

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

HEYWOOD BECKER

Appellant

v.

U.S. BANK, N.A.

Appellee

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 998 EDA 2021

Appeal from the Order Entered April 21, 2021  
In the Court of Common Pleas of Bucks County  
Civil Division at No: 2018-00849

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U.S. BANK, N.A.

Appellee

v.

GEORGE KIRIAKIDI AND HEYWOOD  
BECKER

APPEAL OF HEYWOOD BECKER

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 999 EDA 2021

Appeal from the Order Entered April 21, 2021  
In the Court of Common Pleas of Bucks County  
Civil Division at No: 2018-03392

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HEYWOOD BECKER

Appellant

v.

U.S. BANK, N.A.

Appellee

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1001 EDA 2021

Appeal from the Order Entered April 21, 2021  
In the Court of Common Pleas of Bucks County  
Civil Division at No: 2018-03843

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HEYWOOD BECKER

Appellant

v.

E. KEITH DARROW

Appellee

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1004 EDA 2021

Appeal from the Order Entered April 21, 2021  
In the Court of Common Pleas of Bucks County  
Civil Division at No: 2019-08586

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HEYWOOD BECKER

Appellant

v.

ESTATE OF RICHARD RESTIFO,  
DECEASED A/K/A RICHARD J. RESTIFO,  
EMILY MARIE CIPRIANO, ADMIN. A/K/A  
EMILY M. CIPRIANO, AND UNITED  
STATES OF AMERICA

APPEAL OF HEYWOOD BECKER, ESTATE  
OF RICHARD RESTIFO, DECEASED A/K/A  
RICHARD J. RESTIFO AND EMILY MARIE  
CIPRIANO ADMIN. A/K/A EMILY M.  
CIPRIANO

Appellee

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1000 EDA 2021

Appeal from the Order Entered April 20, 2021  
In the Court of Common Pleas of Bucks County  
Civil Division at No: 2018-02856

BEFORE: BOWES, J., STABILE, J., and McLAUGHLIN, J.

MEMORANDUM BY STABILE, J.:

**FILED JUNE 16, 2022**

The issue in these consolidated appeals<sup>1</sup> is whether Heywood Becker or U.S. Bank, N.A. (“the Bank”) has superior title to residential property originally owned by Richard Restifo located at 5 Brendon Knoll, Solesbury Township, Bucks County, Pennsylvania (“the property”). The trial court

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<sup>1</sup> The four appeals at 998, 999, 1001 and 1004 EDA 2021 were consolidated by order dated August 13, 2021. Pursuant to Pa.R.A.P. 513, we now consolidate these four appeals with the appeal at 1000 EDA 2021.

correctly concluded that the Bank has superior title to the property and that Becker's claims are devoid of merit. Nevertheless, Becker entered judgment at all docket numbers in favor of himself. We remand for entry of judgment against Becker at all docket numbers, and we order the judgments that Becker entered in favor of himself stricken.

The evidence adduced and supported by the record during the bench trial in these cases established the following. Restifo acquired the property in 1990. In 2001, Restifo's builder, George Kiriakidi, loaned Restifo \$30,000.00 and took a lien on the property as security for the loan. Kiriakidi's mortgage was recorded on June 26, 2001.

On October 12, 2001, Transland Financial Services, Inc. loaned Restifo \$384,500.00, and as security for this loan, Transland took a first lien on the property until the debt was repaid. Transland's mortgage was recorded on October 23, 2001.

In 2004, after the work and improvements on the property were completed, Restifo refinanced his debt with a \$500,000.00 loan from Fremont Investment & Loan to be secured by a recorded mortgage lien of first position on the property. Fremont paid the Kiriakidi and Transland mortgages and obtained the first position lien on the property.

On March 15, 2012, the Fremont mortgage was assigned to U.S. Bank. On May 20, 2016, Restifo died. Subsequently, the Fremont mortgage went unpaid. On December 26, 2016, the Bank commenced a mortgage foreclosure action against the property. The Bank notified all interested

parties, including Kiriakidi, that the property was to be sold at sheriff's sale. On November 9, 2017, the Bank was the successful bidder on the property at sheriff's sale. The sheriff prepared and filed a sheriff's deed which was recorded by the Recorder of Deeds.

The Bank refurbished the property and hired a realtor, Kathleen Todd, to list it for sale. In December 2017, Keith and Lori Darrow entered into an agreement of sale to purchase the property. As of the date of trial, there had been no closing due to the litigation over the property.

At some point following Restifo's death, Becker, a real estate investor and disbarred attorney, contacted Kiriakidi regarding his mortgage, which Becker had discovered through a property search. Kiriakidi's mortgage remained of record and unsatisfied. Kiriakidi told Becker about his relationship to Restifo and the reason for the mortgage. Becker agreed to pay Kiriakidi \$3,000.00 for an assignment of the Kiriakidi mortgage and agreed to pay Kiriakidi an additional sum of money if he, Becker, successfully obtained good title to the property. Thus, the total price for assignment of Kiriakidi's mortgage was contingent upon whether Becker succeeded in his quiet title claims. On December 1, 2017, Kiriakidi executed an assignment to Becker. Becker recorded the assignment and recalculated the principal and interest due on the \$30,000.00 loan as \$584,329.60.

In early 2018, Todd noticed signs of intrusion into the property, so she placed "no trespass" signs on the property. In a subsequent visit, she found that her keys to the residence no longer worked. She encountered

contractors inside the residence and learned that Becker had hired them to perform work at the property.

In April 2018, Becker asked Emily Cipriano, a tenant at one of the properties Becker managed, to become administratrix of Restifo's estate. Becker promised to pay Cipriano for serving as administratrix, but only if he successfully acquired good title to the property.

The parties filed a total of five lawsuits asserting title to the property. The first lawsuit at No. 2018-00849 was Becker's quiet title action against the Bank seeking invalidation of the sheriff's deed issued to the Bank for the property following its foreclosure action. Becker initially obtained a default judgment due to the Bank's failure to answer his complaint, but the Bank successfully petitioned to open judgment and then answered the complaint.

In the second lawsuit at No. 2018-02856, shortly after Cipriano was appointed administratrix, Becker sued Restifo's estate in a mortgage foreclosure action that he prepared based on Kiriakidi's mortgage. Cipriano, acting as personal representative of Restifo's estate, admitted to all of Becker's claims against the estate. Becker drafted a quitclaim deed for Cipriano to execute to convey Restifo's interest in the property to Becker to satisfy his claims against the estate. Cipriano testified that she never actually visited the property, that she relied exclusively on documents that Becker provided to her, and that she reviewed these documents in Becker's office. Cipriano signed the quitclaim deed, and Becker filed and recorded it in May 2018.

The third lawsuit at No. 2018-03392 was the Bank's action to quiet title against Becker and Kiriakidi.

The fourth lawsuit at No. 2018-03843 was Becker's second quiet title action against the Bank.

In the fifth lawsuit at No. 2019-08586, Becker filed a petition for injunction against Keith Darrow, who had signed the agreement of sale to purchase the property in December 2017. Following a three-day hearing, the court postponed its decision on Becker's injunction motion until after trial on the quiet title actions.

The lawsuits proceeded to a bench trial in which the court heard testimony and incorporated the record from the injunction hearing into the trial record. In a decision and order docketed on March 9, 2021, the court quieted title in favor of the Bank against all other claims on the ground that the Bank had paramount title to the property by virtue of its foreclosure and deed issued by the Sheriff. The court ordered that Kiriakidi's mortgage be marked satisfied because Fremont paid Kiriakidi's mortgage in 2004, and Kiriakidi received and negotiated the payoff check. The court denied all of Becker's quiet title claims because they were based on a paid-off and satisfied mortgage. The court determined that Cipriano's May 16, 2018 quitclaim deed did not convey any valid interest in the property to Becker and ordered the deed to be marked accordingly by the Recorder of Deeds and all parties. Finally, the court denied Becker's motion for permanent

injunction against Darrow because Becker was not the property's owner and had acquired no interest in said property.

