



Dated: April 09, 2026
The following is ORDERED:

Jennie D. Latta

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
INDEPENDENCE REALTY & INVESTMENTS, LLC,
Debtor-In-Possession.

Case No. 24-24362-L
Chapter 11, Subchapter V

Independence Realty & Investments, LLC, and
Derrick Brown and Carla Brown,
Plaintiffs/Counter-Defendants,
v.
Nexcel Properties, LLC
Defendant/Counter-Plaintiff.

Adv. Proc. No. 24-00121

CORRECTED ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
AND GRANTING SUMMARY JUDGMENT FOR DEFENDANT

BEFORE THE COURT is *Plaintiff's Motion for Summary Judgment* [sic] filed October 23, 2025, by Plaintiffs against Defendants/Counter-Plaintiffs Nexcel Properties, LLC ("Nexcel") and Laksh Nandrajog ("Nandrajog") [ECF No. 57]. By prior order, the Court has dismissed Laksh Nandrajog as a defendant [Adv. Proc. ECF No. 73]. The motion asks the Court to grant summary judgment on "his wrongful foreclosure claim." There are three plaintiffs and no wrongful

foreclosure claim before this Court. The only cause of action before this Court is one to quiet title to two properties known as 4112 Summer Avenue and 883 Hale Road (collectively, the “Relevant Properties”). At the commencement of this case, title to the Relevant Properties was held by the Defendant Nexcel Properties, LLC (“Nexcel”) as the result of the delivery and recording of two quitclaim deeds by Plaintiff Independent Realty & Investments, LLC (“Independent Realty”) to Nexcel. *See* Adv. Proc. ECF No. 57, Ex. 6.

There have been a number of changes in counsel for the Plaintiffs. The underlying complaint was commenced in the Chancery Court of Shelby County, Tennessee, in the Thirtieth Judicial District at Memphis on February 13, 2024, with Larry A. Weismann appearing as “Attorney for the Plaintiff” [sic]. Notice of Removal was filed on October 31, 2024, signed by Toni Campbell Parker as attorney for the Debtor-In-Possession, and by Derrick Brown, individually, and Carla Brown, individually [Adv. Proc. ECF Nos. 1 and 2]. Attorney Adam M. Langley filed a notice of appearance for the Plaintiffs on April 14, 2025 [Adv. Proc. ECF No. 8]. Mr. Langley filed a Second Amended Complaint on behalf of all of the Plaintiffs on April 18, 2025 [Adv. Proc. ECF No. 11]. Mr. Langley and the law firm Butler Snow were permitted to withdraw as counsel for the Plaintiffs by order entered July 28, 2025 [Adv. Proc. ECF No. 42]. Curtis D. Johnson, Jr. entered a notice of appearance for the Plaintiffs on August 4, 2025 [Adv. Proc. ECF No. 45]. Mr. Johnson filed the pending *Motion for Summary Judgment* on October 23, 2025, before he, too, filed a motion to withdraw as counsel on February 26, 2026, the day the Court had scheduled oral argument on the *Motion for Summary Judgment* at the request of the Defendant, Nexcel Properties, LLC. The motion to withdraw was granted without opposition but the Plaintiffs were cautioned that they would have to obtain counsel before the continued setting for oral argument, March 26, 2026. On March 25, 2026, the Plaintiff Derrick Brown filed his Declaration

and a “Notice of Filing Exhibits (Derrick and Carla Brown, Individually)” [Adv. Proc. Nos. 79-80]. At the scheduled hearing, Mr. Brown appeared individually without counsel. The Court notes that it was the Defendant, not the Plaintiffs who requested oral argument and that the Defendant, through counsel, has expressed its intent to withdraw the motion for oral argument.

The *Motion for Summary Judgment* has been pending for five months. The Plaintiffs and Defendant have had opportunity to fully support their motion and response. The motion is now ready for decision.

