

DANIELE VENEZIANO et al.

v.

ROBERT D. SPICKLER

Submitted on Briefs January 28, 2010

Decided March 11, 2010

Panel: ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

#### MEMORANDUM OF DECISION

Robert D. Spickler appeals from a judgment entered by the Superior Court (Sagadahoc County, *Horton, J.*) granting and certifying as final, pursuant to M.R. Civ. P. 54(b)(1), a summary judgment in favor of (1) Daniele and Zahava Veneziano; (2) Douglas Bates and Eleanor Kay; and (3) Mortgage Electronic Recording Systems, Inc. (collectively, the Subsequent Purchasers), on consolidated complaints seeking a declaratory judgment that Spickler has no interest in a disputed parcel of land. Spickler argues that pursuant to 33 M.R.S. § 201 (2009),<sup>1</sup> there are genuine issues of material fact regarding whether the Subsequent Purchasers' predecessors-in-title had actual knowledge of an earlier, unrecorded, deed. *See Gagner v. Kittery Water Dist.*, 385 A.2d 206, 207 (Me. 1978).

On this record, when the most significant predecessor-in-title received from Spickler a properly acknowledged deed purporting to designate prior conveyances excluded from the transfer, and the purported earlier unrecorded deed was not

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<sup>1</sup> Title 33 M.R.S. § 201 (2009) states in relevant part:

No conveyance of an estate in fee simple, fee tail or for life, or lease for more than 2 years or for an indefinite term is effectual against any person except the grantor, his heirs and devisees, and persons having actual notice thereof unless the deed or lease is acknowledged and recorded in the registry of deeds within the county where the land lies.

disclosed as a prior conveyance, the court properly granted summary judgment in favor of the subsequent purchasers who took title with no knowledge of the prior unrecorded deed that was recorded after the transfer to the predecessor-in-title. *See Blue Star Corp. v. CKF Properties LLC*, 2009 ME 101, ¶¶ 31-34, 980 A.2d 1270, 1278; *Schindler v. Nilsen*, 2001 ME 58, ¶ 9, 770 A.2d 638, 641-42; *Zip Lube, Inc. v. Coastal Sav. Bank*, 1998 ME 81, ¶ 10, 709 A.2d 733, 735 (party opposing motion for summary judgment is not permitted to create an issue of material fact to defeat summary judgment by submitting an affidavit or other document disputing that party's own prior sworn or acknowledged statement, here a deed, that the proponent of the motion offers to support the motion).

The entry is:

Judgment affirmed.

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