STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: June 26, 2014)

ROBERT WYSS	:	
AND CHRISTINA WYSS	:	
	:	
v.	:	**C.A. No. WC-2013-0024**
	:	
WILLIAM WYSS	:	

DECISION

K. RODGERS, J. This matter arises out of a debt dating back to 1992 as between brothers and is presently before this Court on cross motions for summary judgment filed by Defendant William Wyss (Defendant or William[1]) and by Plaintiffs Robert Wyss (Robert) and Christina Wyss (Christina, and collectively Plaintiffs). The parties originally stipulated that there are no disputed material facts in this case and that judgment should be issued as a matter of law. This Court entertained oral arguments on April 15, 2013.

On the eve of issuing its written Decision, this Court received Defendant's Motion for Stay of Court Ruling and for Further Consideration, in which the existence of a 1996 Mortgage Deed was disclosed that, Defendant contends, further supports his Motion for Summary Judgment. The parties engaged in discovery and further briefing to address what effect, if any, the existence of the 1996 Mortgage Deed has on the pending cross motions for summary judgment. The parties still maintain that there are no genuine

[1]Because all the parties hereto share the surname Wyss, this Court will refer to each such family member by his or her first name. No disrespect is intended.

issues of material fact and that the case is ripe for summary judgment. After further hearing before this Court, this Court now issues its Decision.

I

Facts and Travel

William loaned $60,000 to his brother Robert and Robert's wife, Christina, on January 14, 1992. In exchange for the loan, Plaintiffs executed a Demand Promissory Note (the Note), whereby they promised to repay the loan before April 15, 1992, with interest at a rate of 12% per annum. The Note was secured by a Mortgage Deed against property at 116 Canterbury Road in Wakefield, Rhode Island, which is Lot 59 of the Town Clerk's Plat Book 16 (the Wakefield Property). That Mortgage Deed was recorded in the South Kingstown Land Evidence Records on January 16, 1992 (the 1992 Mortgage Deed). The debt has never been satisfied in whole or in part, and William has never forgiven, discharged or released any portion of the debt and obligation owed by Plaintiffs.

At the time the Note and the 1992 Mortgage Deed were executed, Plaintiffs were married; however, Christina filed for a divorce on January 3, 2002. By Quitclaim Deed dated January 7, 2002, Robert conveyed all his interest in the Wakefield Property to Christina. The Family Court granted Christina's complaint for divorce and a Final Judgment was entered on or about April 23, 2002, which provides in part that Robert "shall be solely responsible for paying liens on the marital domicile to Williams Wyss" and others.

In 2011, William filed suit in this Court against Robert and Christina to recover the amount due under the terms of the Note. See William Wyss v. Robert Wyss, et al.,

C.A. No. WC-2011-0716. However, that case was dismissed by this Court on August 27, 2012, as being barred by the relevant ten-year statute of limitations for recovering on a promissory note. See G.L. 1956 § 9-1-13. Plaintiffs subsequently commenced the instant action on January 15, 2013, seeking declaratory and injunctive relief that would prevent Defendant from foreclosing on the Wakefield Property. Specifically, Plaintiffs seek (1) a declaration that William is time-barred from foreclosing on the Wakefield Property; (2) a preliminary and permanent injunction enjoining William from foreclosing on the Wakefield Property; (3) a declaration that the Note and 1992 Mortgage Deed on the Wakefield Property is canceled and discharged; and (4) that the Note and 1992 Mortgage Deed be removed as a cloud on the title to the Wakefield Property. Compl. ¶¶ 16-19.

Defendant filed a Motion for Summary Judgment on March 7, 2013, along with a supporting memorandum and affidavit. In those documents, Defendant argues that the statute of limitations set forth in § 9-1-17 does not apply as a bar to potential foreclosure on the Wakefield Property, but rather, the statute of repose found at G.L. 1956 § 34-26-7 controls the outcome of this declaratory judgment action. In objecting to Defendant's motion and in support of their cross motions for summary judgment, Plaintiffs contend[2] that Defendant is barred from foreclosing on the Wakefield Property by the twenty-year statute of limitations found at § 9-1-17.

