Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-227

DECEMBER TERM, 2007

Peter Noel Duhamel	}	APPEALED FROM:
	}	
	}	
v.	}	Washington Superior Court
	}	
	}	
Donald H. Donnelly, Marjorie Donnelly, Christopher John Flynn and Kristi Ann Flynn	}	DOCKET NO. 395-7-05 Wncv
	}	
		Trial Judge: Mary Miles Teachout

In the above-entitled cause, the Clerk will enter:

Appellant landowner appeals the superior court's order granting summary judgment to adjoining landowners with respect to appellant's complaint alleging that appellees fraudulently conveyed land that they had previously conveyed to him. We reverse the superior court's determination that appellant's lawsuit was not filed within the applicable statute of limitations, and remand the matter for further proceedings.

Appellant's claims arise out of a series of transactions that began in 1986, when appellant sold appellees a 5.3-acre parcel of land, which included the right to use a sixty-foot right-of-way on appellant's abutting property. In July 1991, appellant sold appellees an additional 1.7-acre lot that included part of the disputed strip of land and the right to use a thirty-three-foot-wide right-of-way on appellant's property. One month later, in conjunction with the July 1991 deed, appellant conveyed to appellees by easement deed certain land, while stating an intent to correct the width of the right-of-way described in the 1986 deed.

In 1994, the parties signed a "corrective deed" that reconveyed to appellant land that appellant had conveyed to appellees in 1991. With respect to this deed, the parties did not sign a property-transfer tax return required for recording the deed in the town land records. The parties agreed not to record the deed at the time; apparently, this was a tactical decision made by appellant because of his involvement in pending litigation concerning another land dispute with a different party. In June 1998, appellant wrote to appellees acknowledging delaying the recording of the 1994 deed and asking to meet with appellees regarding the deed. Appellant claims that shortly after writing the letter he met with appellees, who agreed to record the 1994 deed within the week. It is undisputed that neither party ever recorded the 1994 deed or filed a property-transfer tax return pertaining to that conveyance.

In 1999-2000, appellees applied for and obtained local permits to subdivide their property. In August 2000, appellees deeded to another couple a parcel of land that included part

of the land appellant claims appellees conveyed to him in the 1994 deed. In June 2004, appellees conveyed to a different couple, Christopher and Kristi Flynn, another parcel of land that included the balance of the disputed property. In July 2004, a few weeks before selling part of his property to third parties, appellant contacted appellees regarding his claim under the 1994 deed. Not satisfied with appellees' response, appellant filed a lawsuit against them in June 2005, claiming fraud, unjust enrichment, breach of contract, and breach of bailment. Appellant also sought a declaration that the Flynns were not good-faith purchasers of the property that appellees had sold them. Appellees filed a motion for summary judgment, arguing that appellant's claims were barred by laches and the applicable statute of limitations, that appellant had failed to establish the elements of fraud, and that the 1994 deed had not effectively conveyed the disputed land because there had been no delivery of the deed. Appellant responded by filing a motion for partial summary judgment on the issue of whether appellees lawfully transferred the disputed property to appellant in the 1994 deed.

In its February 27, 2007 decision, the superior court denied appellant's motion for partial summary judgment and granted appellees' motion for summary judgment. The court concluded that appellant's lawsuit was outside the applicable six-year statute of limitations because, by the summer of 1998, appellant knew or should have known that appellees had not recorded the 1994 deed as allegedly promised and were claiming ownership of the disputed property. See Agency of Natural Res. v. Towns, 168 Vt. 449, 452-53 (1998) (a cause of action accrues upon either the discovery of facts establishing the basis of the action or the existence of facts sufficient to lead a person of reasonable intelligence to pursue and discover the basis of the action). On appeal, appellant argues that the superior court erred in granting summary judgment to appellees because his complaint primarily concerns appellees' sale of the same land to two different parties, not merely their failure to record the 1994 deed as promised. Appellant also argues that, in addressing the parties' cross-motions for summary judgment, the court impermissibly resolved a disputed question of fact—namely, whether the parties intended the 1994 deed to be operative. In addition to refuting appellant's arguments, appellees contend that the superior court's decision can be affirmed on alternative grounds raised below but not addressed by the court.