Becker and Cipriano filed post-trial motions, which the court denied on April 20, 2021. The court's order on this date directed the prothonotary to enter judgment, but the prothonotary did not do so satisfactorily.<sup>2</sup>

On May 14, 2021, Becker and Cipriano<sup>3</sup> filed five notices of appeal (one from each of the five cases below). Becker and the trial court complied with Pa.R.A.P. 1925.

On August 10, 2021, this Court ordered Becker to enter judgment in all five cases. The dockets reflect that at various points in August and September of 2021, Becker entered judgment in favor of **himself** in all five cases. *See, e.g.*, Bucks County No. 2018-03843, docket entries (September 7, 2021 docket entry stating "praecipe to enter judgment on the order entered in favor of Haywood Becker and against U.S. Bank, N.A. for the sum of \$0 on the order dated April 20, 2021").

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<sup>2</sup> In the lead case at No. 2018-00849, the docket entry for April 20, 2021 states, "Order entered by Judge Trauger on April 20, 2021. This order/judgment was docketed and sent on 04/20/2021 pursuant to PA.R.C.P. 236." The term "order/judgment" appears to be standard language that the prothonotary uses for every order on the docket. We do not think that "order/judgment" adequately carried out the intent of the April 20, 2021 order, which was to enter judgment against Becker and in favor of Becker's opponent(s) at each docket number. In our disposition below, we direct the prothonotary to enter judgment in these terms in every case.

<sup>3</sup> Cipriano has not filed briefs in any appeal.



We begin by addressing four of the five appeals: 998, 999, 1001 and 1004 EDA 2021. We address the fifth appeal, 1000 EDA 2021, below, because separate briefs were filed at that docket number.

In the appeals at 998, 999, 1001 and 1004 EDA 2021, Becker filed two opening briefs, one *pro se* brief and one brief by his attorney, Ronald Clever, Esquire. Pennsylvania courts have consistently prohibited this practice, known as hybrid representation, in which a party is represented both by counsel and himself. Our reasons for precluding this practice are

that permitting the *pro se* brief may involve a conflict between lawyer and client, and this conflict could undermine appellant's chance of success; that counsel is obligated to submit to the appellate court only those issues which he believes to possess merit; that under no other circumstances are counsel and client permitted to present opposing arguments to Superior Court, as may well happen if both are permitted to submit briefs; and finally, that reviewing *pro se* briefs of counseled appellants would lead to procedural confusion and delay in the appellate process because of the need for the court and the Commonwealth to review and evaluate additional *pro se* briefs.

***Commonwealth v. Jette***, 23 A.3d 1032, 1040 (Pa. 2011). Based on our policy against hybrid representation, we only will review the opening brief filed by Appellant's counsel at 998, 999, 1001 and 1004 EDA 2021. The briefs essentially raise only two issues:

1. With regard to the various findings and inferences which the trial court made, were they supported by evidence?
2. Is the bank's cause of action barred by the statute of limitations?

Counseled Brief For Becker, Nos. 998, 999, 1001 and 1004 EDA 2021, at 5.

The first argument is a claim that the court erred by denying his post-trial motion for judgment n.o.v.<sup>4</sup> He claims that none of the court's findings are supported by evidence, and he insists that he has superior title to the property because (1) he foreclosed on Kiriakidi's mortgage, which he claimed was never satisfied, and (2) Kiriakidi's mortgage was the first position lien on the property. He requests that we reverse the trial court's decision and remand for entry of judgment in his favor.

Our standard of review of an order denying judgment n.o.v. is whether, viewing the record in the light most favorable to the verdict winner and granting the benefit of every favorable inference, "there is sufficient competent evidence to support the verdict." ***Tillery v. Children's Hosp. of Philadelphia***, 156 A.3d 1233, 1240 (Pa. Super. 2017). Any conflict in the evidence is resolved in the verdict winner's favor. ***Id.*** Judgment n.o.v. may be granted "only where the movant is entitled to judgment as a matter of law ... or [where] the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the

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<sup>4</sup> Technically, Becker's request for judgment n.o.v. in this Court is at odds with his prior act of entering of judgment in his favor at all caption numbers. A party normally seeks judgment n.o.v. when the judgment is adverse to him, not in cases such as this, when the judgment is (purportedly) in his favor. To resolve this procedural anomaly, we will treat these appeals as if the judgments on the docket are adverse to Becker, the proper foundation for an appellate request for judgment n.o.v. Further, as discussed elsewhere in this memorandum, we will instruct the trial court's prothonotary to strike the judgments that Becker entered in his own favor.

movant.” **Quinby v. Plumsteadville Family Practice, Inc.**, 907 A.2d 1061, 1074 (Pa. 2006). We will disturb a trial court’s grant or denial of judgment n.o.v. “only for an abuse of discretion or an error of law.” **Id.**

After a thorough review of the record, the briefs, the applicable law, the well-reasoned decision of the Honorable Jeffrey Trauger dated March 5, 2021, and Judge Trauger’s Pa.R.A.P. 1925 opinion dated July 7, 2021,<sup>5</sup> we conclude Appellant's issue merits no relief. Becker claimed that he had superior title to the property because Kiriakidi’s mortgage was the first position lien on the property but had never been paid off. Thus, Becker continues, he obtained superior title by foreclosing on Kiriakidi’s mortgage and then obtaining a quitclaim deed from Restifo’s estate for the property. Judge Trauger’s decision explains, with accurate citations to the record, that Kiriakidi’s mortgage was fully paid off in 2004. **Id.** at 8-17. The decision further demonstrates that Becker’s claim that the mortgage was not satisfied was patently incredible. **Id.** Indeed, Judge Trauger observed that much of the evidence presented by Becker during trial, particularly the testimony of Kiriakidi, bordered on perjury. **Id.**

Next, Becker’s counseled brief claims that the statute of limitations bars the Bank’s action, the third of the five lawsuits described above.

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<sup>5</sup> We append both Judge Trauger’s decision and his opinion to this memorandum.

Becker characterizes the Bank's action as one for promissory estoppel and argues:

In the [B]ank's instant cause of action for promissory estoppel, the bank claims that there had been a promise to mark the loan "satisfied." Instead of deciding that cause of action, which is time-barred (the alleged promise from 2001 or from 2004, was sued upon in 2018), the [trial court] decided a case which is not before [it]: *i.e.*, a declaratory judgment case, declaring that Mr. Becker's loan was already satisfied, by having been paid in 2004.

Becker's Brief at 15.

This argument is devoid of substance. The Bank's action is not a promissory estoppel claim but an action to quiet title. Becker does not argue that the statute of limitations bars the quiet title action. Moreover, contrary to Becker's argument, there was not merely "a promise" to pay the loan. The trial court determined—and had ample basis to determine from the record—that Kiriakidi's loan was paid in full when Restifo refinanced with Fremont in 2004.

We next address the appeal at 1000 EDA 2021. In this appeal, Becker filed a *pro se* brief as Appellant, while his attorney in the other four appeals above, Mr. Clever, purported to file a brief as Appellee on behalf of Restifo's estate.<sup>6</sup>

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<sup>6</sup> We express no opinion whether attorney Clever's representation of the estate in this appeal poses a conflict of interest with his representation of Becker in the other four appeals. During oral argument attorney Clever answered that he believed there was no conflict because Becker and the estate had consistent interests.

