IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MANUFACTURERS AND TRADERS TRUST CO., and WILMINGTON SAVINGS FUND SOCIETY, FSB,	)	
Petitioners,	)	
v.	)	C.A. No. 11M-12-083 CLS
WASHINGTON HOUSE PARTNERS, LLC, and CHESAPEAKE FIFTH AVENUE PARTNERS, LLC,	)	
Respondents.	)	

Date Submitted: February 17, 2012
Date Decided: March 22, 2012

Upon Petitioners' Rule to Show Cause - the Mortgage Satisfaction is Stricken and the Mortgage is Reinstated.

ORDER

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Introduction

Before the Court is Petitioners' Manufacturers and Traders Trust Company ("Manufacturers") and Wilmington Savings Fund Society, FSB ("Wilmington Savings") Amended Petition for Rule to Show Cause why the entry of a mortgage satisfaction should not be stricken. The Court reviewed the petition and an answer filed by Respondent, Chesapeake Fifth Avenue Partners, LLC ("Chesapeake") and held oral argument. Chesapeake has not shown cause as to why the satisfaction should not be stricken. Therefore, the mortgage between WSFS Bank ("WSFS") and Washington House Partners, LLC ("Washington House") is reinstated and the mortgage satisfaction is stricken.

Findings of Fact

This Amended Petition to Show Cause arises from a construction mortgage that was entered into by the Mortgagee, Wilmington Trust Company ("Wilmington Trust") and the Mortgagor, Washington House on November 16, 2006. The property subject to the mortgage was located at 115 Main Street in Newark, Delaware. According to the loan agreements, Wilmington Trust advanced $13,000,000.00 and Washington House promised to repay the amount, with interest, to Wilmington Trust in periodic payments. Repayment of the indebtedness was secured by a lien encumbering Washington House's interest in the property. On November 29, 2006, the mortgage was recorded.

Wilmington Trust merged with M&T Bank Corporation ("M&T"). Subsequent to the merger, on May 19, 2011, the Mortgage with Washington House was assigned to M&T. On May 31, 2011 the mortgage was recorded. On November 3, 2011, M&T sold, transferred, conveyed and assigned all of its rights under the mortgage to WSFS.

Pursuant to the assignment of the mortgage to WSFS, WSFS paid the purchase price of the loan which represented the amount owed on the loan. Based on the payment by WSFS, Robert Doust, ("Mr. Doust") the senior Vice President of M&T, erroneously believed that receipt of the purchase price from WSFS represented payment in full of the loan secured by the Mortgage.

Mr. Doust testified at the hearing on behalf of the Petitioners. Mr. Doust was assigned to the Washington House Partners Portfolio and managed the loan. After WSFS paid the purchase price, Mr. Doust informed the M&T Center in New York that M&T received payment in full and the loan was therefore paid off. Mr. Doust also instructed the M&T Center to release the mortgage dated November 16, 2006. Later, on November 23, 2011, M&T filed a Mortgage Satisfaction Piece ("satisfaction") that satisfied the mortgage which encumbered the property. The satisfaction was recorded on December 5, 2011.

However, Washington House did not satisfy the mortgage as evidenced by the satisfaction. Instead, Washington House still remains obligated to make

mortgage payments to WSFS pursuant to the mortgage and the loan documents. Washington House submitted an affidavit signed by David Sills, the representative for Washington House. The affidavit indicates that Washington House agrees that the satisfaction was filed in error and the lien held by M&T should still be in place. Additionally, Washington House does not oppose the amended petition to strike an entry of satisfaction of mortgage. Chesapeake did nothing as a result of the satisfaction.

Chesapeake filed an answer to the Rule to Show Cause. Chesapeake is involved in this action because it has a mortgage that is subordinate to the mortgage held by WSFS. Chesapeake claims the following affirmative defenses in its answer: (1) no proof of a mistake and factual omission; (2) unclean hands; (3) undue prejudice because if the satisfaction is stricken, it may be in the position of having an undersecured matured mortgage; (4) this action is barred by the Race Statute; (5) there was a breach of Intercreditor Agreement; (6) there is a need for discovery; and (7) there was a breach of the Implied Covenant of Good Faith and Fair Dealing.

