

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

Wells Fargo Bank, N.A.,	)	
Plaintiff,	)	C.A. No. 6883-MA
	)	
v.	)	
	)	
Charlotte Richardson, Individually, and Charlotte	)	
Richardson in her capacity as Administratrix of the	)	
Estate of Oliver F. Richardson,	)	
Defendants.	)	

MASTER'S REPORT

Date Submitted: April 30, 2013
Draft Report: July 31, 2013
Final Report: August 13, 2013

This is my Final Report following the submission of post-trial memoranda on Plaintiff Wells Fargo Bank, N.A.'s ("Wells Fargo") request for declaratory relief against Defendant Charlotte Richardson ("Mrs. Richardson"), individually and in her capacity as Administratrix of the Estate of Oliver F. Richardson. After reviewing the record, including the testimony and evidence presented at trial on December 20, 2012, I am now recommending that an equitable lien in the amount of \$156,958.78 plus interest and costs be imposed on real property located at 1219 South Farmview Drive, Dover, Delaware 19904 (the "Property") that is currently owned by Mrs. Richardson.

Procedural History

On September 22, 2011, Wells Fargo filed a verified complaint regarding an alleged cloud on the title of the Property owned by Oliver F. Richardson that was created when a deed executed on May 17, 2002 (“2002 Deed”) purported to transfer the Property from “Oliver F. Richard” to Oliver F. Richardson and Charlotte Richardson, husband and wife. According to the complaint, on June 22, 2005, with the knowledge and consent of Mrs. Richardson, Mr. Richardson refinanced an earlier loan by executing in his sole name an Adjustable Home Equity Conversion Mortgage and Second Mortgage with Wells Fargo. The complaint alleged that due to an incorrect grantor name and an incorrect legal description of the Property in the 2002 Deed, Wells Fargo was not able to discover the 2002 Deed during the title search performed in conjunction with the 2005 refinancing. In its complaint, Wells Fargo sought a declaration that the 2002 Deed is void and should be stricken from the land records or, in the alternative, a judgment imposed against the Estate of Oliver F. Richardson and Charlotte Richardson, jointly and severally, in the amount due on the Wells Fargo mortgages, plus accrued interest and costs, or that a constructive trust be placed on the ownership interest in the Property of Charlotte Richardson, in the amount due on the above mortgages, plus accrued interest and costs.

After receiving an extension of time to respond to the complaint, Mrs. Richardson filed a *pro se* answer on November 17, 2011, pleading “not guilty” to the complaint and alleging that she had done nothing wrong.¹ On January 23, 2012, Mrs. Richardson

¹ Docket Item (“D.I.”) No. 8.

supplemented her *pro se* answer, denying Wells Fargo's allegations and alleging that the 2002 deed was valid.² Mrs. Richardson requested that the complaint be dismissed because Wells Fargo had failed to do an accurate title search.

A trial was held on December 20, 2012. Wells Fargo presented one witness, Crystal Carey, Esquire, the attorney who handled the refinancing settlement in 2005. Mrs. Richardson appeared *pro se*, and testified on her own behalf. I reserved decision at the conclusion of the trial and requested post-trial briefing from the parties.

Factual Background³

A deed dated August 15, 1989 ("1989 Deed") and recorded in the land records of Kent County, Delaware in Book Z46, page 318, shows that the Property was purchased in 1989 by Oliver F. Richardson.⁴ At the time, he was married to the Defendant, but she was not working and had bad credit so the Property was purchased in her husband's sole name.⁵ In 2002, the couple refinanced the Property. They borrowed \$112,000.00 from Savings First Mortgage in order to lower the monthly mortgage payments and to pay off Mrs. Richardson's credit card bills.⁶ Both husband and wife signed a mortgage and note (collectively referred to as "2002 Mortgage") as borrowers on May 17, 2002.⁷ On that same date, the 2002 Deed was executed transferring the Property for the sum of zero dollars to "Oliver F. Richardson and Charlotte Richardson, Husband and Wife, tenants by

² D.I. No. 10.

³ Except where otherwise noted, these facts are undisputed in the record.

⁴ Plaintiff's Trial Exhibit I.

⁵ Trial Transcript at p. 90.

⁶ Plaintiff's Trial Exhibit H; Trial Transcript at p. 81.

