

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mann Realty Associates, Inc., :
 : No. 483 C.D. 2013
 Appellant : Argued: December 9, 2013
 :
 v. :
 :
 Lower Swatara Township, :
 Martin L. Grass and :
 Mark G. Caldwell, t/a :
 Double M. Development, A :
 Partnership :

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge
 HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: February 27, 2014

Mann Realty Associates, Inc. (Mann) appeals from the March 1, 2013, order of the Court of Common Pleas of Dauphin County (trial court) that granted the motion of Double M. Development, a Partnership (Double M) to quash Mann's land use appeal. The trial court determined that Mann lacked standing to challenge Lower Swatara Township's (Township) approval of Double M's subdivision plan, which Mann signed as owner. We affirm.

On March 6, 1995, Martin L. Grass and Mark G. Caldwell, partners in Double M, entered into an agreement of sale (Agreement) with Robert M. Mumma, II and Susan Mumma (together, Mumma) as Trustees of the Robert M. Mumma, II

Grantor Retained Annuity Trust (GRAT) for the purchase of property to construct a warehouse facility. Double M purchased 32.38 acres of land from GRAT on July 14, 1995. Paragraph 15 of the Agreement stated that, as part of the consideration paid to GRAT, Double M received the right to purchase additional real estate (Option Real Estate) during the option period. Double M exercised the option by letter dated August 15, 1996. Mumma, on behalf of GRAT, responded that it would not recognize the option.

Double M filed a complaint in equity seeking specific performance of the option clause and a preliminary injunction. Mumma filed a petition seeking intervenor status, which was granted. On March 31, 1998, the trial court entered a decree nisi directing GRAT to comply with the option clause contained in paragraph 15 of the Agreement. After expiration of the time for filing post-trial motions, the trial court entered the decree nisi as a final order. GRAT appealed to the Superior Court.¹

During the pendency of that appeal, Double M filed a motion to compel compliance on April 7, 2000. Shortly before the hearing date on the motion to compel, GRAT conveyed 143 acres of land, which included the Option Real Estate, to the individual Trustees, Mumma. Thereafter, on August 16, 2000, at the hearing on the motion to compel, the trial court ordered the trustees to re-convey the Option Real Estate to GRAT. Mumma did not comply. Rather, two days after the trial court's order, Mumma conveyed the Option Real Estate by deed dated August 18,

¹ On August 13, 2001, the Superior Court affirmed the trial court's March 31, 1998, decree nisi. *Grass v. Mumma*, (Pa. Super., Nos. 175 and 178 MDA 2000, filed August 13, 2001).

2000, to Mann, an entity in which GRAT is the sole shareholder. On September 15, 2000, the trial court entered an order directing GRAT to take whatever action necessary to reconvey the Option Real Estate that had been conveyed to Mann back to GRAT.

Double M prepared a subdivision and land development plan (Plan),² which included the Option Real Estate, for approval. The Plan proposed the division of a single parcel of realty into two lots: a lot identified as Lot #3 or the Option Real Estate, measuring 33.35 acres, and a lot identified as Lot #1 or the Remaining Real Estate, measuring 109.65 acres.

Because GRAT continued to refuse to reconvey the Option Real Estate, Double M filed a motion to compel compliance, which the trial court granted on June 28, 2002. The trial court's June 28, 2002, order directed GRAT to "sign the Subdivision Plan." (Trial Ct. Order, 6/28/02, at 1.) GRAT appealed to the Superior Court.³

On September 13, 2004, Double M filed another motion to compel compliance and for sanctions. On July 7, 2006, the trial court issued a memorandum opinion and decree nisi, concluding that no proper basis existed for GRAT to refuse

² The Plan was originally dated October 9, 2000. However, the 2004 Plan was ultimately recorded.

³ The Superior Court affirmed the trial court's June 28, 2002, order on February 13, 2004. *Grass v. Mumma*, (Pa. Super., No. 1217 MDA 2002, filed February 13, 2004).

to sign the Plan, Double M was entitled to enforcement of the June 28, 2002 order, and GRAT was subject to monetary sanctions.⁴

On July 24, 2006, Mumma signed the Plan on behalf of GRAT and Mann, but did so under “Protest” attached to the subdivision. The Protest provides:

1. Pursuant to Judge Todd A. Hoover’s Orders of June 28, 2002[,] and July [7], 2006, the subdivision plan . . . has been executed by Robert M. Mumma, II authorized signator for [GRAT]. . . and has also been signed by Robert M. Mumma, II, Vice President of Mann
2. Be advised that GRAT and Mann disagree with the legal conclusions reached by Judge Hoover and those conclusions are the subject of an appeal in the nature of Post Trial Motions which have been filed . . .
3. Execution of the attached subdivision plan by . . . Mumma . . . [for] GRAT and. . . Mann has been made under protest
4. This Protest and the signing of the subdivision plan . . . are not deemed to relinquish any rights
5. The signature of . . . Mumma, on behalf of Mann . . . is subject to the further protest that Mann has never been a party to this action or any other action before Judge Hoover

⁴ Thereafter, on September 13, 2007, the trial court issued a final order imposing over \$900,000 in attorneys’ fees and sanctions. (Trial Ct. Final Order, 9/13/07, at 2-3.) Judgment was entered against GRAT on September 26, 2007, and GRAT appealed. The Superior Court affirmed on December 17, 2008. *Grass v. Mumma*, (Pa. Super., No. 1722 MDA 2007, filed December 17, 2008).