In his July 12, 2013 Motion for Stay of Court Ruling and for Further Consideration, William argued that there is additional evidence that should be considered

[2]With regard to the pending cross motions, each Plaintiff has filed separate memoranda through respective counsel. Unless otherwise noted, the arguments raised by Robert and Christina are substantially the same.

by this Court prior to issuing its ruling on the parties' cross motions for summary judgment. Specifically, Defendant presented this Court with a Mortgage Deed from Plaintiffs to Defendant, which is dated April 15, 1996, and recorded on February 27, 1997 (the 1996 Mortgage Deed). Def.'s Mem. in Support of Mot. to Stay Ruling, at Ex. A. The 1996 Mortgage Deed purports to secure the payment of $90,600, due on April 15, 1997, with one year interest of 10%. Id. It also provides that the aforementioned payment due is "as provided in a certain negotiable promissory note and loan modification agreement of date hereof,[3] providing additional security for the outstanding balance due, and interest thereon." Id. The 1996 Mortgage Deed does not expressly reference the prior 1992 Mortgage Deed on the Wakefield Property. See id. Instead, the 1996 Mortgage Deed secures property delineated as Lots 28 K and 28 L of a plat entitled "Division of Land owned by Jo Wilson Barnes, Pettasquamscutt Terrace, Narragansett, RI," which plat is recorded in the Town of Narragansett's Plat Book 7 at page 60. Id. Clearly, the real property secured by the 1996 Mortgage Deed is wholly separate from the Wakefield Property secured by the 1992 Mortgage Deed.

According to Defendant, "[b]y this 1996 Mortgage Deed, [] Plaintiffs not only recognize the continuing validity of the 1992 Mortgage[] but act so as to extend its validity." Def.'s Mem. in Support of Mot. to Stay Ruling, at 2. Robert has responded that the 1996 Mortgage Deed is irrelevant to the instant proceedings and does not serve as a novation of the 1992 debt; Christina agreed and further argued that the submission of additional evidence approximately three months after the hearing on this matter violates

[3]The promissory note and loan modification agreement referenced in the 1996 Mortgage Deed have not been presented to this Court, nor has Defendant ever sought to enforce either of those contracts in any manner.

this Court's Administrative Order regarding dispositive motions. Additionally, Christina filed a Motion to Amend Complaint to include a separate count seeking declaratory and injunctive relief as it relates to the 1996 Mortgage Deed. That additional count seeks (1) a declaration that William has no right to initiate a power-of-sale foreclosure on the Wakefield Property based upon the 1996 Mortgage Deed; (2) a preliminary and permanent injunction enjoining William from foreclosing on the Wakefield Property; (3) a declaration that the 1992 Mortgage Deed on the Wakefield Property is canceled and discharged; and (4) that the Note and 1992 Mortgage Deed be removed as a cloud on the title to the Wakefield Property. Mot. to Amend Compl., at Attachment ¶¶ 25-29. No objection was filed and, therefore, pursuant to Rule 7 of the Superior Court Rules of Civil Procedure, Christina's Motion to Amend Complaint was deemed granted.[4]

II

Standard of Review

This Court is given "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed" by the Uniform Declaratory Judgments Act, codified at §§ 9-30-1, et seq. However, when presented with a complaint seeking declaratory relief, "[t]he decision to grant or to deny declaratory relief under the Uniform Declaratory Judgments Act is purely discretionary." Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997) (quoting Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket Sch. Comm., 694 A.2d 727, 729 (R.I. 1997) (quotation omitted)). If declaratory relief is granted, "[t]he declaration may be either affirmative or negative in

[4]Despite the granting of this Motion by Rule of Court, no order was presented to the Court granting the Motion to Amend Complaint, nor was the First Amended Complaint separately filed with the Court. Likewise, no Answer thereto has been filed.

form and effect; and such declarations shall have the force and effect of a final judgment or decree." Sec. 9-30-1.