⁷ Plaintiff's Trial Exhibit H.

the entireties.”⁸ The grantor’s name recited in the 2002 Deed, however, was Oliver F. Richard, not Oliver F. Richardson. The signatures of the grantor and grantees were notarized by a Delaware notary public, but the 2002 Deed had been prepared and was subsequently recorded by an out-of-state settlement company.⁹ The 2002 Deed contained seven errors in the legal description of the Property in addition to the misspelling of the grantor’s name.

In 2005, Mr. Richardson applied for a reverse mortgage.¹⁰ Mr. Richardson was then 93 years old, but Mrs. Richardson was nearly forty years younger than her husband and not old enough to qualify for a reverse mortgage.¹¹ According to Mrs. Richardson’s testimony, her husband had seen something on the television about a reverse mortgage, and had made a telephone call.¹² In response, an unknown representative from Wells Fargo came to their home.¹³ Two or three weeks later, two other men came to their home with paperwork and sat in the kitchen with Mr. Richardson as he signed documents.¹⁴ According to Mrs. Richardson, these men would not let her stay in the room while they went over the paperwork with Mr. Richardson.¹⁵ She felt she had a right to be participate in the conversation based on her 38-year marriage to Mr. Richardson, and told the two men that there was another deed with her name on it; however, the two men told her they

⁸ Plaintiff’s Trial Exhibit K.

⁹ Trial Transcript at p. 51.

¹⁰ *Id.* at p. 97.

¹¹ *Id.* at p. 92.

¹² *Id.* at pp. 89, 97.

¹³ *Id.* at p. 95.

¹⁴ *Id.* at pp. 83-84.

¹⁵ *Id.* at pp. 83-84.

did not need it, and asked her to leave the room.¹⁶ Mrs. Richardson thought that she was being excluded because of her age.¹⁷

On June 22, 2005, Mr. Richardson drove himself to Crystal Carey's law office for the settlement.¹⁸ He signed two copies of an Adjustable Rate Note, a Home Equity Conversion Loan Mortgage, and a Home Equity Conversion Loan Second Mortgage (collectively referred to as the "2005 Mortgage").¹⁹ He also signed an "Owners Affidavit," in which he swore that he was "the only party having an interest in the premises and [was] in every respect competent to convey or encumber the title to the premises."²⁰ ²¹ At the settlement, Mr. Richardson executed an "Owners Affidavit" in which he swore that he was the only person having an interest in the Property.²² According to Carey's trial testimony, it was her practice to go over this affidavit with each affiant, and she had no reason to believe that she had not done so with Mr. Richardson.²³ After a three-day rescission period expired, the couple's 2002 Mortgage was satisfied,²⁴ and Mr. Richardson received a check for at least \$20,794.58, which he spent on their son's college education and car.²⁵

¹⁶ *Id.* at p. 95.

¹⁷ *Id.* at p. 83.

¹⁸ *Id.* at p. 85.

¹⁹ Plaintiff's Exhibits B, C, D & E.

²⁰ Plaintiff's Trial Exhibit L. Mr. Richardson also signed an application for a reverse mortgage with Wells Fargo that listed him as the sole owner of the Property. Plaintiff's Trial Exhibit M. *See* Trial Transcript at pp. 55-57.

²¹ Plaintiff's Trial Exhibit M. *See* Trial Transcript at pp. 55-57.

²² Plaintiff's Trial Exhibit L.

²³ Trial Transcript at pp. 53-55.

²⁴ Plaintiff's Trial Exhibit F. The 2002 Mortgage had been assigned to Wells Fargo Home Mortgage, Inc., a predecessor by merger to Wells Fargo. *See* Plaintiff's Trial Exhibit G. At trial, Mrs. Richardson objected to the admission into evidence of this document because she claimed that she never had received

Mr. Richardson died on August 27, 2008, at the age of 96.²⁶ Three months after her husband's death, Mrs. Richardson received a letter from Wells Fargo telling her to leave the Property within three to six months.²⁷ She hired an attorney to handle the administration of her husband's estate and the "foreclosure."²⁸ In addition, the attorney helped Mrs. Richardson to transfer title to the Property into her name so that the county tax bills could be sent to her.²⁹ Mrs. Richardson testified that her attorney had a difficult time finding the 2002 Deed because the grantor's last name was "Richard."³⁰ Mrs. Richardson recalled that in 2002, the notary had asked her husband to sign the deed as grantor using the name "Richard."³¹ According to Mrs. Richardson, her husband had refused the notary's request and had insisted on signing his real name, i.e., Richardson.³² Mrs. Richardson has not made any mortgage payments on the Property since 2005.³³

notice of the assignment. Trial Transcript at pp. 34-36. I reserved decision, but now recommend that Exhibit G be admitted into evidence because the document indicates that it was recorded in Kent County Recorder of Deeds Office on August 13, 2002. Whether Mrs. Richardson received actual notice of the assignment is immaterial because she had record notice of this document.