Since Becker's *pro se* brief is the only brief filed on behalf of an appellant at this caption number, we will review its substance. Lengthy review, however, is unnecessary due to its lacking content. Becker does not include a Statement of Questions Presented. His argument section claims that there are "no issues," because all parties agree that this case should proceed to foreclosure in favor of Becker and against Darrow. This is simply false. No other party agrees that Becker is entitled to foreclosure, and the evidence of record belies this claim.

Based on our review of all five appeals, we fully agree with Judge Trauger's apt analysis, and we have no trouble concluding that the Bank is entitled to prevail, while Becker's claim of title is entirely without merit.

We direct the prothonotary in the lower court to strike (1) the judgment entered in favor of Becker on August 18, 2021 at No. 2018-00849, and (2) the judgments entered in favor of Becker on September 7, 2021 at Nos. 2018-03392, 2018-02856, 2018-03843 and 2019-08586. We further order the Bucks County Recorder of Deeds to strike the deed relating to the property from Emily Marie Cipriano to Becker. We further order that the prothonotary shall enter judgment at each docket number, explicitly worded as follows:

- (1) No. 2018-00849: Judgment entered in favor of U.S Bank, N.A. and against Heywood Becker;

(2) No. 2018-03392: Judgment entered in favor of U.S. Bank, N.A. and against George Kiriakidi and Heywood Becker;

(3) No. 2018-02856: Judgment entered against Heywood Becker, and deed from Emily Marie Cipriano to Heywood Becker stricken;

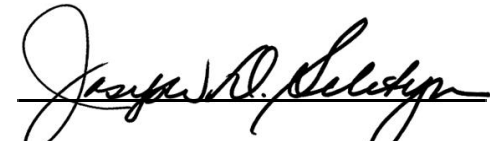
(4) No. 2018-03843: Judgment entered in favor of U.S Bank, N.A. and against Heywood Becker; and

(5) No. 2019-08586: Judgment entered in favor of E. Keith Darrow and against Heywood Becker.

Finally, we affirm the judgments as modified above.

Case remanded for proceedings in accordance with this memorandum.  
Judgments affirmed as modified in accordance with this memorandum.  
Application of Heywood Becker for leave to file supplemental brief denied.  
Jurisdiction relinquished.

*Judgment Entered.*

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

*Joseph D. Seletyn, Esq.  
Prothonotary*

*Date: 6/16/2022*

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA  
CIVIL DIVISION

<p><b>HEYWOOD BECKER</b></p> <p style="text-align: center;">v.</p> <p><b>U.S. BANK NA, SUCCESSOR TRUSTEE TO BANK OF AMERICA NA, SUCCESSOR IN INTEREST TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE BEAR STEARNS ASSET BACKED SECURITIES I TRUST 2004-HE10, ASSET-BACKED CERTIFICATES, SERIES 2004-HE10</b></p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p><b>Consolidated Cases:</b></p> <p><b>No. 2018-00849-40 (Lead Case)</b></p> <p><b>No. 2018-03392-40</b></p> <p><b>No. 2018-03843-40</b></p> <p><b>No. 2018-02856-40</b></p> <p><b>No. 2019-08586-40</b></p>
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**OPINION**

Appellants, Heywood Becker and the Estate of Richard Restifo, by and through Emily Cipriano as the Administratrix of the Estate, appeal to the Superior Court of Pennsylvania from the April 20, 2021 Order denying their Motions for Post-Trial Relief.<sup>1</sup> Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a), the Court files this Opinion<sup>2</sup> in support of its Order.<sup>3</sup>

<sup>1</sup> These five cases were consolidated under the leading case Heywood Becker v. U.S. Bank, NA, et al., Bucks County docket number 2018-00849. Thus, all matters related to these five consolidated cases fall under the leading case's docket number. Appellants have erroneously filed numerous Notices of Appeal under the four non-leading cases.

<sup>2</sup> Appellant, the Estate of Richard Restifo, failed to properly file a Notice of Appeal pursuant to Pennsylvania Rule of Appellate Procedure 905(a). However, because attorney Ronald L. Clever provided five Notices of Appeal to Chambers - one of which was for the Estate of Richard Restifo - this Opinion will generally address its decision in this matter and its rationale for denying the Motions for Post-Trial Relief.

<sup>3</sup> George Kiriakidi, a named defendant in this matter, has not filed an appeal.

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## **I. PROCEDURAL HISTORY**

The Court set forth the extensive procedural history in this consolidated case in its March 5, 2021 Decision and Order.<sup>4</sup> See Attachment A.

On March 22, 2021, a Motion for Post-Trial Relief was filed on behalf of Becker and the Estate of Richard Restifo.<sup>5</sup> On March 23, 2021, an additional Motion for Post-Trial Relief was filed directly by Heywood Becker.<sup>6</sup> On April 20, 2021, following argument, the Court denied the Motions for Post-Trial Relief filed by Heywood Becker and the Estate of Richard Restifo. On May 14, 2021, Heywood Becker filed this Notice of Appeal from the April 20, 2021 Order.

## **II. FACTUAL BACKGROUND**

This is a consolidated case involving the disputed ownership of a residential property located at 5 Brendon Knoll, Doylestown, Pennsylvania 18901 (“the property”). The Court set forth the extensive factual background in this matter in its March 5, 2021 Decision and Order which is incorporated herein by reference. See Attachment A.

## **III. STATEMENTS OF ERRORS COMPLAINED OF ON APPEAL**

On June 4, 2021, Appellants, Heywood Becker and the Estate of Richard Restifo (“Appellants”), filed a joint Concise Statement of Errors Complained of on Appeal.<sup>7</sup> In their Concise Statement of Errors Complained of on Appeal (“Concise Statement”), Appellants raised the following allegations of error:

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<sup>4</sup> The March 5, 2021 Decision and Order was docketed on March 9, 2021.

<sup>5</sup> In his March 22, 2021 Motion for Post-Trial Relief, Becker was represented by attorney Ronald Clever.

<sup>6</sup> In his March 23, 2021 Motion for Post-Trial Relief, Becker proceeded pro se.

<sup>7</sup> For clarity and judicial economy, Appellants’ allegations of errors are reproduced in more concise language and with the omission of redundant claims.



1. The trial court erred in entering judgment in favor of U.S. Bank because U.S. Bank was not a proper party in this case.
2. The trial court erred in granting U.S. Bank's Petition to Open and/or Strike Judgment.<sup>8</sup>
3. The trial court erred in finding the Kiriakidi mortgage was satisfied.<sup>9</sup>
4. The trial court erred by not giving more weight to Robert Foley's testimony in reaching its Decision and Order.<sup>10</sup>
5. The trial court erred in improperly assessing the credibility of the evidence presented at trial and by finding in favor of U.S. Bank.
6. The trial court erred by finding Becker contacted George Kiriakidi about the Kiriakidi mortgage.
7. The trial court erred by not finding the amount due on the Kiriakidi mortgage had grown to \$584,329.60.
8. The trial court erred by noting Heywood Becker's disbarment from the Pennsylvania Bar on page 6, footnote 5 of its Decision and Order.
9. The trial court erred by stating the proper procedure for contesting a Sheriff's Sale in page 12, footnote 11 of its Decision and Order.
10. The trial court erred by stating Heywood Becker failed to meet his burden of proof to provide evidence of the underlying outstanding loan in the Kiriakidi mortgage.