When a hearing justice is ruling on a motion for summary judgment, whether the underlying complaint seeks declaratory relief or not, the preliminary question before the court is whether there is a genuine issue as to any material fact which must be resolved. R.I. Hosp. Trust Nat'l Bank v. Boiteau, 119 R.I. 64, 376 A.2d 323 (1977); O'Connor v. McKanna, 116 R.I. 627, 359 A.2d 350 (1976). If an examination of the evidence—viewed in the light most favorable to the opposing party—reveals no such issue, then the suit is ripe for summary judgment. Id. at 66, 376 A.2d at 324. If a case is ripe for summary judgment, then this Court must determine whether the moving party is entitled to judgment as a matter of law. See Lucier v. Impact Recreation, Ltd., 864 A.2d 635, 638 (R.I. 2005) (citation omitted).

Here, Plaintiffs maintain that William's right to foreclose the 1992 Mortgage Deed is barred by the lapse of time. The burden of establishing that time bar rests with Plaintiffs. Walsh v. Morgan, 60 R.I. 349, 198 A. 555, 559 (1938)

III

Analysis

It is undisputed that this Court previously ruled that the debt owed on the Note was barred by the ten-year statute of limitations applying to contract actions. See § 9-1-13. However, under Rhode Island law, this prior ruling precluding enforcement of the Note does not, in and of itself, bar Defendant's ability to foreclose on the Wakefield Property secured by the 1992 Mortgage Deed. See Walsh, 60 R.I. at 349, 198 A. at 559 (recognizing the principle that "the mortgagee may foreclosure his mortgage after the

debt is barred"); see also Ballou v. Taylor, 14 R.I. 277, 277 (1883) ("The remedy on a mortgage is not lost because a personal action on the mortgage note is barred by the statute of limitations.").

Plaintiffs in the instant case seek declaratory and injunctive relief that William's ability to foreclose on the subject property is barred by the twenty-year statute of limitations found in § 9-1-17. That provision states that "[t]he following actions shall be commenced and sued within twenty (20) years next after the cause of action shall accrue and not after: actions on contracts or liabilities under seal; and actions on judgments or decrees of any court of record of the United States, or of any state." Sec. 9-1-17. Thus, this twenty-year period only applies if the enforcement of the 1992 Mortgage Deed executed by the parties in this case is considered an "action[] on [a] contract[] . . . under seal" as used in the statute. Id.

By contrast, Defendant maintains that it is actually § 34-26-7 which applies in the instant case. That statute states, in pertinent part:

> "[N]o power of sale in any mortgage of real estate . . . shall be exercised . . . nor proceeding begun for foreclosure of any such mortgage after the expiration of a period which shall be fifty (50) years from the date of recording of the mortgage unless an extension of the mortgage, or an acknowledgment by affidavit that the mortgage is not satisfied, is recorded within the last ten (10) years of that period." Sec. 34-26-7 (emphasis added).

Defendant asserts, then, that he retains the ability to foreclose on the Wakefield Property until fifty years from the date the 1992 Mortgage Deed was recorded, or January 16, 2042.

A

Judicial Foreclosure and Statutory Power of Sale

Before this Court can analyze the applicability of §§ 9-1-17 and 34-26-7, it is important to note the different types of foreclosure that are relevant to the arguments which have been presented to this Court. First, foreclosure is a broad and general term that refers to a method of "terminat[ing] a mortgagor's interest in property, [which is] instituted by the lender (the mortgagee) either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property." Black's Law Dictionary 658 (7th ed. 1999). This general term encompasses at least two distinct types of foreclosure: judicial foreclosure and power-of-sale foreclosure. Judicial foreclosure is defined as a "foreclosure method by which the mortgaged property is sold through a court proceeding requiring many standard legal steps such as the filing of a complaint, service of process, notice, and a hearing." Id. By contrast, power-of-sale foreclosure is "[a] foreclosure process by which . . . the mortgaged property is sold at a nonjudicial public sale by a public official, the mortgagee, or a trustee, without the stringent notice requirements, burdens, or delays of a judicial foreclosure." Id.