(R.R. at 41a-42a.) On August 16, 2006, the Township Commissioners approved the recording of the Plan.

On September 15, 2006, Mann filed a land use appeal with the trial court as the “deeded owner of the Option Real Estate,” alleging: inadequate lot width; inadequate provisions for access; lack of a preliminary plan; and inadequate provisions for future streets required by the Subdivision and Land Development Ordinance. On September 18, 2006, the prothonotary of Dauphin County issued a writ of certiorari upon the Township and Double M ordering them to file the certified record. On October 17, 2006, Double M filed a response/answer to Mann’s land use appeal asserting that the issues raised on appeal were neither set forth in the Protest nor previously raised.

On August 13, 2009, Mann filed a motion for hearing, which the trial court denied on December 11, 2009. On July 14, 2010, Mann filed a motion to compel compliance with the writ of certiorari, seeking to have the Township certify the record. On January 11, 2012, the trial court granted Mann’s motion to compel compliance with the writ and the Township filed the record on February 10, 2012. The trial court conducted a status conference on October 24, 2012. Following the conference, the trial court issued an order directing Double M to file a motion and brief addressing the issue of standing and directing Mann to file a response and reply brief.

After oral argument, the trial court issued an order on March 1, 2013, granting Double M’s motion to quash the land use appeal due to Mann’s lack of

standing. The trial court determined that Mann lacked standing because it is not the owner of the property. Specifically, the trial court determined that the equity litigation resolved the issue of Double M's right to purchase the Option Real Estate. The trial court further observed that the "Protest" document was meaningless because nothing in the Pennsylvania Municipalities Planning Code (MPC)⁵ allows a party who signs a subdivision plan to reserve the right to thereafter challenge the plan. Finally, the trial court determined that Mann waived its right to assert standing based upon the theory that it is an adjoining property owner. This appeal followed.⁶

Mann acknowledges that to pursue a land use appeal, a party must be a "person aggrieved." *Rouse & Associates Ship Road Land Limited Partnership*, 636 A.2d 231, 234 (Pa. Cmwlth. 1993). "To be 'aggrieved' a party must have been adversely affected by the decision from which the appeal is to be taken. Generally, a prevailing party is not 'aggrieved,' and, therefore, does not have standing to appeal an order which has been entered in his or her favor." *Commonwealth v. Polo*, 563 Pa. 218, 220 n.1, 759 A.2d 372, 373 n.1 (2000) (citation omitted).

Section 107 of the MPC, defines an "[a]pplicant" as "a landowner or developer . . . who has filed an application for development including his heirs,

⁵ Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §§10101-11202.

⁶ Where, as here, the trial court does not take additional evidence, this court's review in a land use appeal is limited to determining whether the local governing body committed an abuse of discretion or error of law. *Weiser v. Latimore Township*, 960 A.2d 924, 929 n.9 (Pa. Cmwlth. 2008). The decision to grant or deny a motion to quash an appeal is a question of law that is within this court's scope of review. *Spahn v. Zoning Board of Adjustment*, 922 A.2d 24, 27 n.6 (Pa. Cmwlth. 2007), *aff'd*, 602 Pa. 83, 977 A.2d 1132 (2009).

successors and assigns.” 53 P.S. §10107. In this case, Mann signed the Plan as “owner” of the property. We conclude that Mann, having “executed” the Plan as the “deeded owner” of the Option Real Estate, cannot now challenge the Township Commissioners approval of the Plan. The Plan was approved and, therefore, Mann was not aggrieved. Because Mann is not aggrieved, the trial court properly concluded that Mann lacked standing.

Similarly, Mann’s argument that it has standing as a neighboring landowner must also fail.⁷ But for Mann, who completed the application as owner, there would have been no subdivision plan for the Township Commissioners to approve. Mann cannot on the one hand “apply,” via its signature as owner, for subdivision approval and then, on the other hand, challenge the Plan approval as an aggrieved neighboring landowner. Although Mann signed the Plan “under protest,” we agree with the trial court that this is of no consequence under the MPC.⁸

Accordingly, we affirm the trial court’s order.

ROCHELLE S. FRIEDMAN, Senior Judge

⁷ Mann claims that “[i]t is well-established that adjacent property owners have substantive standing to object to subdivision plans both before the governing body and in land use appeals to common pleas.” *Miravich v. Township of Exeter*, 6 A.3d 1076, 1079-80 (Pa. Cmwlth. 2010).

⁸ In essence, Mann attempts to collaterally attack the trial court’s June 28, 2002, order directing Mann to sign the subdivision and land development application.

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Mark G. Caldwell, t/a	:
Double M. Development, A	:
Partnership	:

ORDER

AND NOW, this 27th day of February, 2014, we hereby affirm the March 1, 2013, order of the Court of Common Pleas of Dauphin County.

ROCHELLE S. FRIEDMAN, Senior Judge