#### IV. DISCUSSION

Most of Appellants' allegations of error essentially argue the Court erred in assessing the weight and credibility of the evidence presented at trial. Because the Court has already discussed the weight and credibility of the evidence with specificity, it will not restate its findings here. Instead, in the interest of judicial economy, the Court will respectfully rely on its March 5, 2021 Decision and Order for the appellate review of this issue. See Attachment A. This Opinion will, however, address two of Appellants' allegations of error which were not previously addressed in the March 5, 2021 Decision and Order. First, Appellants' argument that the Court erred in entering judgment in favor

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<sup>8</sup> The Court granted U.S. Bank's Petition to Open and/or Strike Judgment in its May 13, 2020 Order. [Docket number 135].

<sup>9</sup> This claim of error is repeatedly raised by Appellants in various forms in their Concise Statement. Appellants' allegations of errors numbers 3, 5, 7, 8, 9, 10, 11 and 13 all generally contest the Court's finding that the Kiriakidi mortgage was satisfied and therefore are consolidated for purpose of this Opinion.

<sup>10</sup> Appellants also repeat this claim of error in number 12 of its Concise Statement.

of U.S. Bank because U.S. Bank's captioned name in this matter did not exactly match U.S. Bank's name on its mortgage assignment. Second, Appellants' argument that the Court erred in granting U.S. Bank's Petition to Open and/or Strike Judgment. An analysis of these issues follows.

**A. Whether the Court Erred in Granting Judgment in Favor of U.S. Bank When the Captioned Name of U.S. Bank in this Case Did Not Exactly Match the Name on its Mortgage Assignment.**

In their Concise Statement, Appellants argue the Court erred in granting judgment in favor of U.S. Bank because U.S. Bank's name in the caption of this case did not exactly match the name in the mortgage assignment to U.S. Bank. See Appellants' Concise Statement at 2-3. Essentially, Appellants allege U.S. Bank had no interest in the disputed property and thus the Court erred in finding U.S. Bank is the lawful owner of the property. Id. The Court notes Appellants first raised the argument of an alleged mismatching of names during closing arguments. Appellants failed to properly challenge U.S. Bank's standing as a named party in this matter by filing a preliminary objection, a motion, a petition or even an objection at trial. Appellants first raised this issue of an alleged inconsistent writing of U.S. Bank's name during closing arguments of the two-day bench trial. U.S. Bank did not have an opportunity to respond to this newly raised argument because Appellants first raised this issue during closing arguments. Ultimately, the Court found U.S. Bank had standing as a party in this case and Appellants waived any objection to U.S. Bank's standing as a party by not previously raising this issue for disposition. See Boyle v. Steiman, 631 A.2d 1025, 1030 (1993), *alloc. denied*, 649 A.2d 666 (Pa. 1994) (stating "In order to preserve an issue for appellate review a party must make a timely and specific objection at the appropriate stage of the proceedings before the trial court.").

The Court views this argument as an attempt to collaterally attack the validity of U.S. Bank's Sheriff's Deed dated December 18, 2017. However, the validity of U.S. Bank's Sheriff's Deed was never in dispute in this matter - only the superiority of the parties' respective titles. U.S. Bank acquired its Sheriff's Deed to the property in a separate case not consolidated in this matter. See U.S. Bank,

NA. v. Christine Restifo, Bucks County docket number 2016-08077. Because the Sheriff's Sale of the property to U.S. Bank was never contested in that case, the Court finds it improper to address the validity of U.S. Bank's Sheriff's Deed in this case. No petition was ever filed by any party to set aside the 2017 Sheriff's Sale. Appellants later raised this issue in their Motions for Post-Trial Relief. See, e.g., Mot. for Post-Trial Relief filed by Ronald Clever, Esquire at 3. However, Pennsylvania Rule of Civil Procedure 227.1(b)(2), prevents a party from raising an issue for the first time in a post-trial motion without having properly raised the issue before the Court for disposition at or before trial.

Even assuming, *arguendo*, Appellants properly raised this issue before the Court, the evidence presented at trial clearly showed U.S. Bank had standing as a party in this case based upon its duly issued and recorded Sheriff's Deed. Appellants argue the Court erred in finding in favor of U.S. Bank because its name in the caption of this case was not the exact same name found in the Fremont's assignment of the mortgage to U.S. Bank. See Appellants' Concise Statement at 2-3. However, the evidence presented at trial proved U.S. Bank's Sheriff's Deed of the property, dated December 18, 2017, conveyed ownership of the property to U.S. Bank. U.S. Bank's Trial Ex. 4. The December 18, 2017 Sheriff's Deed names "U.S. BANK NA, SUCCESSOR TRUSTEE TO BANK OF AMERICA, NA SUCCESSOR IN INTEREST TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE BEAR STEARNS ASSET BACKED SECURITIES I TRUST 2004-HE10, ASSET-BACKED CERTIFICATES, SERIES 2004-HE10" as the owner of the property. Id. Thus, U.S. Bank's name on the caption of this case and its name on the Sheriff's Deed *are an exact match*. Additionally, the Court notes Becker, as Plaintiff in this quiet title action, named U.S. Bank as the defendant.

A new objection to a party's standing in a case is improperly raised for the first-time during a trial's closing arguments. For this reason alone, the issue should be deemed waived for appellate review. However, even when considering the merits of Appellants' arguments, the evidence at trial

clearly showed U.S. Bank had a valid property interest through its Sheriff's Deed and so the Court's finding in its favor was proper and based on the Court's factual determinations.

**B. Whether the Court Erred in Granting U.S. Bank's Petition to Open and/or Strike Judgment.**

U.S. Bank filed a Petition to Open and/or Strike Judgment upon discovering the existence of Becker's quiet title action and the accompanying procedural default judgment. In its Petition, U.S. Bank argued it was never properly served and thus lacked notice of this quiet title action. U.S. Bank's Pet. to Open/Strike Default J. at 4. Becker responded by arguing he properly served U.S. Bank, a corporation headquartered outside of Pennsylvania, by mailing a copy of the Complaint pursuant to Pennsylvania Rule of Civil Procedure 404. Becker's Resp. at 5.

On February 12, 2018, Becker filed a pro se Complaint against U.S. Bank to quiet title for the property. Initially, U.S. Bank failed to file a responsive pleading to Becker's Complaint. On April 9, 2018, the Court entered procedural routine default judgment in favor of Becker and against U.S. Bank. Promptly after learning of the default judgment, U.S. Bank filed a Petition to Open and/or Strike Default Judgment. On January 7, 2019, Becker filed his Response to the Bank's Petition. On May 13, 2020, the Court granted U.S. Bank's Petition based upon the issue of lack of service and notice of the actual Complaint and also upon the equity of allowing facially meritorious claims to proceed to trial. Furthermore, the Bank's explanation of lack of service and notice of Mr. Becker's Complaint and claims was reasonable under the facts and circumstances of this case.

The Superior Court of Pennsylvania has held a default judgment may be opened "when the moving party establishes three requirements: (1) a prompt filing of a petition to open the default judgment; (2) a meritorious defense; and (3) a reasonable excuse or explanation for its failure to file a responsive pleading." Dumoff v. Spencer, 754 A.2d 1280, 1281-82 (Pa.Super. 2000) (internal citation omitted). The Supreme Court of Pennsylvania has held that the decision to grant a petition to open

judgment falls within the broad discretion of the trial court's equitable power. Schultz v. Erie Ins. Exchange, 477 A.2d 471, 472 (Pa. 1984).