The distinction between judicial foreclosure and power-of-sale foreclosure is important in analyzing the instant case. In Rhode Island, judicial foreclosure is authorized pursuant to § 34-27-1, which provides that "[a]ny person entitled to foreclose the equity of redemption in any mortgaged estate, whether real or personal, may prefer a complaint to foreclose it, which complaint may be heard, tried, and determined according to the usages in chancery and the principles of equity." By contrast, the statutory power of sale is found in § 34-11-22, which also allows the power of sale to be included in any

mortgage by reference. The statutory power of sale provides not only the grant of authority to the mortgagee to make such a sale, but also the procedures that must be followed in the execution of such a sale. See § 34-11-22. Among the procedures outlined by the statute are specific guidelines for the issuance of notice prior to sale, payment of all relevant expenses, retention of proceeds, and payment of any surplus. See id.

Absent from the statutory power of sale, however, is any requirement of judicial involvement. See id. Indeed, Rhode Island courts have long recognized the power of sale as a means of enforcing security on a debt without court intervention. See, e.g., In re Saxton, 2014 WL 1369913, at *3 n.3 (R.I., filed Apr. 4, 2014) ("[S]tatutory power of sale[] and foreclosure auctions do not require judicial approval or occur on courthouse property."); McFarland v. Brier, 850 A.2d 965, 982 (R.I. 2004) (analogizing power of sale to Article 9 of the Uniform Commercial Code (UCC) and finding that "power-of-sale foreclosure 'is not imbued with state action,' but 'is a privately created contractual remedy analogous to the self-help repossession remedy afforded secured creditors under § 9-503 of the'" UCC, which does not require judicial approval) (citation omitted); (Silverman v. Shattuck, 33 R.I. 67, 80 A. 184, 186 (1911) (rejecting interpretation that mortgagee's "liberty to foreclose the mortgage" was for technical foreclosure by suit in equity and instead permitting mortgage to sell under power of sale contained in the mortgage, "such sale under the power being very generally called a foreclosure" in Rhode Island); see also Bucci v. Lehman Bros. Bank, FSB, 68 A.3d 1069, 1087 (R.I. 2013) (holding that agent of the owner of note may exercise statutory power of sale on behalf of owner); Beaufort v. Warwick Credit Union, 437 A.2d 1375, 1376 (R.I. 1981) (analyzing

notice requirements for foreclosure of mortgage containing power of sale). As such, the statutory power of sale is not an "action," which is defined as "[a] civil or criminal judicial proceeding." Black's Law Dictionary 28 (7th ed. 1999).

Plaintiffs' Complaint does not distinguish between a judicial foreclosure and a statutory power of sale. Rather, Plaintiffs seeks a general declaration that William "is now time barred from foreclosing his Mortgage Deed" on the Wakefield Property and that he be "preliminarily and permanently restrained and enjoined from foreclosing his Mortgage Deed" on the Wakefield Property. Compl. at ¶¶ 16-17. Plaintiffs use only the general term "foreclosure," while at no point specifying the specific type(s) of foreclosure for which they are seeking such declaratory and injunctive relief. In their memoranda and at oral argument, they maintain that they are entitled to declaratory and injunctive relief precluding William from exercising both judicial foreclosure and statutory power of sale under the 1992 Mortgage Deed.

B

Statutes of Limitations and Statutes of Repose

Another critical distinction worth noting, prior to analyzing the merits of the parties' arguments, is that § 9-1-17 is a statute of limitations while § 34-26-7 is a statute of repose. "[A] 'statute of limitations' bars a right of action unless the action is filed within a specified period after an injury occurs whereas a 'statute of repose' terminates any right of action after a specific time has elapsed irrespective of whether there has as yet been an injury." Salazar v. Mach. Works, Inc., 665 A.2d 567, 568 (R.I. 1995) (citing Hanson v. Williams Cnty., 389 N.W.2d 319, 321 (N.D. 1986)). Unlike a statute of repose, a statute of limitations does not destroy the right, but instead withholds the

remedy. Harodite Indus., Inc. v. Warren Elec. Corp., 24 A.3d 514, 538 (R.I. 2011) (citing Sun Oil Co. v. Wortman, 486 U.S. 717, 725, 108 S.Ct. 2117 (1988)). These statutes may coexist relative to the same subject matter because a statute of limitations "relate[s] solely to the remedy rather than to the substantive right," while the limitations imposed by a statute of repose act as "an express condition of the right to compensation." Salazar, 665 A.2d at 568 (quoting Emmett v. Town of Coventry, 478 A.2d 571, 572 (R.I. 1984) (internal quotation omitted)). Thus, these two statutes are not necessarily in conflict with one another; rather, this Court must simply decide which of the statutes is determinative of the instant controversy.