²⁵ Trial Transcript at p. 85. The parties dispute whether Mr. Richardson also received an additional \$2,613.87, which was the difference between the total amount on the HUD settlement sheet that was due from him and the total amount that was paid, according to Carey's testimony. *Id.* at pp. 20-22. *See* Plaintiff's Exhibit A. Mrs. Richardson denied that her husband ever received a separate check in that amount. Trial Transcript at p. 87.

²⁶ Plaintiff's Trial Exhibit N.

²⁷ Trial Transcript at p. 75.

²⁸ *Id.*

²⁹ Trial Transcript at pp. 100, 102-103.

³⁰ *Id.* at p. 103.

³¹ *Id.* at pp. 103-104.

³² *Id.*

³³ *Id.* at p. 98.

Issues

Wells Fargo argues that because “Oliver F. Richard” did not have an interest in the Property and did not exist, the grantor named in the 2002 Deed could not convey any title to the Property to Mr. and Mrs. Richardson and, hence, the 2002 Deed was void. In addition, Wells Fargo argues that the error in the grantor’s name extended to the certificate of acknowledgement, rendering the 2002 Deed legally insufficient to transfer title due to the faulty acknowledgment under 25 *Del. C.* § 132. Wells Fargo argues that the discrepancies in the description of the Property in the 2002 Deed render it legally insufficient to transfer title.

Wells Fargo further contends that Mr. and Mrs. Richardson committed fraud when they failed to disclose the 2002 Deed and Mrs. Richardson’s purported interest in the Property. Given its inability to locate the 2002 Deed in the land records due to the inaccurate grantor’s name, Wells Fargo claims that it justifiably relied upon Mr. Richardson’s representations that he was the only owner of the Property, and has suffered damages in the amount of \$156,958.78, plus accrued interest and costs, while Mr. and Mrs. Richardson were unjustly enriched by the funds provided to Mr. Richardson, and by Mrs. Richardson’s continuing possession and use of the Property without any repayment on the 2005 Mortgage.

Mrs. Richardson denies having committed any fraud, and places the blame on Wells Fargo for not conducting a proper title search.

Analysis

To support its argument that the 2002 Deed should be declared void because the grantor's name was incorrect, Wells Fargo cites cases involving corporate names, e.g., *Elbert v. Wilmington Turngemeinde*, 107 A. 215 (Del. 1919), for the proposition that inclusion or exclusion of the word "the" as part of a corporate name will not void a conveyance of land either to or by a corporation, and *Chew v. First Presbyterian Congregation of the Borough of Wilmington*, 237 F.2d 219, 234 (D.Del. 1916) ("variation between 'Congregation' and 'Church' in the name is not such as in any manner to invalidate or injuriously affect the deed[.]"). Wells Fargo then cites cases where the omission of or error in a middle initial was determined to be immaterial in deeds, e.g., *Banks v. Lee*, 1884 WL 2256 (Ga. March 4, 1884) and *Erskine v. Davis*, 1861 WL 3999 (Ill. Jan. Term 1861). Finally, Wells Fargo cites *Krichevsky v. Hirshout*, 92 A. 242 (Del. 1914), where the issue presented was whether the certificate of the notary public was defective because the name of the grantor in the certificate was "Catherine McClafferty," but the name of the grantor in the body of the deed was "Mary McClafferty." In that case, the Supreme Court first found the mistake to have been a clerical one because the notary public who made the certificate had been one of the attesting witnesses to the signing and sealing of the deed by Mary. *Id.* at 243. Next, the Supreme Court considered the deed and the certificate together, and found that the certificate of acknowledgment was sufficient to allow the deed to be recorded. *Id.* Finally, the Court found that if the

acknowledgment was defective, it was cured by a statute designed to provide relief from mistakes of the certifying officers and parties to deeds. *Id. See 25 Del. C. §132.*

Wells Fargo deduces from this line of cases that a deed containing a mistake in an individual grantor's surname, as opposed to the grantor's first name or middle initial, which appears both in the body of the deed and the certificate of acknowledgment, cannot convey legal title. According to Wells Fargo, the 2002 Deed contains no internal inconsistency that could correct the flawed acknowledgment and, therefore, should be declared void.