Upon careful consideration of U.S. Bank's Petition and Becker's Response, the Court found U.S. Bank provided sufficient grounds with potentially meritorious claims to title for the Court to open the default judgment entered in this quiet title case. First, the Court found U.S. Bank promptly filed its Petition to Open the Default Judgment once it first discovered it was a named party in this matter. The Superior Court has instructed the trial courts to consider the following factors when determining the promptness of a petition: "(1) the length of the delay between discovery of the entry of a default judgment, and (2) the reason for the delay." Allegheny Hydro No. 1 v. Am. Line Builders, 722 A.2d 189, 193 (Pa.Super. 1998) (quoting Quatrochi v. Gaiters, 380 A.2d 404, 407 (Pa.Super. 1977)). In this case, U.S. Bank only first discovered the existence of this quiet title action *while reviewing another case in which it was a party*. Upon making this discovery, U.S. Bank then filed its Petition to Open and/or Strike Judgment. Although eight months had transpired from the date the default judgment was entered in this matter to the date U.S. Bank filed its Petition, the Court found U.S. Bank promptly filed its Petition upon discovering the existence of this quiet title action and reviewing the filed Complaint, rather than by direct process and Complaint served by mail upon the Bank as was alleged.

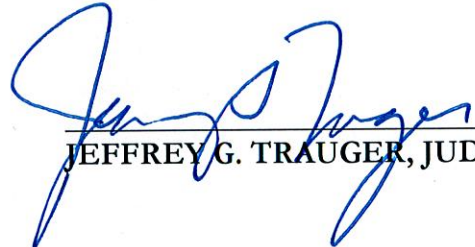
Next, the Court found U.S. Bank had a meritorious defense against Becker's quiet title action because U.S. Bank was the named owner of the disputed property by means of its December 18, 2017 Sheriff's Deed, to which no challenges or petitions to set aside had been filed. Finally, the Court found U.S. Bank credible in its explanation for why it failed to file a response pleading to Becker's Complaint. U.S. Bank admitted Becker provided evidence of a U.S. Postal Service certified mailer as his proof of having served Wendy Powell, an agent of U.S. Bank, on February 15, 2018. U.S. Bank's Pet. to Open and/or Strike J. at 5. However, U.S. Bank credibly asserted it never actually received a copy of the Complaint and that it had no record of the commencement of this quiet title action despite

the Bank's policy and procedures for handling such legal notices and filings. The Court found it necessary and in the interest of fairness and justice to adjudicate this quiet title action on the merits of the parties' respective superior title claims and not on a procedural default judgment technicality. Finally, the Court finds Pennsylvania Rule of Civil Procedure 126 further permits the Court to open a default judgment so as to justly adjudicate and determine the substantial rights of the parties to this disputed property regarding their title.

**V. CONCLUSION**

For the foregoing reasons, it is respectfully submitted that the Court did not err in denying Appellants' Motions for Post-Trial Relief in its April 20, 2021 Order. Accordingly, the Court's March 5, 2021 Decision and Order should be affirmed.

**BY THE COURT:**



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**JEFFREY G. TRAUGER, JUDGE**

Date: July 7, 2021

**N.B. It is your responsibility to notify all interested parties of the above action.**

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HEYWOOD BECKER	:	
	:	Consolidated Cases:
v.	:	No. 2018-00849-40 (Lead Case)
	:	No. 2018-03392-40
U.S. BANK NA, SUCCESSOR TRUSTEE TO	:	No. 2018-03843-40
BANK OF AMERICA NA, SUCCESSOR IN	:	No. 2018-02856-40
INTEREST TO LASALLE BANK NATIONAL	:	No. 2019-08586-40
ASSOCIATION, AS TRUSTEE, ON BEHALF	:	
OF THE HOLDERS OF THE BEAR STEARNS	:	
ASSET BACKED SECURITIES I TRUST	:	
2004-HE10, ASSET-BACKED	:	
CERTIFICATES, SERIES 2004-HE10	:	

DECISION AND ORDER

I. INTRODUCTION

Before the Court for decision following trial is the consolidated case captioned above comprised of five separate actions. All claims are centered around the disputed ownership of a residential property originally owned by Richard Restifo located at 5 Brendon Knoll, Solebury Township, Bucks County, Pennsylvania 18902 (the "Restifo property"). The five consolidated cases herein include: three quiet title actions between Heywood Becker and U.S. Bank, NA; a mortgage foreclosure action brought by Heywood Becker against the Estate of Richard Restifo; and a Petition for Permanent Injunction brought by Heywood Becker against E. Keith Darrow. The Court was ultimately compelled to issue an Order prohibiting additional actions from being filed without the express leave of Court.

The unnecessarily complex nature of the litigation in this case turns on one key question: which Party's mortgage and subsequent foreclosure resulted in the superior title to the property? Heywood Becker and U.S. Bank, NA have each filed competing quiet title actions - each claiming to

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have superior title based upon their underlying mortgages on the Restifo property. Upon consideration of the evidence presented at trial, the Court finds U.S. Bank, NA has paramount title to the property by virtue of its foreclosure and subsequent Deed issued and recorded by the Bucks County Sheriff's Office. The Court further finds the private mortgage between George Kiriakidi and Richard Restifo (the "Kiriakidi mortgage") was paid off by First Charter Search and Abstract Company in 2004 when the payoff check was received and negotiated by Kiriakidi. Upon receipt of that payment, the Kiriakidi mortgage should have been satisfied of record at all times thereafter. Accordingly, Becker's title claims to the Restifo property must fail as they are all based on a paid off and satisfied private mortgage.

## II. PROCEDURAL BACKGROUND

These cases are currently consolidated under the lead case in this matter: Heywood Becker v. U.S. Bank, NA, docket number 2018-00849. The procedural history of each case will be briefly addressed below in the order filed and docketed.

### Heywood Becker v. U.S. Bank, NA, 2018-00849

On February 12, 2018, Heywood Becker ("Becker") filed a quiet title action against U.S. Bank, NA ("U.S. Bank") asking the Court to invalidate the Sheriff's Deed issued to U.S. Bank for the property following its foreclosure action. After the standard procedural entry of a default judgment due to U.S. Bank's failure to answer the Complaint,<sup>1</sup> on May 13, 2020, following hearing and consideration of the facts and evidence related thereto, the Court granted U.S. Bank's Petition to Open the Default Judgment and ordered all claims be determined and decided at trial on the merits.<sup>2</sup>

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<sup>1</sup> The default judgment was docketed on April 10, 2018.

<sup>2</sup> The Order was docketed on May 14, 2020.



**Heywood Becker v. the Estate of Richard Restifo, 2018-02856**

On May 16, 2018, Becker filed a mortgage foreclosure action utilizing the Kiriakidi mortgage against the Estate of Richard Restifo (the “Restifo Estate”). On May 22, 2018, Emily Cipriano (“Cipriano”), as Administratrix of the Restifo Estate, filed an Answer, *pro se*, in which she admitted to all allegations raised in Becker’s Complaint.<sup>3</sup> On January 25, 2019, this case was consolidated with Heywood Becker v. U.S. Bank, docket number 2018-00849.

**U.S. Bank, NA v. George Kiriakidi and Heywood Becker, 2018-03392**

On June 11, 2018, U.S. Bank filed a Writ of Summons against George Kiriakidi (“Kiriakidi”) and Becker in a quiet title action. On October 22, 2018, U.S. Bank filed a Complaint asking the Court to quiet title in its favor and to order the mortgage, originally held by Kiriakidi and later assigned to Becker, as satisfied. On March 6, 2019, this case was consolidated with Heywood Becker v. U.S. Bank, docket number 2018-00849.

**Heywood Becker v. U.S. Bank, NA, 2018-03843**

On July 2, 2018, Becker filed a second quiet title action against U.S. Bank for this same property. On October 31, 2018, U.S. Bank filed an Answer. On March 26, 2019, this case was consolidated with Heywood Becker v. U.S. Bank, docket number 2018-00849.