JURISDICTION, AUTHORITY, AND VENUE

Jurisdiction over an adversary proceeding related to a bankruptcy case lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). Count I of the amended complaint seeks a declaration that certain real property is property of the bankruptcy estate notwithstanding quitclaim deeds that were recorded by Nexcel. Matters concerning the administration of the estate and determination of property of the estate are core proceedings. *See* 11 U.S.C § 541(a) and 28 U.S.C. § 157(b)(2)(A). The bankruptcy court has authority to enter a final order determining whether real property is property of the bankruptcy estate subject only to appellate review. *See* 28 U.S.C. § 157(b)(1). Venue of this adversary proceeding is proper to the Western District of Tennessee because this proceeding is related to a bankruptcy case pending in this district. *See* 28 U.S.C. § 1409(a).

SUMMARY JUDGMENT STANDARDS

In order to grant a motion for summary judgment, the Court must first be satisfied that no reasonable trier of fact could find for the non-movant. *Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986). On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine dispute of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986). “As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 202 (1986). If the movant makes the initial showing that there is an absence of a genuine dispute of material fact, the burden shifts to the non-movant to “go beyond the pleadings and . . . designate specific facts showing that there is a genuine issue for trial.” *Celotex Corp.*, at 324. All legitimate factual inferences must then be made in favor of the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202 (1986). “Summary judgment is appropriate if the evidence, taken in the light most favorable to the nonmoving party, shows that there are no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law.” *Mazur v. Young*, 507 F. 3d 1013, 106 (6th Cir. 2007).

Federal Rule of Civil Procedure 56(f)(3), made applicable here by Federal Rule of Bankruptcy Procedure 7056(f)(3), also permits a court, to “consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute” and giving notice and a reasonable time to respond. In fact, a court may enter summary judgment *sua sponte* in favor of a nonmoving party so long as the losing party was on notice to present all desired

evidence on the matter at issue. *Salehpour v. Univ. of Tenn.*, 159 F.3d 199, 204 (6th Cir.1998), citing, *Celotex Corp. v. Catrett*, 477 U.S. 317, 326, 106 S. Ct. 2548, 2554 (1986)(“District courts are widely acknowledged to possess the power to enter summary judgments *sua sponte*, so long as the losing party was on notice that she had to come forward with all of her evidence.”).

BACKGROUND FACTS

Plaintiff Independence Realty is a Mississippi limited liability company that owns real property in the state of Tennessee.

Plaintiffs Derrick Brown and Carla Brown are members of Independence Realty and a related company, Performance Property Management, LLC.

Defendant Nexcel is a Mississippi limited liability company with its principal place of business in Olive Branch, Mississippi.

Laksh Nandrajog is a member of Nexcel and its manager.

Nexcel made certain loans to Independence Realty in 2021 and 2022 that were secured by the Relevant Properties and guaranteed by the Browns.

In addition to the deeds of trust held by Nexcel, as additional security, Independence Realty executed quitclaim deeds with respect to each of the Relevant Properties to be recorded only in the event of default under the respective deeds of trust. [*Quitclaim Deeds*, Adv. Proc. ECF Nos. 57-8, 57-9, 68-3, 68-6].

In connection with these transactions, Independence Realty executed two promissory notes.

The first note was dated August 2, 2021, in the principal amount of \$15,000 with a maturity date of December 1, 2021 (the “2021 Note”) [*Promissory Note*, Adv. Proc. ECF Nos. 57-4 and 68- 1]. The 2021 Notes was secured by a deed of trust encumbering the Hale Road property.