Upon review of the record, we conclude that the superior court erroneously determined that the six-year statute of limitations began to run in the summer of 1998 when appellant was or should have been aware that appellees failed to record the 1994 deed as promised. Although several of the counts in appellant's complaint reference appellees' failure to record the 1994 deed as promised, the gist of the complaint is that appellees breached the covenant contained in the 1994 deed and acted fraudulently by selling land that had they had already sold to him. Thus, at best from appellees' perspective, the event that triggered the running of the statute of limitations was appellees' August 2000 conveyance of property containing part of the strip of land appellant claimed appellees had conveyed to him in the 1994 deed. Indeed, until appellees sold part or all of the disputed land, their failure to record the 1994 deed had not resulted in appellant losing his claimed ownership of the land and had not prevented appellant from claiming title to the land directly from appellees. See 27 V.S.A. § 342 (a deed shall be ineffectual against any person except the grantor and heirs, unless it is acknowledged and recorded as provided by statute); Spaulding v. H. E. Fletcher Co., 124 Vt. 318, 323 (1964) (quitclaim deed was good with respect to grantor even when still unrecorded). Until that time, appellant could not have claimed that appellees breached the covenant contained in the 1994 deed or failed to disclose the 1994 deed to third-party purchasers of the land that was the subject of the deed. In short, the superior court erred in establishing the trigger date for the running of the applicable statute of limitations. Because the limitations period for appellant's cause of action did not begin to run until August 2000 at the earliest, his June 2005 lawsuit was within the six-year limitations period.

Appellees argue, however, that we should affirm the trial court's decision on alternative grounds not reached by the trial court. In this regard, appellees contend: (1) appellant's claims are barred by laches; (2) the undisputed facts do not support the elements of fraud; and (3) there was no valid conveyance of land in 1994 because there was no delivery of the deed and no intent that the deed become operative. We decline to grant judgment to appellees on any of these grounds on the current state of the record. " 'Laches is the failure to assert a right for an unreasonable and unexplained period of time when the delay has been prejudicial to the adverse party, rendering it inequitable to enforce the right.' " In re Town Highway No. 20 of Town of Georgia, 2003 VT 76, ¶ 16, 175 Vt. 626 (mem.) (quoting Stamato v. Quazzo, 139 Vt. 155, 157 (1980)). Here, viewed most favorably to appellant, the evidence indicates that appellant filed suit against appellees shortly after first learning that they had sold property containing part of the land that was the subject of the 1994 deed. Moreover, the trial court made no finding as to whether, by reasonable diligence, appellant could have learned of the 2000 transaction, and made no conclusion that, even assuming he could have, his delay in bringing suit supported a laches defense. Certainly, the current state of the evidence does not support our dismissal of appellant's action on appeal based on laches.

Similarly, considering the current state of the record and the fact that the trial court has not examined the facts in connection with appellant's fraud claim, we decline appellees' invitation to grant them summary judgment on appeal with respect to that count. Appellees have failed to demonstrate that there are no material facts in dispute and that they are entitled to judgment as a matter of law on appellant's fraud claim. The evidence is also disputed as to what the parties intended when they agreed to delay recording the 1994 corrective deed, and thus summary judgment is not appropriate on the issue of whether there was a valid delivery and conveyance of the deed. See Spero v. Bove, 116 Vt. 76, 86 (1950) (whether a grantor intended delivery of a deed is a question of fact); see also Spaulding, 124 Vt. at 321-22 ("A deed is presumed to have been delivered at the date of the instrument, and this presumption is strengthened if the date of the acknowledgment is that same as that of the deed."). In sum, given the current state of the record, the superior court erred by granting appellees' motion for summary judgment and dismissing appellant's claims against appellees. Finally, because the court erred in dismissing the claims against appellees, it also erred in dismissing as moot appellant's claims against the Flynns.

Reversed and remanded.

BY THE COURT:

_____
Denise R. Johnson, Associate Justice

_____
Marilyn S. Skoglund, Associate Justice

_____
Brian L. Burgess, Associate Justice