C

Applicability of § 34-26-7

In this case, Defendant argues that the only limitation on his right to enforce the 1992 Mortgage Deed is the statute of repose found at § 34-26-7. Defendant further points to the pertinent language, "no power of sale in any mortgage of real estate . . . shall be exercised . . . nor proceeding begun for foreclosure of any such mortgage after the expiration of a period which shall be fifty (50) years from the date of recording of the mortgage," as evidence that the statute of repose applies both to the statutory power of sale and the right to file an action for judicial foreclosure. See id. This Court agrees. Under the terms of § 34-26-7, all foreclosure actions—either by judicial foreclosure or the statutory power of sale—are barred after fifty years from the date the mortgage is recorded. Here, that means that Defendant's right to foreclose on the subject property is extinguished by this statute of repose on January 16, 2042, unless there is an extension filed pursuant to the terms of the statute. See id.

This determination, however, does not end this Court's inquiry insofar as it is undisputed that there was an injury to Defendant in the instant case based on Plaintiffs' failure to repay the $60,000 loan, as provided for in both the Note and the 1992 Mortgage Deed. Under the terms of the 1992 Mortgage Deed itself, that money was due on April 14, 1992. The next question, then, is whether that undisputed injury started the clock on the statute of limitations found at § 9-1-17.

D

Applicability of § 9-1-17

1

Statutory Power of Sale

A statute of limitations operates to bar the litigation of stale demands by requiring that an action be filed within a specified period of time after an injury or loss is incurred. Section 9-1-17 is a statute of limitations which requires that certain "actions shall be commenced and sued within twenty (20) years next after the cause of action shall accrue and not after." Sec. 9-1-17 (emphasis added). Among the included actions are "actions on contracts or liabilities under seal." Id. (emphasis added). As previously noted, supra Section III A, because the statutory power of sale involves no judicial intervention, it is not an "action," nor is there any entity "sued" when a power-of-sale is enforced.

Plaintiffs' argument that a power-of-sale foreclosure is an extra-judicial remedy that is barred by § 9-1-17 is unavailing. First, this Court's determination during the pendency of the cross motions for summary judgment that William shall be enjoined from foreclosing on the 1992 Mortgage Deed does not transform William's right to

statutory power of sale into an "action" or a "suit" that is contemplated in § 9-1-17. Rather, this Court's previous direction, which was not separately sought or entered as a temporary or preliminary injunction, served to maintain the status quo while this Court weighed the legal arguments raised herein.

Second, our Supreme Court has previously questioned the applicability of § 9-1-17 to the statutory power of sale. In Walsh, 60 R.I. at 349, 198 A. at 555, the Court considered whether the twenty-year statute of limitations barred an administrator of the estate of the mortgagee from foreclosing on a mortgage deed. The court ultimately determined that, under the unique facts of that case, "the foreclosure should take place in the exercise of the equity powers of the superior court, rather than in the exercise of the power of sale contained in the mortgage." Id. at 349, 198 A. at 561. Before reaching that conclusion, however, the court considered the mortgagors' contention that foreclosure would be time-barred:

> "The complainants rely on the following statement in the above work by [2 Jones on Mortgages, 8th Ed., 1042, § 1542]: 'Although the mortgagee may foreclose his mortgage after the debt is barred he can not foreclose it after the statutory period has run against the mortgage as a specialty.' We have some doubt whether this rule applies to a sale under a power of sale in the mortgage; but at any rate it does not apply, unless a proceeding in court to enforce the mortgage has been barred by the lapse of the period stated in that provision of the statute of limitations which relates to actions upon instruments under seal. That period in this state is twenty years." Id. at 349, 198 A. at 559 (emphasis added).