Notwithstanding the fact that the note matured on December 1, 2021, the parties entered into three loan modification agreements with respect to that note. The first is dated March 2, 2022. It increased the loan amount by \$10,000, which Independence Realty agreed to repay in 15 days. According to the modification agreement, “[a]ll other terms contained in the Note remain the same.” [*Loan Modification Agreement*, Adv. Proc. ECF No. 68-8]. The second loan modification agreement is dated May 9, 2022. It increased the amount of the loan to \$35,000 and called for Independence Realty to repay the full loan balance of \$35,000 sixty (60) days from the signing of the modification agreement. [*Loan Modification Agreement*, Adv. Proc. ECF No. 68-9]. The third loan modification agreement is dated June 21, 2022. It extended the maturity date of the note to October 1, 2022, and called for Independence Realty to repay a loan balance of \$45,000 by that date. [*Loan Modification Agreement*, Adv. Proc. ECF No. 68-10].

The second note in the principal amount of \$75,000 with a maturity date of April 1, 2023, is dated December 30, 2022 (the “2022 Note”). [*Promissory Note*, Adv. Proc. ECF Nos. 57-6 and 68-4]. It was secured by a deed of trust encumbering the Summer Avenue property.

The 2022 Note was also modified three times. The first modification is dated January 10, 2023. It increased the loan amount by \$75,000, which Independence Realty agreed to repay in three months with the option to extend an additional three months. All other terms of the note remained the same. [*Loan Modification Agreement*, Adv. Proc. ECF No. 68-11]. The second loan modification agreement is dated February 16, 2023. It increased the amount of the loan by \$65,000 to a total of \$215,000 and called for Independence Realty to repay the \$65,000 added to the note in 21 days, with all remaining terms of the note to remain the same. [*Loan Modification Agreement*, Adv. Proc. ECF No. 68-12]. The third loan modification agreement is dated February 24, 2023. It increased the loan amount by \$20,000 to a total of \$235,000 and called for Independence Realty

to repay the \$20,000 in 45 days, with all remaining terms of the note to remain the same. [*Loan Modification Agreement*, Adv. Proc. ECF No. 68-13].

When the notes and modification agreements are read together, the 2021 Note matured on October 1, 2022, and the 2022 Note matured on April 1, 2023. *See Declaration of Laksh Nandrajog*, Adv. Proc. ECF No. 68, ¶¶ 15 and 16.

The deeds of trust provide that failure to pay any part of the indebtedness secured by the deed of trust when due empowers the trustee, among other remedies, to sell the property to the highest bidder. The deeds of trust also permit the trustee to enter and take possession of the property in the event of a “default in payment” by Independence Realty (the party of the first part). [*Deed of Trust and Assignment of Rents*, Adv. Proc. ECF Nos. 57-5 and 68-2; *Subordinate Deed of Trust (2nd Lien)*, Adv. Proc. ECF Nos. 57-7 and 68-5].

Plaintiff Derrick Brown admits that the 2021 Note was not paid on its maturity date of October 1, 2022, and the 2022 Note was not paid on its maturity date of April 1, 2023. [*Excerpt from Deposition of Derrick Brown*, pp. 51 and 74, Adv. Proc. ECF No. 69-1].

The quitclaim deed with respect to the Summer Avenue property was recorded January 1, 2023, and the quitclaim deed with respect to the Hale Road property was recorded November 17, 2023. [*Quitclaim Deed*, Adv. Proc. ECF No. 57-8 and 68-5; *Quitclaim Deed*, Adv. Proc. ECF No. 57-9 and 68-3].

Plaintiffs Independence Realty, Derrick Brown and Carla Brown filed a *Complaint to Quiet Title for Breach of Contract and for Damages and for Injunctive Relief* in in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis on February 13, 2024. *See* Adv. Proc. ECF No. 1, Ex. 1.

Nexcel filed an answer and counterclaim and Independence Realty filed a motion to amend its complaint before Independence Realty filed a voluntary petition under Subchapter V of Chapter 11 of the Bankruptcy Code on September 6, 2024.

The original complaint, answer and counterclaim of Nexcel, and motion to amend complaint were removed to the United States District Court and referred to the United States Bankruptcy Court for the Western District of Tennessee on October 31, 2024 [Adv. Proc. ECF No. 1].

