

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

TERESA ISABELLA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

v.

MAUREEN MCCLAY, SHARON JAEP, HIEN  
NGUYEN A/K/A HIEN T. TRAN A/K/A  
HIEN TRUNG TRAN, ELIZABETH  
DEJESUS, JACK TRUNG NGUYEN,  
MELVIN VY, REGENCY LAND & TITLE  
SERVICE, INC., XYZ CORPORATIONS #1-  
10 (FICTITIOUS NAMES) AND JOHN AND  
JANE DOES (FICTITIOUS NAMES)

APPEAL OF: JACK TRUNG NGUYEN

No. 1381 EDA 2012

Appeal from the Judgment Entered March 29, 2012  
In the Court of Common Pleas of Philadelphia County  
Civil Division at No(s): 01693 April Term, 2008

BEFORE: FORD ELLIOTT, P.J.E., MUNDY, J., and FITZGERALD, J.\*

CONCURRING AND DISSENTING STATEMENT BY FITZGERALD, J. **FILED MAY 16, 2013**

I concur in the result reached by the learned majority for Appellant's last five issues. However, I write separately because, in the first issue, I would find that the trial court erred in holding that Appellant was a volunteer at the time he purchased the property and satisfied the liens and other encumbrances. There is no evidence that Appellant had constructive notice that there were fraudulent deeds in the chain of title. Furthermore, I would

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\* Former Justice specially assigned to the Superior Court.

find that Appellant satisfied the four pronged test enunciated in **1313466 Onatrio, Inc. v. Carr**, 954 A.2d 1,4 (Pa. Super. 2008), and therefore the trial court erred in holding the doctrine of equitable subrogation did not apply.

I would find the doctrine of equitable subrogation applies in the case *sub judice*. **See First Commonwealth Bank v. Heller**, 863 A.2d 1153, 1156 (Pa. Super. 2004). An equitable lien arises

[w]here property of one person is used in discharging an obligation owed by another or a lien upon the property of another, under such circumstances that the other would be **unjustly enriched** by the retention of the benefit thus conferred, the former is entitled to be subrogated to the position of the obligee or lienholder.

**Gladowski v. Felczak**, 31 A.2d 718, 720 (Pa. 1943) (emphasis added).

In **Nebesho v. Brown**, 846 A.2d 721 (Pa. Super. 2004), this Court “interpret[ed] **Stanko [v. Males**, 135 A.2d 392 (Pa. 1957),] to require the real owner to compensate the bona fide purchaser for payments made to discharge claims against the property.” **Id.** at 730. Instantly, to hold otherwise would result in Appellee being unjustly enriched. **See Gladowski, supra.**