This Court concurs with that doubt expressed in 1938 and concludes that § 9-1-17, codified in our 1956 General Laws, does not apply to a statutory power of sale. As the statutory power of sale is not subject to the twenty-year statute of limitations set forth

in § 9-1-17, the only temporal limitation on a statutory power of sale, then, is the fifty-year statute of repose set forth in § 34-26-7.

2

Judicial Foreclosure

In order for the twenty-year statute of limitations to apply to a judicial foreclosure, the 1992 Mortgage Deed must be a "contract[] or liabilit[y] under seal." Sec. 9-1-17. A contract under seal is "[a] formal contract that requires no consideration and has the seal of the signer attached." Black's Law Dictionary 320 (7th ed. 1999). Such a contract is "[t]he only formal contract of English law . . . [and is] sometimes also called a deed and sometimes a specialty." Id. (quoting William R. Anson, Principles of the Law of Contract 82 (Arthur L. Corbin ed., 3d Am. ed. 1919)). The discussion in Walsh makes clear that mortgage deeds are a "specialty" and, therefore, are considered a contract under seal for purposes of determining whether the twenty-year statute of limitations applies to a proceeding in court to enforce the mortgage. Walsh, 60 R.I. 349, 198 A. at 559. Accordingly, this Court concludes that, because the 1992 Mortgage Deed is a contract under seal, the twenty-year statute of limitations found in § 9-1-17 applies to judicial foreclosure actions arising under the 1992 Mortgage Deed.

E

Judicial Foreclosure of the 1992 Mortgage Deed is Time-Barred

In the instant case, it is undisputed that there was an injury to Defendant based on Plaintiffs' failure to repay the $60,000 loan, as provided for in both the Note and the 1992 Mortgage Deed that is the subject of this declaratory judgment action. Under the terms thereof, that money was due on April 14, 1992. Thus, Defendant was first able to

institute an action for judicial foreclosure on April 15, 1992, when Plaintiffs had failed to repay the funds due under the Note by April 14, 1992.

Defendant argues that his injury did not occur until he demanded payment from Plaintiffs and was refused that payment. Such demands were made via letter signed by Attorney Margaret A. Laurence, now deceased, directed to each Plaintiff on various dates during 2010. See Def.'s Supplemental Mem. at Ex. B. This Court finds this argument to be without merit. If the date of demand is the controlling date, as Defendant suggests, mortgagees would have free reign to effectively circumvent the relevant statutes of limitation by strategically declining to make such a demand until it is most convenient for them. The result of such strategic scheduling of demands for payment could significantly extend the time period during which a party is entitled to institute foreclosure, irrespective of the time frame intended by the General Assembly in passing the relevant statute of limitations. In the view of this Court, this result is untenable. Thus, the twenty-year statute of limitations under § 9-1-17 began to run in this case on April 15, 1992.

Defendant also argues that the twenty-year statute of limitations provided for in § 9-1-17 is interrupted by "recognition" of the 1992 Mortgage Deed by Plaintiffs in their Final Judgment of divorce. That Final Judgment does not directly reference the Note or the 1992 Mortgage Deed but provides that Robert Wyss "shall be solely responsible for paying liens on the marital domicile to Williams Wyss" and others. See Def.'s Supplemental Mem. at Ex. A, ¶ 8. According to Defendant, this establishes "that Plaintiffs[] clearly recognized the validity of Defendant's mortgage, and in such a way as to interrupt the running of any twenty (20) year period of possession without such

recognition." Id. at 4 (emphasis in original). Defendant's reliance on our Supreme Court's holdings in Ballou and Walsh in support of his argument is misplaced.

In Ballou, the Court stated that "[t]he remedy on the mortgage ordinarily remains good until the note is paid, or may be presumed to have been paid, or until the remedy has been lost by the lapse of twenty years without recognition of the mortgage as a valid lien by the mortgagor remaining in possession." 14 R.I. 277, 279 (1883) (emphasis added). In that case, our Supreme Court found that a mortgage had been "recognized" when a payment was made on the note, noting that "[a] payment of interest or of part of the principal renews the mortgage, so that an action may be brought to enforce it within twenty years after such last payment." Id. (quotation omitted). This notion that a mortgage may be renewed by payment of principal or interest is wholly inapposite to the instant case, as it is undisputed that no payments have ever been made on the outstanding debt owed by Plaintiffs under the Note or 1992 Mortgage Deed.

