COURT OF CHANCERY
OF THE
STATE OF DELAWARE

ABIGAIL M. LEGROW
MASTER IN CHANCERY

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DE 19801-3734

Final Report: September 2, 2014
Submitted: June 3, 2014

Seth L. Thompson, Esquire
Sergovic Carmean & Weidman, P.A.
142 East Market Street
P.O. Box 751
Georgetown, DE 19947

Jason R. and Brenda G. Roslewicz
1994 McGinnis Pond Road
Magnolia, DE 19962

Re: *Deutsche Bank National Trust Co., et al. v. Roslewicz, et al.*
C.A. No. 5922-ML

Dear Counsel and Litigants:

Plaintiff Deutsche Bank National Trust Company, ("Deutsche Bank"), as trustee for Wells Fargo Home Mortgage, Inc. ("Wells Fargo Home Mortgage"), filed a petition to reform a deed on the basis of mutual mistake. Deutsche Bank contends the name of Defendant Brenda G. Roslewicz mistakenly was included on the deed to 1994 McGinnis Pond Road, Magnolia, Delaware 19962 (the "Property") when Mrs. Roslewicz's husband, Jason R. Roslewicz, purchased the Property using funds obtained through a mortgage loan made solely to Mr. Roslewicz. Mr. and Mrs. Roslewicz maintain that the

deed and the mortgage for the Property properly reflect the intent of the parties as written, but the Roslewiczes also concede that all parties intended for the loan to be secured by a mortgage on the Property. Because the undisputed facts show that the parties intended the Property to serve as collateral for the loan, and because that result only can be accomplished by correcting the apparent mistake in the deed, I recommend that the Court enter an order granting summary judgment in favor of Deutsche Bank.

FACTUAL BACKGROUND[1]

In 2003, Mr. Roslewicz submitted a loan application to Wells Fargo Home Mortgage for the purpose of funding his anticipated purchase of the Property.[2] Wells Fargo Home Mortgage approved Mr. Roslewicz for a loan of $143,920.00.[3] Mrs. Roslewicz did not apply for the loan and was not an approved borrower. On November 25, 2003, Mr. Roslewicz purchased the Property for $179,900.00.[4] The proceeds of the loan were used to fund the bulk of the purchase price for the Property, and Mr. Roslewicz signed a Mortgage on the Property in the amount of the loan.[5]

Clifford B. Hearn, Jr., Esquire ("Attorney Hearn") represented Mr. Roslewicz at settlement.[6] Although Mrs. Roslewicz was present at the settlement, only Mr. Roslewicz signed the settlement statement and the Mortgage.[7] Additionally, only Mr. Roslewicz signed a Correction Agreement – Limited Power of Attorney appointing Clifford Hearn

[1] Except as noted, the following facts are not in dispute.
[2] Am. Compl. ¶¶ 5-6.
[3] *Id.* ¶ 7.
[4] Opening Br. in Supp. of Pl.'s Mot. for Summ. J. (hereinafter "Opening Br.") ¶¶ 3, 11.
[5] Am. Compl. ¶ 8; Defs.'s Answer to Am. Compl. (hereinafter "Answer") ¶ 8.
[6] Opening Br. ¶ 12.
[7] *Id* ¶¶ 14, 18, 19, 20 & Ex. 1 at 1.

Law Firm as his agent.[8] The deed that was recorded after settlement (the "Deed"), however, does not match the Mortgage, and instead lists both of the Roslewiczes as joint owners of the Property.[9] The Deed is a sealed document.[10] Wells Fargo Home Mortgage assigned the rights to the Mortgage to Deutsche Bank.[11]

Deutsche Bank contends, and the Roslewiczes do not dispute, that all parties to the loan agreement intended the loan to be secured by the Mortgage on the Property.[12] The Roslewiczes conceded this fact both in their filings in this Court and later at Mr. Roslewicz's deposition.[13] Both defendants also acknowledge that – although they intended to purchase the Property as a family home – they did not intend for Mrs. Roslewicz's name to appear on the Deed.[14]