**Heywood Becker v. E. Keith Darrow, Dominick Bellizzie and Kevin Edwards, 2019-08586**

On December 15, 2019, Becker filed an Emergency Motion for Preliminary Injunction against E. Keith Darrow (“Darrow”) and two officers of the Solebury Township Police Department. Darrow had previously entered into a written Agreement of Sale for the property with U.S. Bank following the Bank’s receipt of the Sheriff’s Sale and Sheriff’s Deed issued by the Bucks County Sheriff’s Office.

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<sup>3</sup> As will be described later with more detail, Becker, as an alleged creditor, subsequently filed for Letters of Administration and was instrumental in obtaining the appointment of his tenant Cipriano as the Administratrix of the Restifo Estate and guiding all of Cipriano’s actions thereafter.

Becker sought to assert his claim of ownership of the property by asking the Court to order the exclusion of Darrow from the property. Simultaneously, Becker also filed a Motion for Permanent Injunction to permanently exclude Darrow from the property. On January 8, 2020, Darrow filed an Answer and New Matter. On January 15, 2020, Dominick Bellizzic and Kevin Edwards, the Solebury Township police officers, filed a joint Answer. On January 21, 2020, the Court commenced a three-day hearing to address Becker's Motion for Preliminary Injunction.

Becker ultimately withdrew his claims against the Solebury Township police officers. N.T. Jan. 21, 2020 [Docket Entry 129] at 16. Only Darrow remained as a named Defendant in this action. Upon considering the evidence presented at this hearing, the Court ordered all Parties not to visit the property until the pending quiet title actions were decided.<sup>4</sup> N.T. Jan. 23, 2020 [Docket Entry 128] at 128-29. The Court further advised that Becker's Motion for Permanent Injunction would not be decided until the conclusion of trial on the quiet title actions. On January 24, 2020, this case was consolidated with Heywood Becker v. U.S. Bank, docket number 2018-00849.

### **Trial of the Consolidated Cases**

On November 17, 2020, the Court commenced the trial pursuant to Pa.R.C.P. No. 1067 to determine the merits of the competing consolidated quiet title cases. To promote judicial economy, all evidence presented at the previous three-day preliminary injunction hearing was incorporated into the trial record. N.T. Nov. 17, 2020 [Docket Entry 148] at 6-7.

### **III. BACKGROUND**

In 1990, Richard Restifo acquired title to the property at 5 Brendon Knoll, Solebury Township, Bucks County, Pennsylvania 18902. Subsequently, on June 14, 2001, Restifo and his builder, George

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<sup>4</sup> An exception was permitted allowing the Parties to check on the property's security and maintenance from time to time.

Kiriakidi, entered into a loan secured by a mortgage. The essential terms of this mortgage agreement stated Kiriakidi would personally loan Restifo \$30,000. As security for the loan, Kiriakidi took a lien on the property. The Kiriakidi mortgage was recorded on June 26, 2001.

On October 12, 2001, Restifo entered into a primary loan and mortgage agreement with Transland Financial Services, Inc. ("Transland"). The essential terms of this transaction were for Transland to loan Restifo \$384,500. As security for this loan, Transland would also take a first lien on the property until the debt was repaid (the "Transland mortgage"). The Transland mortgage was recorded on October 23, 2001.

Sometime after the work and improvements at the property were completed, Restifo sought to refinance his debt with a \$500,000 loan from Fremont Investment & Loan ("Fremont") which was to be secured by a recorded mortgage lien of first position on the property (the "Fremont mortgage"). James Nolan, the settlement agent and previous owner of First Charter Search and Abstract Company ("First Charter Abstract"), insured the title and first lien priority for Fremont. James Nolan then dispersed the necessary funds from the refinance loan to pay off the Kiriakidi and Transland mortgages and obtained the insured first position lien against the Restifo property for Fremont. In this manner, the Fremont refinance mortgage became the mortgage with the first position lien on the Restifo property in 2004.

Subsequently, on March 15, 2012, the Fremont mortgage was assigned to U.S. Bank. On May 20, 2016, Restifo departed this life. Restifo's death and lack of family, beneficiaries, or others to take care of his affairs ultimately resulted in a default of payment on the Fremont mortgage. On December 26, 2016, U.S. Bank commenced a foreclosure action against the Restifo property. U.S. Bank notified all interested parties - including Kiriakidi - that the property was to be sold at Sheriff's Sale. N.T. Jan. 21, 2020 [Docket Entry 129] at 95-96. On November 9, 2017, U.S. Bank was the successful bidder for the property at the publicly advertised and conducted Sheriff's Sale. The Bucks County Sheriff's

Office thereafter prepared and filed a Sheriff's Deed for the property which was recorded in the Bucks County Recorder of Deeds Office on December 29, 2017. Ex. P-9.

During the period following Restifo's passing and the events described above, Becker contacted Kiriakidi regarding his mortgage which Becker had discovered through his property search remained of record and unsatisfied for approximately thirteen years. Kiriakidi informed Becker of his relationship to Restifo, the property, and the mortgage background. Becker then agreed to pay Kiriakidi \$3,000 for an assignment of the Kiriakidi mortgage. They also agreed if Becker successfully acquired good title to the property, Becker would pay Kiriakidi an additional sum of money for the assignment. N.T. Jan. 21, 2020 [Docket Entry 129] at 94-95. Thus, the total price for the assignment of the Kiriakidi mortgage to Becker was contingent on whether Becker succeeded in his quiet title claims. Id. In the event Becker was unsuccessful in acquiring good title to the property, Becker would not pay Kiriakidi any additional money under their agreement. Id.

On December 1, 2017, Kiriakidi executed an assignment of the 2001 Kiriakidi mortgage to Becker.<sup>5</sup> On December 19, 2017, Becker subsequently recorded a reassignment of the mortgage and performed his own recalculation on the principal and interest due on the original \$30,000 loan. Incredibly, Becker claimed the interest on the original loan had grown to a total amount due of \$584,329.60.

Later that same month, Becker sent U.S. Bank's realtor, Kathleen Todd ("Todd"), an email claiming his interest in the property. Todd had only recently negotiated the Darrow Agreement of Sale on behalf of U.S. Bank following the recording of the Sheriff's Deed to the Bank.

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<sup>5</sup> The evidence presented at trial shows Becker drafted this mortgage assignment himself. Becker was formerly a licensed attorney with the Commonwealth of Pennsylvania before his disbarment in 2004. The evidence of record also established Becker personally prepared the foreclosure action against the Restifo Estate on behalf of Cipriano, the draft Answer filed by Cipriano, and the Deed to Quiet Title executed by Cipriano as the putative Administratrix of the Restifo Estate.

U.S. Bank had executed a standard listing agreement with Todd and advertised the property for sale. U.S. Bank also took measures to preserve the property by hiring Field Asset Services (“FAS”). FAS winterized the property, cut the lawn, rekeyed the doors, removed snow, fixed broken steps, and generally maintained the property. Darrow, as a potential buyer of the property from U.S. Bank, initially visited the property on November 23, 2017. After contacting his personal real estate agent, he visited the property again the next day and later attended an open house at the property which was advertised by Todd as the listing realtor. In December 2017, E. Keith and Lori Darrow (“the Darrows”) entered into an Agreement of Sale to purchase the property from U.S. Bank. However, to date, the sale of the property has not closed due to the pending consolidated litigation. Todd testified that a release was never executed or signed by the Parties and that the pending Agreement of Sale was still in effect. N.T. Jan. 21, 2020 [Docket Entry 129] at 65. She further testified that U.S. Bank still hopes to sell the property to the Darrows upon the successful resolution of the quiet title claims. *Id.* at 66.

