimony of the witnesses, including Plaintiff's expert witness Edward F. Holodak, Esq., the condominium documents, evidence presented and argument of counsel, the Court finds that the Default Final Judgment is not a lien against the Property.

6. The Default Final Judgment entered in CACE20003878 in the Circuit Court in and for Broward County, Florida adjudicated claims against Smith and other former members of the Association's board of directors for breach of fiduciary duty, negligence and unjust enrichment. Nothing in that action related to the Property or assessments owed by Smith in relation to the Property. The Court finds that the Default Final Judgment is not an assessment against the Property, as defined by the Associations' condominium documents or Florida law.

7. Further, the Court finds that the Property is Smith's homestead property pursuant to Article X, Section 4 of the Florida Constitution, and is therefore exempt from a forced sale under the fact of this case.

8. Finally, the Court finds Mr. Holodak's rate of \$450/hour is reasonable, and the time spent preparing for the trial (3 hours) and attending trial (2.5 hours) is reasonable.

it is hereby ORDERED AND ADJUDGED that:

Judgment is entered in Plaintiff Richard Smith's favor against Defendant Cypress Tree Condominium Association, Inc.;

The Property located at 2451 NW 41st Ave., Apt. 409, Lauderdale, FL 33313 is Smith's homestead property pursuant to Article X, Section 4 of the Florida Constitution, and is therefore exempt from a forced sale under the fact of this case;

The Default Final Judgment is not an assessment against the Property;

The Default Final Judgment is not an encumbrance of title against the Property located at 2451 NW 41st Ave., Apt. 409, Lauderhill, FL 33313;

Plaintiff has good fee simple title to the Property and title is cleared of any cloud associated with the Default Final Judgment;

Plaintiff is entitled to an award for his reasonable taxable costs, including \$2,475. in expert witness fees. The Court reserves jurisdiction to determine the amount of taxable costs to be awarded;

The Court reserves jurisdiction to enforce this Final Judgment and to adjudicate entitlement to attorney's fees, if appropriate.

DONE AND ORDERED in Chambers, in Fort Lauderdale, Broward County, Florida on July 31, 2024.



FABIENNE FAHNESTOCK
CIRCUIT JUDGE

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All counsel/parties of record

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