A "mistake in setting out the name of a grantor is not fatal where his or her identity is apparent." 26A C.J.S. Deeds § 42 (citing *Wakefield v. Brown*, 37 N.W. 788 (Minn. 1888)). In this case, the identity of the grantor is readily apparent from the body of the 2002 Deed. First, the names of the grantor and the first grantee are identical except for the omission of the suffix "son" in the grantor's name. Second, the property being conveyed is from "Oliver F. Richard" to "Oliver F. Richardson and Charlotte Richardson, Husband and Wife, of 1219 S. Farmview Drive, Dover, DE 19904," suggesting that a simple scrivener's error has been made in a conveyance from husband to husband and wife.³⁴ Third, the property being conveyed is described as "[a]ll that certain lot, piece or parcel of land with the dwelling thereon erected know [sic] as 1219 South Farm View Drive, situate in the City of Dover[,]" and is recited as "[b]eing the same lot or parcel of ground which by Deed dated August 15, 1989, and recorded among the Land Records of

³⁴ Plaintiff's Trial Exhibit K.

Kent County in Book 246, page 315, was granted and conveyed by and between Frank Robino Associates, Inc. unto Oliver F. Richardson, as sole owner.”³⁵ Under the Being Clause, the conveyance is also described as “Tax Exempt, Adding Spouse.”³⁶ Viewing this document as a whole, I find that that the grantor of the 2002 Deed clearly was intended to be Oliver F. Richardson, and that the 2002 Deed is valid. *See Wilmington Turngemeinde*, 107 A. at 216 (“[I]n regard to mistake in setting out the name in a deed, the rule is that if it can be ascertained from the deed who is intended, the deed is not vitiated by the mistake.”).

Moreover, Wells Fargo is not claiming that any other party than Mr. Richardson and Mrs. Richardson signed the 2002 Deed. According to Mrs. Richardson’s trial testimony, Mr. Richardson signed the 2002 Deed as grantor using his own last name rather than “Richard” as the notary had requested.³⁷ While the actions of the notary public who certified the parties’ signatures may have been irregular, to say the least, 25 *Del. C. § 132* cures any improper acknowledgment.

Wells Fargo also argues that numerous discrepancies in the description of the Property render the 2002 Deed sufficiently vague that it must be considered a nullity. The discrepancies consist of: (a) an incorrect lot number (“34” instead of “56”); (b) a misstatement of the date of revisions to the plot plan and the page on which the plot plan was recorded (“32” instead of “52”); (c) the adjacent lot in the metes and bounds

³⁵ *Id.*

³⁶ *Id.*

³⁷ Although I am not a handwriting expert, the two signatures appear to be identical. *See* Plaintiff’s Trial Exhibit K.

description is listed as “Lot 37” instead of “Lot 57”; (d) a misstatement of the acreage of the land (“7,400 square feet” instead of “7,800 square feet”); and (e) the Being Clause of the 2002 Deed refers back to a deed recorded at “Book 246, page 315” instead of “Book Z 46, page 318.”

Although there are numerous typographical errors in the description of this Property, the description in the body of the 2002 Deed contains both the correct tax parcel number and the correct street address in its body, which would enable the Property to be identified and located. *See* 26A C.J.S. Deeds § 58 (“A clerical error in the description of the land does not vitiate the deed where the intent of the parties is ascertainable with certainty from the instrument when considered in connection with the situation of the parties and of the subject matter. In such event, the erroneous matter will be rejected in favor of that part of the description which is true.”) (citations omitted).

Compare with Faraone v. Kenyon, 2004 WL 550745 (Del. Ch. March 15, 2004) (quitclaim deed “had neither any description of the property nor any other information that would have enabled a reader to identify the property being conveyed,” rendering it void *ab initio* as a matter of law). Therefore, I find that the 2002 Deed should not be deemed a nullity because of minor errors in the legal description of the Property.