Todd, as the real estate agent on behalf of U.S. Bank, frequently visited the property to ensure it was being maintained. She also kept in contact with FAS to report any issues found on the property. After noticing signs of an intruder in early 2018, Todd checked the locks FAS had installed. To ensure no squatters or other individuals entered the premises, she placed “no trespass” signs on the property. However, on a later visit to the property, she found her keys no longer worked to enter the residence. Todd then encountered contractors inside the residential property and subsequently determined that Becker had hired the contractors to perform work at the property. *Id.* at 69-70.

In April of 2018, Becker asked Emily Cipriano to be the Administratrix of the Restifo Estate. N.T. Jan. 21, 2020 [Docket Entry 129] at 124. Cipriano was a tenant in one of the buildings Becker owned and managed. *Id.* at 126. Becker agreed to pay Cipriano additional sums of money for serving as the Administratrix of the Restifo Estate, but only if he successfully acquired good title to the

property. *Id.* at 138. Cipriano's ultimate payment for aiding Becker in his claim was contingent on the outcome of the quiet title claims, like that of Kiriakidi. Shortly after Cipriano was appointed Administratrix, Becker sued the Estate of Restifo in a mortgage foreclosure action he prepared based on the 2001 Kiriakidi mortgage. Cipriano, as his personally selected Administratrix of the Restifo Estate, admitted to all of Becker's claims against the Restifo Estate.<sup>6</sup> Becker then drafted a Quitclaim Deed for Cipriano to execute so as to convey Restifo's interest in the property to Becker to satisfy his claims against the Estate. *Id.* at 130-31. Cipriano, in her capacity as Administratrix of the Restifo Estate, testified that she never actually visited the Restifo property. She further testified that she relied exclusively on documents provided to her by Becker in representing the interest of the Restifo Estate and that she only reviewed those documents in Becker's office.

Against the foregoing factual background, the Parties filed the numerous consolidated cases now before the Court for disposition.

#### IV. DISCUSSION AND ANALYSIS

The trial before the undersigned addressed the following claims: three quiet title actions; one mortgage foreclosure action; and a motion for permanent injunction.<sup>7</sup> The Court initially observes that when a trial judge sits as the finder of fact, the trial judge "is free to believe all, part, or none of the evidence." *Williams v. Taylor*, 188 A.3d 447, 450 (Pa. Super. 2018) (internal citation omitted). In a bench trial, it is the trial judge's duty to assess the credibility of witnesses and properly weigh the evidence presented. With these principles of law clearly expressed and the relevant trial claims outlined

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<sup>6</sup> Cipriano chose to litigate this matter *pro se* and with the help of Becker. Becker was not only the *pro se* Plaintiff suing the Restifo Estate, he was also directing Cipriano in her duties to represent the Restifo Estate as Defendant.

<sup>7</sup> The Court found it beneficial and necessary to consolidate these cases for judicial economy under Pa.R.C.P. No. 213(a) because the cases all address the same essential factual background and are dependent on the outcome of the Court's factual and legal findings in the competing quiet title claims.

above, the discussion and analysis below moves to the Parties' competing ownership claims, all of which ultimately turns on the lien status and validity of their underlying mortgages.

### A. Quiet Title Claims

U.S. Bank and Becker both claim to have superior title to the property and have each filed a quiet title action against the other. U.S. Bank's claim of superior title is founded on its foreclosure of the Fremont refinance mortgage and the resulting Sheriff's Deed it obtained following the 2017 mortgage foreclosure and Sheriff's Sale of the property. Becker's claim of superior title stems from his foreclosure of the Kiriakidi private mortgage and the resulting Quitclaim Deed he acquired to settle his claims against the Restifo Estate.<sup>8</sup> Both Parties ask the Court to invalidate the other's claim of title to the premises and consequentially dispel the competing cloud that is currently over the property's ownership.

In Pennsylvania, to prevail in a quiet title action, the party seeking to quiet title "must demonstrate good title by a fair preponderance of the evidence." Poffenberger v. Goldstein, 776 A.2d 1037, 1041 (Pa. Commw. 2001) (internal citation omitted). "Moreover, [the] plaintiff has the burden of proving a prima facie title, which proof is sufficient until a better title is shown [by] the adverse party." Moore v. Commonwealth, Dep't of Env'tl. Res., 566 A.2d 905, 907 (Pa. Commw. 1989) (quoting Hallman v. Turns, 482 A.2d 1284, 1287 (Pa. Super. 1984)). In this case, both Parties have filed a quiet title claim under Pennsylvania Rule of Civil Procedure 1061(b)(3) "to compel an adverse party to file, record, cancel, surrender or satisfy of record, or admit the validity, invalidity or discharge of, any document, obligation or deed affecting any right, lien, title or interest in land[.]"

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<sup>8</sup> Plaintiff Becker resolved his case amicably with Defendant Emily Cipriano, as the Administratrix of the Estate of Restifo. At the time, Cipriano was his tenant and had never visited the Restifo property.

Notably, Pennsylvania law grants the trial court broad power in settling a quiet title dispute. Pennsylvania Rule of Civil Procedure 1066 sets forth the types of relief the trial court may grant in a quiet title action. In relevant part, the rule states that upon granting relief, the trial court:

(3) shall enter a final judgment ordering the defendant, the prothonotary, or the recorder of deeds to file, record, cancel, surrender or satisfy of record, as the case may be, any plan, document, obligation or deed determined to be valid, invalid, satisfied or discharged, and to execute and deliver any document, obligation or deed necessary to make the decree effective; or

(4) shall enter **any other order necessary** for the granting of proper relief.

Pa.R.C.P. No. 1066(b)(3)-(4) (emphasis added). The Court is mindful that with this broad authority to decide and resolve quiet title disputes comes a heavy burden for the trial court to analyze the evidence with great diligence. As a result, the Court's analysis below will address the merits each Parties' title claim separately.

### **1. U.S. Bank's Claim of Superior Title**

U.S. Bank claims to have superior title to the property through its foreclosure of the Fremont refinance mortgage and the resulting Sheriff's Deed. The evidence presented at trial shows that Restifo obtained a \$500,000 refinance loan and mortgage from Fremont in 2004. Ex. U.S.-1. During this time, Restifo had multiple debts and mortgages on the property - including the Kiriakidi mortgage. Ex. U.S.-8. As a condition for obtaining the loan, Fremont required all of Restifo's creditors to be paid off so as to allow Fremont to obtain the first position lien on the property. Ex. U.S.-8. The evidence shows First Charter Abstract served as the title insurer for the Fremont refinance mortgage and was tasked with ensuring Fremont obtained the first position lien on the Restifo property. Ex. D-10. At trial, Brendan Nolan ("Nolan"), as record custodian of First Charter Abstract, credibly testified that its regularly maintained business records for this transaction showed that Restifo's creditors were paid off in 2004 and that it properly obtained and insured the first position lien in favor



of Fremont.<sup>9</sup> N.T. Jan. 22, 2020 [Docket Entry 127] at 138-39. Nolan credibly testified that First Charter Abstract had numerous documents in its business file and records evidencing that all of Restifo's creditors were paid off in 2004 during this transaction.

During trial, the Court viewed the 2004 United States Department of Housing and Urban Development ("HUD") settlement statement related to the Fremont refinance mortgage which clearly shows Restifo's creditors were paid off. Ex. D-10. The HUD settlement statement shows a list of payments made to Restifo's creditors, corresponding title company check numbers evidencing payment by check to the creditors and Restifo's own signature affirming the accuracy of the information provided. *Id.* Restifo himself, as the original owner of the property and original mortgagor of the Kiriakidi mortgage, signed this document attesting to the payoff payments that were made to his creditors at settlement. Thus, it is clear to this Court by a preponderance of the evidence that Fremont obtained the first position lien on the Restifo property in 2004 through its refinance mortgage with Restifo, including the payoff of the Kiriakidi mortgage disbursed in that transaction.