In June 2004, the Roslewiczes took out a loan of $75,000, which was secured by a second mortgage on the Property.[15] The Roslewiczes both signed the second mortgage.[16] Thereafter, Mr. Roslewicz defaulted on his mortgage payments.[17] Following Mr. Roslewicz's default, Deutsche Bank tried to foreclose on the Property, at which point the

---

[8] *Id*. ¶ 12.
[9] *Id*. Ex. 5 at 288.
[10] *Id*. at 289.
[11] Am. Compl ¶ 7; Answer ¶ 7.
[12] Am. Compl. ¶ 12; Answer ¶¶ 12, 17.
[13] Answer ¶ 12; Defs.'s Answer to Mot. for Summ. J. (hereinafter "Answering Br.") ¶ 23; Opening Br. Ex. 3 (Dep. of J. Roslewicz) at 24,
[14] Opening Br. Ex. 3 (Dep. of J. Roslewicz) at 25; Opening Br. Ex. 4 (Dep. of B. Roslewicz) at 9-10; Answering Br. ¶ 22.
[15] Consent of Wells Fargo to the Relief Requested in the Complaint, *Deutsche Bank National Trust Company v. Roslewicz*, C.A. No. 5922-ML; *see also* Letter to the Court from Seth L. Thompson, Esq. (Feb. 22, 2013).
[16] *Id.*
[17] Am. Compl. ¶ 11.

discrepancy between the Mortgage and the Deed was discovered. Because the Deed does not match the Mortgage, Deutsche Bank cannot initiate a foreclosure action in Superior Court. On October 1, 2010, Deutsche Bank filed this action. The Roslewiczes were deposed in November 2011. Deutsche Bank later amended its complaint. Deutsche Bank then moved for summary judgment.

Deutsche Bank contends that the settlement documents as well as the Roslewiczes' actions and sworn statements show the parties' intentions at the time the loan was made and the Mortgage was executed. Specifically, Deutsche Bank argues that both parties believed the Property would be titled to Mr. Roslewicz, and would match the Mortgage, so that the Property would serve as collateral for the loan. Deutsche Bank maintains that the Deed matches neither the Mortgage nor the original intentions of the parties due to a scrivener's error made when the Deed was prepared. In response, the Roslewiczes maintain that the Deed as written reflects their true intentions at the time the loan was extended and the Mortgage was signed, because they always intended for the Property to serve as the family home. Mr. Roslewicz also maintains that this action is time-barred because Deutsche Bank had 120 days to request corrections to the Deed after it was executed. Mr. Roslewicz contends that Deutsche Bank should have reviewed and amended the Deed at settlement. Mr. Roslewicz also states that he is working with NCALL Research, Inc. to modify the loan with Wells Fargo Home Mortgage and cure the default, and that it would be "unjust" to modify the Deed because Mr. Roslewicz

"fully intends to cure the default and repay … the full amount of the mortgage through loan modification."[18]

A lengthy delay between the filing and resolution of Deutsche Bank's motion largely is attributable to various extensions granted by the Court to afford the Roslewiczes time to consult counsel, along with a series of serious and unfortunate health issues confronted by Mr. Roslewicz. On June 3, 2014, I heard argument on Deutsche Bank's motion.