Wells Fargo’s alternative argument is that Mr. and Mrs. Richardson committed common law fraud when they failed to disclose the existence of the 2002 Deed to the settlement attorney. The elements of common law fraud are: (1) a false representation, usually one of fact, made by the defendant; (2) the defendant’s knowledge or belief that

the representation was false, or was made with reckless indifference to the truth; (3) an intent to induce the plaintiff to act or to refrain from acting; (4) the plaintiff's action or inaction taken in justifiable reliance on the representation; and (5) damage to the plaintiff as a result of such reliance. *Stephenson v. Capano Development, Inc.*, 462 A.2d 1069, 1074 (Del. 1983). Common law fraud can occur in three ways: (1) overt misrepresentation; (2) silence in the face of a duty to speak; or (3) deliberate concealment of material facts. *See Transdigm Inc. v. Alcoa Global Fasteners, Inc.*, 2013 WL 2326881, at * 6 (Del.Ch. May 29, 2013). The record reflects that Wells Fargo has demonstrated the existence of fraud by overt misrepresentation by Mr. Richardson.

On both the reverse mortgage application and in the Owners Affidavit, Mr. Richardson falsely represented that he was the sole owner of the Property. Mr. Richardson should have known that his representation was false since three years earlier he had gone through the formalities of executing a deed conveying the Property to himself and his wife as tenants by the entireties. At a minimum, Mr. Richardson executed these documents with reckless indifference to the truth. Furthermore, in making this representation, Mr. Richardson intended to induce Wells Fargo to act, i.e., to lend him sufficient funds to pay off the couple's prior loan and provide him a cash advance.

Mrs. Richardson argues, however, that Wells Fargo failed to do a proper title search. And at trial, Mrs. Richardson testified that she told two agents of Wells Fargo

that there was another deed with her name on it.³⁸ The issue, therefore, is whether Wells Fargo was justified in relying on Mr. Richardson's representations that he was the sole owner of the Property that was being used as security for the reverse equity loan.

I do not find Mrs. Richardson's self-interested testimony on this issue to be credible. Mrs. Richardson could not identify the two men with whom she allegedly had this conversation. Also, she equivocated on the stand when asked whether she had helped her husband with the loan application in 2005:

Q. In going through the loan application process, did you help your husband with that? I understand he was what, 93 at the time?

A. Yes. No, but, see, he called the number – we just going to, you know – Mr. Richardson was always handling the business. And – but, see, I wasn't allowed in the room. So I don't really know too much about that process.

Q. Okay

A. I had to leave the room, but he always did – he handled the business and like that.³⁹

What is clear from the record is that Mrs. Richardson aware that her husband was going through the process of applying for a reverse home equity loan and taking out a mortgage on the Property and she consented to the process. To the extent she had concerns about being excluded from participating in the process, she believed her exclusion was due to her being too young to qualify for such a mortgage.

Regarding the adequacy of the title search by Wells Fargo, Carey is an attorney who has been practicing real property law for approximately 18 years and conducting 20

³⁸ Trial Transcript at p. 95.

³⁹ *Id.* at 89.

to 30 settlements per month, the overwhelming majority of which have required title searches.⁴⁰ Carey testified that her in-house title searcher is supplied with the name of a borrower and the address of the property, and starts the search by entering this information in the Kent County property information website to determine what property is owned by the borrower and to obtain a deed reference.⁴¹ Then the title searcher locates the deed and traces the chain of title backward. The title search also checks for out conveyances, i.e., deeds showing that the borrower had conveyed the property to third parties.⁴² According to Carey, the title searcher checks for out conveyances using only the name of the grantor exactly as it appears on the deed since to check every variation of every name on a deed would be extremely time-consuming.⁴³ In this case, the title searcher located the 1989 Deed,⁴⁴ but did not discover the out conveyance, i.e., the 2002 Deed, because she was looking under the name “Oliver F. Richardson,” not “Oliver F. Richard.”

At trial, Mrs. Richardson presented no evidence to demonstrate that the 2005 title search conducted by Wells Fargo had been inadequate. Furthermore, Mrs. Richardson undermined her defense when she testified that her own attorney had had a difficult time locating the 2002 Deed after Mr. Richardson’s death. It appears that her attorney was able to locate the 2002 Deed only because Mrs. Richardson recalled the notary’s

⁴⁰ *Id.* at pp. 58-59.