The holding and discussion in Walsh concerning possession of the property that is the subject of the mortgage are similarly inapposite to the instant case. In that case, the Court responded to the mortgagors' argument that enforcement of the mortgage is barred because they had remained in possession of the subject property for more than twenty years by applying the statute of adverse possession. Walsh, 60 R.I. 349, 198 A. at 560. There is no claim made by Plaintiffs herein that they are entitled to declaratory or injunctive relief based upon adverse possession. This Court concludes that the reference in the Final Judgment entered in the Plaintiffs' divorce action is of no moment to the enforcement of the 1992 Mortgage Deed, as a recognition of the debt or otherwise. Simply put, Defendant's cause of action on the 1992 Mortgage Deed accrued on April 15,

1992, and Defendant had twenty years from that date to file an action for judicial foreclosure thereon. Having failed to do that, Defendant's right to seek judicial foreclosure on the 1992 Mortgage Deed is barred by the twenty-year statute of limitations in § 9-1-17.

F

1996 Mortgage Deed

Finally, this Court considers the impact of the belatedly-identified 1996 Mortgage Deed on the parties' rights under the 1992 Mortgage Deed. The discovery conducted subsequent to the disclosure of the 1996 Mortgage Deed offers little details concerning its execution.[5] There is no promissory note of loan modification for the Court to consider, nor is there any evidence of how the 1996 Mortgage Deed serves as "additional security." In sum, there is no basis upon which this Court can conclude that the existence of the 1996 Mortgage Deed on an entirely separate parcel of real estate in another municipality in any way extends the twenty-year statute of limitations on a judicial foreclosure action based upon the 1992 Mortgage Deed.

IV

Conclusion

For all the reasons stated herein, there are no genuine issues of material fact raised and the case is ripe for summary judgment. Plaintiffs' Motions for Summary Judgment are granted in part and denied in part. Similarly, Defendant's Motion for Summary

[5]A deposition of Attorney Leonard Bergerson was taken and Christina served upon William a request for production of documents. Atty. Bergerson notarized the 1996 Mortgage Deed but had no memory of the details of the transaction or of any antecedent transaction between the parties. See Christina Wyss' Supplemental Mem. Addressing 1996 Mortgage Deed, at 1. Defendant has not disputed this assessment of Atty. Bergerson's deposition testimony.

Judgment is granted in part and denied in part. This Court declares that Defendant is barred by § 9-1-17 from instituting judicial foreclosure proceedings on the Wakefield Property, and that Defendant retains the right to exercise the statutory power of sale in the 1992 Mortgage Deed on the Wakefield Property until January 16, 2042, pursuant to § 34-26-7. The Court further orders that Defendant is preliminarily and permanently enjoined from instituting a judicial foreclosure action against the Wakefield Property. The Court denies Plaintiffs' requested injunctive relief as it relates to Defendant's right to exercise the statutory power of sale concerning the Wakefield Property. Finally, the Court denies Plaintiffs' request for a declaration that the 1992 Mortgage Deed is canceled and discharged, and for a declaration that the 1992 Mortgage Deed be removed as a cloud on title to the Wakefield Property. The Note, however, shall be canceled, discharged and removed as a cloud on title to the Wakefield Property as the judgment in C.A. No. WC-2011-0716 conclusively determined that Defendant's rights to enforce the Note have been extinguished.

Counsel for the parties shall confer and submit an appropriate judgment consistent with this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	Robert B. Wyss, et al. v. William V. Wyss
CASE NO:	C.A. No. WC-2013-0024
COURT:	Washington County Superior Court
DATE DECISION FILED:	June 26, 2014
JUSTICE/MAGISTRATE:	Kristin E. Rodgers

ATTORNEYS:

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