It does not appear from the record that the motion to amend was ever granted.

The Plaintiffs filed a second motion to amend the complaint in this adversary proceeding, which was denied [Adv. Proc. ECF Nos. 10, 34].

The Court remanded all but Count I of the complaint to the Circuit Court because Counts II through VI raise questions purely of state law. The Court retained the question of whether the Summer Avenue property and Hale Road properties are property of the bankruptcy estate, subject to whatever liens or encumbrances that existed prior to the filing of the bankruptcy petition [Adv. Proc. ECF No. 44].

As things now stand, Count I of the original complaint is before the Court. Nexcel has filed an answer to Count I denying that it has improperly clouded the title to the Relevant Properties and denying that the Plaintiffs are entitled to any relief.

Count I of the amended complaint differs from Count I of the original complaint only in substituting “Defendants” for “Nexcel” in the allegation that Nexcel or the Defendants “proceeded to cloud the title to both properties by improperly recording quitclaim deeds and proceeding to market the properties for sale” in the second sentence of paragraph 36 of the original complaint and 40 of the amended complaint.

DISCUSSION

A motion for summary judgment may be granted only when there is no genuine dispute concerning a material fact. There is no dispute that record title to both of the Relevant Properties was held by Nexcel, not Independence Realty, when the bankruptcy petition was filed. This resulted from the delivery of the quitclaim deeds by Independence Realty to Nexcel Properties and the subsequent recordation of those deeds by Nexcel Properties.

The delivery of the quitclaim deeds to Nexcel Properties resulted in transfer of title from Independence Realty to Nexcel. As explained by the Tennessee Supreme Court,

An unregistered deed is effective “between the parties to the [instrument], and their heirs and representatives.” Tenn. Code Ann. § 66-26-101 (1982). “As between the parties” to a conveyance, “registration of the deed [is] unimportant.” *McCorkle*, 80 S.W. at 836. Legal title passes from the grantor to the grantee when the deed is executed, regardless of whether the deed is registered. *Id.* (explaining that as “between [the vendor] and his vendee the divestiture of title was as complete as if registration had taken place”); see also, e.g., *Campbell v. Home Ice & Coal Co.*, 126 Tenn. 524, 150 S.W. 427, 429 (1912); *Wilkins v. May*, 40 Tenn. (3 Head) 173, 176 (1859); *Shields v. Mitchell*, 18 Tenn. (10 Yer.) 1, 8 (1836); *Hays v. McGuire*, 16 Tenn. (8 Yer.) 92, 101 (1835); *Vance’s Heirs v. McNairy*, 11 Tenn. (3 Yer.) 171, 176–77 (1832).

Mathes v. 99 Hermitage, LLC, 696 S.W.3d 542, 548 (Tenn. 2024). The subsequent recording of the deeds made the transactions effective as to all subsequent purchasers and creditors. *Id.* at 547–48. Both quitclaim deeds had been recorded before the bankruptcy petition was filed by Independence Realty. As a result, not only was title divested of Independence Realty but title was effectively vested in Nexcel Properties as to all creditors and any trustee in bankruptcy. Independence Realty filed its bankruptcy petition under Chapter 11 of the Bankruptcy Code and remains in possession of its property, but it stands in the shoes of a trustee in bankruptcy. 11 U.S.C. § 1107(a); *Steelvest, Inc. v. Messer and Sons Constr. Co. (In re Steelvest, Inc.)*, 112 B.R. 852, 854 (Bankr. W.D. Ky. 1990).