⁴¹ *Id.* at p. 40.

⁴² *Id.* at p. 41.

⁴³ *Id.*

⁴⁴ Plaintiff’s Trial Exhibit J is a printout from the Kent County property information website dated April 6, 2009, which lists the Property in Mr. Richardson’s sole name and references the 1989 Deed.

conversation with Mr. Richardson about the name “Richard.” Accordingly, I find that Wells Fargo’s title search had been adequate and that Wells Fargo had been justified in relying on Mr. Richardson’s representations that he was the sole owner of the Property.

The final element of common law fraud relates to damages. According to Carey, the amount of a reverse equity loan is based upon a lender’s estimate of the value of the property, the condition of the property, any liens against the property, and the age of the person borrowing the money.⁴⁵ Because an applicant may live beyond his life expectancy, the applicant does not execute a mortgage for the exact amount of the funds that he borrows. Instead, the lender applies a formula somewhere between one and one half to twice the amount of the funds borrowed so that the lender is protected in the event the applicant lives beyond his life expectancy.⁴⁶ According to Carey, if Wells Fargo had been aware that Mrs. Richardson had a legal interest in the Property, it would not have gone through with the refinancing transaction the way that it was structured.⁴⁷ As a result of Wells Fargo’s reliance upon Mr. Richardson’s false representation that he was the sole owner of the Property, I find that Wells Fargo has been damaged in the amount of \$156,958.78 plus accrued interest and costs.

Wells Fargo, however, has not shown that Mrs. Richardson committed any fraud. Mrs. Richardson did not make any false representations on an application for a reverse home equity loan or an Owners Affidavit. Although Wells Fargo argues that Mrs.

⁴⁵ Trial Transcript at pp. 26, 28.

⁴⁶ *Id.* at p. 29. In this case, the 2005 Mortgage was for \$268,500.00 although the amount of funds borrowed was \$156,958.78. See Plaintiff’s Trial Exhibits A, D & E.

⁴⁷ Trial Transcript at pp. 63-64.

Richardson had a duty to disclose her interest in the Property when she communicated with the settlement attorney's office,⁴⁸ and accepted the funds from the reverse home equity loan, Wells Fargo has not established that Mrs. Richardson owed any duty to Wells Fargo.

Having determined that the 2002 Deed is valid, I find that in 2005 Mr. and Mrs. Richardson owned the Property as tenants by the entireties. Although Wells Fargo has not addressed this issue in its post-trial briefing, the nature of the couple's interest in the Property is significant because:

It is settled in Delaware that a creditor of one spouse ... may not place a lien on real property held as tenants by the entireties. *See Steigler v. Insurance Co. of North America*, Del.Supr., 384 A.2d 398 (1978) ("interest of neither [husband nor wife] can be sold, attached or liened 'except by [their] joint act'"); *Citizens Savings Bank, Inc. for the Use of Govatos v. Astrin*, Del.Super., 61 A.2d 419 (1948); *Hurd v. Hughes*, Del.Ch. 109 A. 418 (1920). This is a consequence of the peculiarities of a tenancy by the entireties. The tenancy can only be created by husband and wife during marriage. Although each spouse owns the whole, neither may convey any interest without the other's consent. There is also a right of survivorship so that at the death of one spouse the other continues to own the whole. From this is deduced the indivisibility and unseverability of the estate so that creditors of one spouse cannot reach the interest the debtor holds in the estate. *See Hurd v. Hughes*, at 419.

Johnson v. Smith, 1994 WL 643131, at *2 (Del.Ch. Oct. 31, 1994). The fact that the couple held the Property as tenants by the entireties meant that the 2005 Mortgage granted by Mr. Richardson in favor of Wells Fargo gave rise to an inchoate lien that was incapable of execution during the joint lives of the tenants, and was subject to divestment

⁴⁸ There was evidence at trial suggesting that Mrs. Richardson had called Carey's law office to inquire about the cash advance Mr. Richardson was to receive. Trial Transcript at pp. 61-62, 86-88.

in the event that the spouse who was not a party to the mortgage, i.e., Mrs. Richardson, survived the mortgagor. *See Mitchell v. Wilmington Trust Co.*, 449 A.2d 1055, 1059 (Del. Ch. 1982). Since Mr. Richardson predeceased his wife in 2008, Wells Fargo no longer has even an inchoate lien on the Property.