ANALYSIS

Summary judgment should be awarded if "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[19] When considering a motion for summary judgment, the evidence and the inferences drawn from the evidence are to be viewed in light most favorable to the nonmoving party.[20] A party seeking summary judgment bears the initial burden of showing that no genuine issue of material fact exists.[21] If the movant makes such a showing, the burden then shifts to the non-moving party to submit sufficient evidence to show that a genuine factual issue, material to the outcome of the case, precludes judgment before trial.[22] The non-moving party must do more than simply allege the

[18] Answering Br. ¶ 31.
[19] *Twin Bridges Ltd. P'ship v. Draper*, 2007 WL 2744609, at *8 (Del. Ch. Sept. 14, 2007) (citing Ct. Ch. R. 56(c)).
[20] *Judah v. Del. Trust Co.*, 378 A.2d 624, 632 (Del. 1977).
[21] *Johnson v. Shapiro*, 2002 WL 31438477, at *3 (Del. Ch. Oct. 18, 2002).
[22] *Id.*; *Conway v. Astoria Fin. Corp.*, 837 A.2d 30, 36 (Del. Ch. 2003).

existence of a disputed factual issue.[23] Rather, the non-moving party must bring forth specific evidence from which a rational trier of fact could infer that the non-moving party has proven the elements of a prima facie case against the movant.[24]

The relief Deutsche Bank seeks is unusual; a formal instrument, reduced to writing, will not lightly be set aside by this Court.[25] Where, however, a party can prove by clear and convincing evidence that a writing fails to express the intent of the parties to an agreement, this Court may reform an instrument to effectuate the parties' original intent.[26] To prevail, Deutsche Bank must present evidence removing any doubt that the Deed fails to reflect the parties' agreement as a result of mutual mistake, stenographic negligence, or mistake of one party together with fraud, overreaching or inequitable conduct by the other party.[27]

Deutsche Bank argues that the parties' plain and undisputed intent was to have the loan secured by the Mortgage on the Property, and that intent was not accomplished because of a mutual mistake or stenographic error in the Deed. Mutual mistake occurs when both parties share identical intentions that mistakenly are not expressed when a written instrument is executed.[28] A mutual mistake may arise when a party erroneously

---

[23] *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).
[24] *See Cerebrus Intern., Ltd. v. Apollo Management, L.P.*, 794 A.2d 1141, 1149 (Del. 2002) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986)).
[25] *Hob Tea Room, Inc. v. Miller*, 89 A.2d 851, 856 (Del. 1952)
[26] *Id*. at 856-57; *Croxton v. Chen*, 1998 WL 515346, at *2 (Del. Jun. 26, 1998).
[27] *Demetriades v. Kledaras*, 121 A.2d 293, 295 (Del. Ch. 1956).
[28] 76 C.J.S. Reformation of Instruments § 40 (2014).

includes a word or a provision in the instrument that the parties did not agree upon.[29] Like a mutual mistake, a scrivener's error fails to reflect the intentions of the parties in the written instrument.[30] An example of a scrivener's error is a "minor typographical mistake, such as an incorrect address."[31]

The undisputed facts on which Deutsche Bank relies establish by clear and convincing evidence that the parties intended for the Property to serve as collateral for the loan. That intent is confirmed both by the Mortgage executed by Mr. Roslewicz and the Roslewiczes' admissions during their depositions and in documents filed with this Court. The parties' intent was not accomplished because of an apparent mistake or stenographic error in the Deed, which lists Mrs. Roslewicz as a joint owner to the Property even though she did not apply for the loan and did not sign any papers at the time the Property was purchased. As is typical, neither of the Roslewiczes signed the Deed, and the Roslewiczes confirmed at their depositions that they did not intend to list Mrs. Roslewicz as a joint owner of the Property. The only logical conclusion to be drawn from the Roslewiczes' admissions is that the inclusion of Mrs. Roslewicz on the Deed was the result of a stenographic error.[32]

---

[29] *Id.*
[30] 66 AM. JUR. 2D *Reformation of Instruments* § 19 (2014).
[31] *Envo, Inc., v Walters*, 2009 WL 5173807, at *5 (Del. Ch. Dec. 30, 2009).
[32] At oral argument, Mr. Roslewicz argued that reformation of the deed to remove Mrs. Roslewicz's name could not be accomplished on the basis of a finding of scrivener's error, because the reformation "fundamentally would alter the personal liability of the parties involved," which Mr. Roslewicz argued was contrary to this Court's decision in *Envo, Inc. v. Walters*, 2009 WL 5173807, at * 4-5. First, I do not believe *Envo* stands for the proposition that reformation never may be ordered on the basis of scrivener's error if the reformation would fundamentally alter the parties' liabilities. Even if *Envo* stood for that broad proposition,