Petitioner's argument is two-fold. First, Chesapeake has no standing under the statute because they are not a mortgagee or mortgagor. Second, assuming that the Court finds that Chesapeake does have standing, Chesapeake has the burden to show cause, which it has failed to do. Further, the petitioners contend that the

purpose of this statute is to correct a mistake that was made. Additionally, Petitioners submit that the Respondents answer is flawed for the following reasons: (1) the subject matter jurisdiction of this court does not extend to consideration of equitable remedies; (2) the argument that this action is barred by the race statute is incorrect because if true, it would render § 2122 meaningless; (3) breach of the intercreditor agreement is not applicable to this action; (4) there is no undue prejudice because if the satisfaction is stricken, Chesapeake will be in the same position it would have been in prior to the entry of the satisfaction.

At the hearing, Respondent argued the equitable defense of "unclean hands" and submitted that if the mortgage is reinstated, they would be prejudiced for purposes of mortgage proceedings. The Respondent conceded to the Court that Chesapeake has done nothing as a result of this mortgage satisfaction.

Discussion

Chesapeake Does Have Standing to Show Cause.

Petitioners argue that Chesapeake does not have standing in this matter to show cause why the mortgage satisfaction should not be stricken. This Court will consider Chesapeake's answer in response to Petitioners' Rule to Show Cause. Pursuant to title 25, section 2122(a) of the Delaware Code:

> When entry of satisfaction, recordation of a mortgage satisfaction piece or other indication of a mortgage satisfaction has been made upon the record through inadvertence, error or mistake, any person or party affected by such inadvertence, error or mistake may, upon sworn

> petition to the Superior Court of the county in which such mortgage was recorded, setting forth the facts, obtain from such Court a rule on the mortgagor or obligor or their heirs, executors, administrators or assigns, returnable at such time as the Court may direct, requiring such mortgagor or obligor or other heirs, executors, administrators or assigns to appear . . . and show cause, if they have any, why the entry of satisfaction or other indication of a mortgage satisfaction should not be stricken.[1]

The plain language of the statute indicates that any party affected by the error may file a rule to show cause on the mortgagor, obligor, or other heirs, executors, administrators or assigns.[2] The statute suggests that once the rule to show cause is issued, an interested party may come forward and show cause why the mortgage satisfaction should not be stricken. As an example, in Pennsylvania, a mortgage satisfaction and release entered in error may be set aside and the mortgage reinstated so long as the rights of third parties are not affected.[3]

Here, Chesapeake is an interested party because they are in the chain of lienholders. While Chesapeake is not specifically covered under 25 *Del. C.* § 2122 as a party to show cause, they are a party that has a potential financial interest in this matter. Therefore, under the unique circumstances in this case, the Court views Chesapeake to be an interested financial party as a junior lien holder in this action.

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[1] 25 *Del. C.* § 2122(a).
[2] *See* 25 *Del. C.* § 2122(a).
[3] *In re Burkett*, 295 B.R. 776, 783 (Bankr. W.D. Pa. July 24, 2003).

Chesapeake Has Not Shown Cause Sufficient to Leave the Mortgage Satisfied.

Chesapeake alleges that they were prejudiced by the entry of the mortgage satisfaction. However, Chesapeake has done nothing as a result of this mortgage satisfaction that suggests that they were prejudiced as a result of this mistake.

In *Farmers and Merchants Bank v. Riede*, the District Court of Appeal of Florida held that the trial court appropriately entered an order reestablishing a mortgage that was erroneously satisfied and determining that the reinstated mortgage had priority over a subsequent mortgage entered into with the bank.[4] In *Farmers*, two mortgages were given on the same property.[5] Shortly after, the first mortgage was satisfied in error.[6] The trial court set aside the mortgage satisfaction, reinstating the mortgage and determined that the Reides' mortgage had priority over the Bank's mortgage.[7] The Bank, who held the second mortgage on the property appealed arguing that the trial court erred in setting aside the satisfaction and reinstating the mortgage because the bank relied on the satisfaction when it extended credit to the mortgagor.[8] In support of this contention, the bank referred the court to testimony of a loan officer who negotiated the loan.[9] The loan officer testified that the bank loaned money and took a mortgage on the property

[4] 565 So.2d 883, 884 (Fla. Dist. Ct. App. Aug. 16, 1990).
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.* at 884-85.
[9] *Id.*

based on the mortgagor's promise to pay the first mortgage and secure a satisfaction.[10]

The Court in *Farmers* held that the bank did not detrimentally rely on the satisfaction executed by the holder of the first mortgage.[11] The bank instead relied on the promise by the mortgagor to pay the first mortgage, which was not fulfilled.[12] Therefore, based on these facts, the Court concluded that these actions did not cause the bank injury and the mortgage was properly reinstated.[13]

This case is similar to *Farmers* because Chesapeake did not detrimentally rely on the mortgage satisfaction. At oral argument, this Court specifically asked how Chesapeake was prejudiced and it refereed to priority rights in relation to foreclosure proceedings. The precise issue for the Court to decide in this Rule to Show Cause is whether or not Chesapeake sufficiently set forth facts that would warrant not striking the mortgage satisfaction. Chesapeake has not done so. In fact, Chesapeake conceded at oral argument that no steps were taken in reliance of the satisfaction. Therefore, there was nothing done by Chesapeake which would warrant the Court to allow the mortgage to remain satisfied.