Because I found that Mr. Richardson committed fraud in his dealings with Wells Fargo, I looked for cases where fraud had been committed by one of the co-tenants of a tenancy by the entireties. This Court has declined to sever and abrogate a tenancy by the entireties where the other co-tenant had not participated in or been aware of the spouse's fraud or had not ratified the spouse's conduct. *See id.* at 1056 (wife only became aware that husband had forged her name on loan documents, including the mortgage and underlying note, after the loan had become delinquent and wife was in the process of divorcing husband); *Insurance Co. of North America v. Dubroff*, 1984 WL 19487, at *1 (Del.Ch. Oct. 17, 1984) (where there was no evidence that wife had participated in or knew of her husband's conspiracy to commit arson or had ratified his conduct; and there was no other basis for entry of a judgment against her or impressing a constructive trust on the real estate owned by husband and wife).

This case, however, differs in several respects from the two cases listed above. First, this case involves a reverse home equity loan that is based upon the life expectancy of the mortgagor. The loan underlying the 2005 Mortgage would not have become delinquent during the lifetime of the mortgagor, Mr. Richardson; hence, the first time Wells Fargo could have become aware of the fraud would have been after Mr.

Richardson's death, by which time the tenancy by the entirety would have already terminated. Second, this case does not present the issue of whether a tenancy by the entirety should be severed and abrogated, but rather whether Mrs. Richardson should be allowed to continue her ownership of the whole Property free and clear of any liens. Third, this case does not involve an entirely innocent co-tenant of a tenancy by the entirety. The record shows that Mrs. Richardson: (1) knew that her husband was applying for a reverse home equity loan; (2) knew that she was too young to qualify for a reverse home equity loan; (3) ratified the 2005 Mortgage process by calling Wells Fargo and Carey's office in her effort to obtain a check representing funds being advanced to Mr. Richardson;⁴⁹ and (4) has been enriched by the satisfaction of the 2002 Mortgage, the payment of at least \$20,794.58 toward her son's car and college expenses, and the elimination of monthly mortgage payments from 2005 onward.

Wells Fargo has requested that a constructive trust be imposed over Mrs. Richardson's interest in the Property, in the amount of \$156,958.78, plus accrued interest and costs. A principle reason for impressing an equitable lien on real property by way of a resulting or a constructive trust "is to prevent unjust enrichment, i.e., where it would be contrary to equity and good conscience for an individual to retain a property interest acquired at the expense of another." *Branca v. Branca*, 443 A.2d 929, 931 (Del. 1982); *see also Pharmathene, Inc. v. Siga Technologies, Inc.* 2011 WL 4390726, at *34 (Del. Ch. Sept. 22, 2011) ("As a remedial measure, the constructive trust resembles the

⁴⁹ Trial Transcript at pp. 85-88

enforcement of a quasi-contractual obligation in that both remedies seek to prevent unjust enrichment in the absence of an express agreement.”).

If Mr. Richardson had not executed the 2005 Mortgage, upon his death in 2008 Mrs. Richardson would have inherited the Property still encumbered by the 2002 Mortgage, which was for a term of 15 years.⁵⁰ If Mr. Richardson had not executed the 2005 Mortgage, Mrs. Richardson’s son likely would not have received the 2005 gift of a car and his college expenses because Mr. and Mrs. Richardson were in poor health and also carrying non-real estate debt in the amount of \$19,014.00.⁵¹ I find that Mrs. Richardson has been unjustly enriched by her husband’s wrongful conduct and, accordingly, recommend that Wells Fargo is entitled to a constructive trust upon the Property in the amount of \$156,928.78, plus accrued interest and costs.

Conclusion

For the foregoing reasons, I recommend that an equitable lien in favor of Wells Fargo should be imposed on the Property of Mrs. Richardson in the amount of \$156,928.78, plus interest and costs. The parties are referred to Court of Chancery Rule 144 for the time period and process of taking exceptions to a Master’s Final Report.

⁵⁰ Plaintiff’s Trial Exhibit H.

⁵¹ Trial Transcript at p. 97; Plaintiff’s Trial Exhibit M.