The Roslewiczes contend, however, that Deutsche Bank's claim for reformation of the Deed is untimely and barred by laches. When considering a laches defense, a court may consider the analogous statute of limitations period, and this Court typically applies that limitations period by analogy absent some tolling of the period.[33] In support of their laches defense, the Roslewiczes argue that the applicable limitations period should be 120 days from the settlement, because the Limited Power of Attorney Mr. Roslewicz signed at settlement gave Deutsche Bank 120 days to correct errors in the Deed.[34]

There is no statutory or other authority supporting the harsh conclusion that the 120 day effective period for the Limited Power of Attorney operates as a statute of limitations to bar later efforts to correct errors in the Deed. Because the Deed was a sealed document, the analogous limitations period for purposes of a laches defense is 20 years.[35] Deutsche Bank filed this action to reform the Deed well within that 20 year period, and therefore this action presumptively is timely. In addition, the Roslewiczes have made no effort to establish the other elements of a laches defense, including the prejudice they may have suffered as a result of any delay.

---

however, Mr. Roslewicz's argument fails to persuade. The removal of Mrs. Roslewicz's name from the deed would not alter her liability, as she did not sign the loan agreement or the Mortgage, and therefore cannot be held liable for the debt. The removal of Mrs. Roslewicz's name from the Deed only will allow Deutsche Bank to perfect its Mortgage on the Property and enforce its rights against Mr. Roslewicz – a result Mr. Roslewicz concedes was the intent of the parties to the Mortgage.

[33] *Capano v. Capano*, 2014 WL 2964071, at * 8 (Del. Ch. Jun. 30, 2014).

[34] Opening Br. Ex. 2; *see also* Answering Br. ¶ 12.

[35] *Whittington v. Dragon Gp., L.L.C.*, 991 A.2d 1, 10 (Del. 2009). The 20-year limitations period for sealed documents is a "matter of common law." *Id.* at 14 (Jacobs, J., dissenting).

The Roslewiczes also argue that they would not be unjustly enriched if this Court denies Deutsche Bank's claim for reformation because Mr. Roslewicz is working with a company to obtain a loan modification and cure the default on the Mortgage. This and similar arguments advanced by Mr. Roslewicz during the hearing on the motion reflect a fundamental misunderstanding about the relief Deutsche Bank seeks and the necessity of reformation before the Mortgage may be enforced. Mr. Roslewicz continues to believe that this case should be a foreclosure action in the Superior Court and that Deutsche Bank is not without a remedy at law. The problem with each of those arguments is that Deutsche Bank cannot foreclose on the Mortgage – or even file an action in Superior Court to initiate a foreclosure process – unless and until the Mortgage and the Deed match. It also seems unlikely that Mr. Roslewicz will be able to modify the loan until the Deed is reformed to match the parties' intent and the Mortgage.

For all those reasons, Deutsche Bank has established by clear and convincing evidence that the parties intended for the Property to serve as collateral for the loan, intended for the Mortgage to be effective, and did not intend for Mrs. Roslewicz's name to appear on the Deed. The Roslewiczes have not advanced any material facts creating a disputed issue of fact or rebutting Deutsche Bank's showing. Reformation of the Deed therefore is warranted.

CONCLUSION

For the foregoing reasons, I recommend that the Court grant summary judgment in favor of the plaintiff. This is my final report and exceptions may be taken in accordance with Court of Chancery Rule 144.

Respectfully submitted,

/s/ Abigail M. LeGrow

Master in Chancery