

2024 MAY 23 PM 2:45

HOUSING SESSION
AT HARTFORD

H-1777

DOCKET NO. HFH-CV-23-6027467-S : SUPERIOR COURT
COMMERCIAL FUNDING, LLC : HOUSING SESSION
v. : AT HARTFORD
SAM WALKER MCCULLOUGH, JR., ET AL. : MAY 23, 2024

**MEMORANDUM OF DECISION RE:
MOTION TO DISMISS #128.00**

The plaintiff, **COMMERCIAL FUNDING, LLC.**, commenced this case by writ summons and complaint returnable to the Court on November 11, 2023. The plaintiff was the successful bidder at the Town of Rocky Hill's tax sale of the property at 140 Hayes Road in Rocky Hill. It brought this action against the defendants, **SAM WALKER MCCULLOUGH JR** and **STEPHEN CAMPBELL MCCULLOUGH**, to gain possession of the premises. Defendant Stephen McCullough is the only appearing party, in a self-represented capacity, and will be referred to as "the defendant" in this decision.

The defendant filed an earlier motion to dismiss claiming that the plaintiff used an improper return date to initiate this action. The Court denied that motion to dismiss as November 11, 2023 is a return date allowable in a summary process action by statute (See Order #104.10, February 20, 2024).

The defendant has now moved again to dismiss the action based on an alleged defect in the plaintiff's notice to quit. Specifically, the defendant claims that the notice to quit is dated October 19, 2023 but the Tax Collector's Deed through which it obtained title was not recorded on the Rocky Hill Land Records until



October 20, 2023 at 2:27:11 pm. By way of objection, the plaintiff notes that as a matter of law October 19, 2023 was the redemption date from the tax sale, and then claims that title vested in the plaintiff on October 19, making this action proper.

The Court held a remote hearing on the defendant's motion on May 23, 2024. During oral argument, the plaintiff proffered a second argument that an effective date of a notice to quit is the date of *service* not the date it was signed and the marshal's return indicates *service* of the notice to quit was made on October 20, 2023. Accordingly, the plaintiff argues, that even if the Court accepted the defendant's argument that October 20, 2023 was the effective date of transfer of title, the notice to quit was timely. The defendant countered that with the Town Clerk's time stamp of 2:27:11 pm on the deed and no time indicated on the marshal's return, there is no evidence that the notice to quit was served after the recordation of the deed and he avers that he was served that morning prior to the deed recordation.

According to Connecticut Practice Book §10-30: "(a) A motion to dismiss shall be used to assert: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; and (4) insufficiency of service of process." "[A] motion to dismiss ... properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) Santorso v. Bristol Hospital, 308 Conn. 338, 350 (2013).



“A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction.” (Internal quotation marks omitted.) MacDermid, Inc., v. Leonetti, 310 Conn. 616, 626 (2013). “A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide.” (Internal quotation marks omitted.) Hinde v. Specialized Education of Connecticut, Inc., 147 Conn.App. 730 (2014).

Service of a valid notice to quit, which terminates the lease and creates a tenancy at sufferance, is a condition precedent to a summary process action under Connecticut General Statute §47a-23 that implicates the trial court’s subject matter jurisdiction over that action. See Waterbury Twin LLC v. Renal Treatment Centers-Northeast, Inc., 292 Conn. 459, 466 (2009). The question for the Court here is whether the notice to quit is “valid” to confer subject matter jurisdiction upon the Court.

In general, a conveyance of property occurs upon a “closing,” and the formality of the recording of a deed is when the world is placed on notice of the closing. The operative time for a real estate transaction is usually when the deed is formally given to the grantee from the grantor. A Tax Collector’s Deed, however, is a creation of statute. It is not a traditional closing, but a statutory procedure set forth in Connecticut General Statute §12-157, et. seq.



Pursuant to the statute, the Town of Rocky Hill conducted a tax sale on April 27,

2023. The defendants had a six-month redemption period to resolve the taxes, fees, interest and other costs due to the town. That redemption period expired on October 19, 2023. Pursuant to the last sentence of §12-157(f): “If the purchase money and interest are not paid within such redemption period, the deed shall be recorded and have full effect.”

Accordingly, unlike an arm’s length closing where the recordation of the deed is solely evidence to the world of the transaction, in a tax deed sale, the transfer of the deed from grantor (the Town of Rocky Hill through its Tax Collector) to the grantee (successful bidder) is not effective and does not have “full effect” until the deed is recorded. The moment of recordation is the moment of title/ownership transfer¹.

Connecticut General Statute §47a-23 provides, in part, that a notice to quit can be served: “(a) When the owner or lessor, or the owner's or lessor's legal representative, or the owner's or lessor's attorney-at-law, or in-fact, desires to obtain possession or occupancy of any land or building, any apartment in any building, any dwelling unit, any trailer, or any land upon which a trailer is used or stands . . .”

The deed here was not recorded until October 20, 2023. When the plaintiff’s attorney signed the notice to quit on October 19, 2023, the plaintiff was not an “owner or lessor, or the owner's or lessor's legal representative, or the owner’s or



¹ This does not mean that the successful bidder may not have other interests in the premises, subject to redemption, prior to the recording of the deed – and it probably had an insurable interest in the premises – but it didn’t have OWNERSHIP until recordation.

lessor's attorney-at-law, or in-fact." If anything, it was the holder of a defeasible interest in the property that could have been redeemed.

While the plaintiff is correct that, generally, the date of the notice to quit is not the operative date of the notice because the date of service is the operative date – this argument is only applicable when the notice was signed by a proper party in the first place. Here, the plaintiff was not a party able to issue a notice to quit on the date it was signed.

CONCLUSION

Accordingly, the notice to quit is invalid as it was signed by a party without authority to issue said notice on October 19, 2023 and the Court, therefore, has no jurisdiction over this matter and the defendant's motion to dismiss is granted.

BY THE COURT,



Walter M. Spader, Jr., Judge

Notice of Decision sent to COLP and:

Reckmeyer & Reckmeyer, LLC., PO BOX 271376, West Hartford CT 06127
Stephen Campbell McCullough, 140 Hayes Road, Rocky Hill CT 06067

by /s/ Suzana Zenko, Deputy Chief Clerk
Hartford Housing Session