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[10] *Id.*
[11] 565 So.2d at 885.
[12] *Id.*
[13] *Id.*

Chesapeake's Unclean Hands Defense is Meritless.

The maxim of Equity providing that, "one who comes into equity must do so with clean hands,"[14] is "well embedded in American Jurisprudence."[15] "Delaware Courts have extraordinarily wide latitude to apply the unclean hands doctrine."[16] While the unclean hands doctrine is generally an equitable defense available in the Court of Chancery, this Court is permitted to consider equitable defenses raised by parties.[17]

Chesapeake's unclean hands defense is meritless. A party cannot come to court with unclean hands and then claim unclean hands as a defense.[18] In this situation, a mistake was made. The sole purpose of Chesapeake coming forward pertains not to its reliance on the satisfaction of the mortgage, but because of its concern about priority rights in the event that the mortgage is reinstated. What Chesapeake is essentially trying to do is take advantage of an error that was made. The Court will not entertain a party trying to take advantage of a mistake for its own benefit. Chesapeake is the party that would profit the most from this mistake. That, in and of itself, is not equitable. Chesapeake was a junior lien holder before the

[14] *Kousi v. Sugahara*, 1991 WL 248408, at *2 (Del. Ch. Nov. 21, 1991).
[15] *Nakahara v. NS 1991 Am. Trust*, 718 A.2d 518, 522 (Del. Ch. Sept. 28, 1998)
[16] *SmithKline Beecham Pharmaceuticals Co. v. Merck & Co., Inc.*, 766 A.2d 442, 449-450 (Del. 2000) (*citing Nakahara*, 718 A.2d 518 at 522).
[17] *USH Ventures v. Global Telesystems Group, Inc.*, 796 A.2d 7, 20 (Del. Super. May 9, 2000).
[18] *See Nakahara v. NS 1991 Am. Trust*, 718 A.2d 518, 522 (Del. Ch. Sept. 28, 1998).

mistake was made and will be a junior lien holder after the satisfaction is corrected, if it was satisfied in error.

The Mortgage was Satisfied in Error.

The mortgage in this case was satisfied in error. When an encumbrance has been discharged through error, equity affords relief.[19] Chesapeake claims that it is entitled to additional discovery before this rule to show cause is decided by the Court. However, discovery is not necessary in this case.

According to 25 *Del. C.* §2122(b), "if the Court is satisfied from the evidence produced that entry of satisfaction or other indication of a mortgage satisfaction has been made . . . through inadvertence, error or mistake . . . the Court shall order that the entry of satisfaction . . . be stricken as if such satisfaction . . . had not been made."[20]

Here, there was a mistake that was made that must be fixed. Mr. Doust testified at the hearing that because the mortgage in question was transferred to WSFS from M&T and WSFS paid the amount left on the loan, he believed that Washington House and not WSFS paid off the remaining balance on the mortgage. The Court is satisfied from Mr. Doust's testimony that his authorization given to satisfy the mortgage was an error. In Pennsylvania, if a mistake is present, the mortgage may be reinstated, even if the exact nature of the mistake is not

[19] *Alliance Funding Co. v. Stahl*, 829 A.2d 1179, 1181 (Pa. Super. Ct. July 24, 2003).
[20] 25 *Del. C.* §2122(b)

disclosed.[21] However, here, the exact nature of the mistake was disclosed. Mr. Doust, who made the mistake testified specifically as to what happened and why the mortgage satisfaction was wrongfully entered. Therefore, the mortgage was erroneously satisfied based on a mistake.

Conclusion

Because the mortgage was erroneously satisfied and Chesapeake did not act in reliance of the satisfaction, to prevent unjust enrichment, the original mortgage is reinstated as having priority. In addition, the mortgage satisfaction that was entered on November 23, 2011 is stricken.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.

[21] *Alliance Funding Co.*, 829 A.2d at 1181.