The claim before this Court is a claim to quiet title. Other counts of the second amended complaint related to the alleged wrongful recording of the quitclaim deeds were remanded to the Chancery Court for further consideration. *See Order on Defendant's Motion For Abstention and to Remand to State Court and to Modify the Automatic Stay*, August 4, 2025, Adv. Proc. ECF No. 44. Plaintiffs concede in their memorandum, filed by Mr. Johnson before his withdrawal, that a plaintiff in a quiet title action must prove that “he himself has title, or else he has no right to have a cloud removed from that to which he has no title in himself.” *Plaintiff’s* [sic] *Memorandum in Support of His Motion for Summary Judgment*, October 22, 2025, Adv. Proc. ECF No. 57-3, p. 6, quoting *Hoyal v. Bryson*, 53 Tenn. 139, 141 (Tenn. 1871).

The Plaintiffs’ claim also fails under estoppel by deed. In *Denny v. Wilson County*, our Tennessee Supreme Court described estoppel by deed as: “a bar which precludes one party to a deed and his privies from asserting as against the other party and his privies any right or title in derogation of the deed or from denying the truth of any material facts asserted in it.” 198 Tenn. 677, 685, 281 S.W.2d 671, 675 (1955). The Plaintiffs voluntarily executed the quitclaim deeds. A party cannot convey title by deed and later deny the validity of that same deed to reclaim the property. Tennessee law prevents a grantor from contradicting its own conveyance. *Id.*

Plaintiffs essentially seek a declaration that the recording of the quitclaim deeds by Nexcel was improper because Independence Realty was not in default of payment of its notes to Nexcel when Nexcel recorded the quitclaim deeds. In support of this assertion, Plaintiffs rely upon the declaration of Derrick Brown, which states in pertinent part, “We intended these [modification] agreements to supersede the terms of the [respective notes, quitclaim deeds, and deeds of trust],” and “[a]lthough neither Independence Realty nor Performance Realty is in default under the [deeds

of trust], Laksh proceeded to record the [quitclaim deeds].” [*Declaration of Derrick Brown*, Adv. Proc. ECF No. 57-2, ¶¶7, 8, 12, 13].

These statements directly contradict the terms of the modification agreements, the deposition testimony of Mr. Brown, and the Declaration of Mr. Nandrajog. Each of the modification agreements either contains a specific amendment concerning the maturity date or specifies that the remaining terms of the notes remain unchanged. Mr. Nandrajog declared under penalty of perjury that the maturity date for the 2021 Note was October 1, 2022, and the maturity date of the 2022 Note was April 1, 2023. Mr. Nandrajog further declared that the notes were not paid at maturity. Mr. Brown stated under oath that the 2021 Note was not paid on October 1, 2022, and the 2022 Note was not paid on April 1, 2023.

Moreover, proof of oral statements contradicting the terms of a written note is inadmissible: the “[t]erms of a note cannot be varied by oral proof.” *Farmers & Merchants Bank v. Petty*, 664 S.W.2d 77, 81 (Tenn. Ct. App. 1983), citing, *Rush v. Chattanooga Dupont Emp. Credit Union*, 210 Tenn. 344, 358 S.W.2d 333 (1962); *Todd v. Third Nat. Bank*, 172 Tenn. 586, 113 S.W.2d 740 (1938). This parole evidence rule has been codified at section 29-2-101(b)(1) of the *Tennessee Code*, which states:

(b)(1) No action shall be brought against a lender or creditor upon any promise or commitment to lend money or to extend credit, or upon any promise or commitment to alter, amend, renew, extend or otherwise modify or supplement any written promise, agreement or commitment to lend money or extend credit, unless the promise or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the lender or creditor, or some other person lawfully authorized by such lender or creditor.

Tenn. Code Ann. § 29-2-101 (West).

CONCLUSION

Because the Plaintiffs have failed to show that Independence Realty held title to the Subject Properties at the time the petition in bankruptcy was filed, the action to quiet title must fail. Summary Judgment is **DENIED** to the Plaintiffs and **GRANTED** for the Defendant.

cc: Debtor
Attorneys for Debtor
Plaintiffs
Attorney for Plaintiffs
Defendants
Attorney for Defendants
Chapter 11, Subchapter V Trustee
United States Trustee