Approximately eight years later, on March 15, 2012, Fremont assigned this loan and mortgage to U.S. Bank and recorded an assignment with the Bucks County Recorder of Deeds. Importantly, U.S. Bank stepped into Fremont's first position lien on the property insured by First Charter Abstract in 2004. In 2016, due to non-payment of the loan, U.S. Bank commenced a mortgage foreclosure action against the Restifo property which led to the Sheriff's Sale of the property.<sup>10</sup> On November 9, 2017, the property was sold to U.S. Bank at the Bucks County Sheriff's Sale. Ex. P-9. The evidence further established that on December 18, 2017, U.S. Bank obtained a recorded Sheriff's Deed from

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<sup>9</sup> Brendan Nolan testified at trial as the current record custodian of First Charter Abstract. James Nolan, Brendan Nolan's brother, was unable to testify at trial because of his untimely death.

<sup>10</sup> U.S. Bank's mortgage foreclosure action against Restifo is not consolidated with these cases.

the Bucks County Sheriff's Office for the property at 5 Brendon Knoll, Solebury Township, Bucks County, Pennsylvania 18902 naming the Bank as the lawful owner.<sup>11</sup> Id.

## 2. Becker's Claim of Superior Title

Becker claims to have superior title to the property through his foreclosure of the private Kiriakidi mortgage and the subsequent Quitclaim Deed he obtained from Emily Cipriano, Administratrix of the Restifo Estate. The Court finds a vital flaw with Becker's claim based on Kiriakidi's mortgage. As previously discussed, the evidence established that the Kiriakidi mortgage was in fact paid off in 2004 - long before Becker was assigned the Kiriakidi mortgage on December 1, 2017. Ex. D-4. At trial, Becker argued the Kiriakidi mortgage was never paid off and that by his calculations an outstanding debt of \$584,329.60 had accrued and remained due and payable at the time he commenced his foreclosure action in May of 2018. Ex. D-1. Becker also claimed his foreclosure of the Kiriakidi mortgage resulted in his ownership of the property because at the time of this action the Kiriakidi mortgage was the first position lien on the property. U.S. Bank countered by arguing there was no longer a debt owed on the Kiriakidi mortgage when Kiriakidi assigned the mortgage to Becker for \$3,000 as the mortgage was paid off in 2004 and should have been satisfied of record. U.S. Bank also argued the Kiriakidi mortgage did not have a first position lien on the property because Fremont obtained the first position lien in 2004 through the \$500,000 refinance transaction with Restifo.<sup>12</sup>

The Supreme Court of Pennsylvania has previously held that "as the original debt is retired the lien of the mortgage is correspondingly reduced." W. Pa. Nat'l Bank v. Peoples Union Bank & Tr.

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<sup>11</sup> The Court notes that under Pennsylvania law, the proper procedure to contest a Sheriff's Sale is by filing a petition to set aside a Sheriff's Sale prior to the delivery of the Sheriff's Deed. Pa.R.C.P. No. 3132. See also Farmers First Bank v. Wagner, 687 A.2d 390, 392 n.3 (Pa. Super. 1997). Nothing in the record shows Becker filed a timely petition to set aside the Sheriff's Sale of the property to U.S. Bank prior to U.S. Bank obtaining the Sheriff's Deed.

<sup>12</sup> As previously stated, the Fremont mortgage was assigned to U.S. Bank on March 15, 2012.

Co., 439 Pa. 304, 307 (1970). Crucially, the Superior Court of Pennsylvania has explained that a *mortgage foreclosure action is invalid when the original debt under the mortgage was paid* or when the debt was forgiven. (emphasis added). Donald J. Weiss & Assocs., P.C. v. Tulloch, 961 A.2d 862, 864 (Pa. Super. 2008). Therefore, Pennsylvania law is clear and unequivocal that a mortgagee may not bring a valid mortgage foreclosure action against a mortgagor when the underlying mortgage debt has been paid and satisfied or forgiven.

In this case, the evidence presented at trial clearly proved to this Court that the Kiriakidi mortgage was paid off in full by First Charter Abstract in 2004. As a threshold matter, the Court observed that Becker failed to provide any evidence to show Kiriakidi actually loaned the sum of \$30,000 to Restifo. No check stubs, payment disbursements, bank records, nor any other documents were admitted into evidence showing Kiriakidi provided \$30,000 in funds to Restifo. Still, the evidence of record did demonstrate that a private mortgage agreement was entered between Restifo and his contractor Kiriakidi in 2001 in the face amount of \$30,000 and the Court analysis begins from that premise. Ex. T-19.

At trial, Becker presented Kiriakidi as his key witness related to his claim of superior title. However, the Court finds Kiriakidi was not credible as a witness on this issue. First, Kiriakidi admitted he stands to substantially benefit financially if Becker succeeds in this quiet title claim. Kiriakidi testified Becker promised to pay him an additional substantial sum of money if Becker successfully gained ownership of the property. N.T. Nov. 17, 2020 [Docket Entry 148] at 102. Thus, Kiriakidi's testimony was severely biased in favor of Becker due to his financial interest alone. Second, Kiriakidi gave contradictory answers to simple questions throughout his direct and cross examinations. For example, Kiriakidi initially testified he personally loaned Restifo \$30,000 to *complete* the construction of the property. Id. at 115. When confronted with contradictory evidence, Kiriakidi changed his answer and stated he loaned Restifo the money to help him *begin* constructing the property. Id. at 114.

When confronted with contradictory evidence, Kiriakidi changed his answer yet again and stated he had no idea why he loaned Restifo \$30,000. *Id.* at 121-22. Third, Kiriakidi admitted that following receipt of funds from First Charter Abstract in 2004 following the refinancing, he never attempted to collect any payment on the loan from Restifo for sixteen years. From 2001 to 2017, Kiriakidi admitted he never attempted to collect any money from Restifo for the alleged unpaid mortgage. *Id.* at 112. Kiriakidi incredibly testified he did not attempt to collect the money allegedly owed on the mortgage because he was doing very well financially and he had money “oozing out of everywhere.” *Id.* at 112.

The Court makes the factual finding that Kiriakidi did not attempt to collect any payment after 2004 from Restifo because he in fact knew the mortgage was paid off in 2004 with the title company’s \$2,076 payoff check. The evidence established that Restifo hired Kiriakidi in 2001 for a construction project on the property. N.T. Nov. 17, 2020 [Docket Entry 148] at 95. Kiriakidi and Restifo entered the \$30,000 mortgage agreement prior to Kiriakidi actually beginning construction on the Restifo property. N.T. Nov. 17, 2020 [Docket Entry 148] at 95. Kiriakidi testified he did not know exactly why he loaned Restifo the \$30,000 but thought it possible he loaned Restifo the money to “jumpstart” the construction project. *Id.* at 114. The Court viewed evidence that Restifo paid Kiriakidi \$31,081 from another construction loan Restifo obtained in 2001. Ex. U.S.-13. Thus, the Court finds from the evidentiary record that the \$2,076 payment in 2004 was made to pay off and satisfy the remaining debt under the Kiriakidi mortgage. In fact, First Charter Abstract’s business records prove Kiriakidi accepted and negotiated the payoff check from First Charter Abstract in 2004 for \$2,076. Ex. D-14.

Even with the ultimate knowledge that the mortgage had been paid off, Kiriakidi still agreed to assign the mortgage to Becker in December of 2017 for \$3,000. Ex. D-4. The Court notes Kiriakidi’s assignment of his private mortgage to Becker only occurred after U.S. Bank began foreclosure proceedings against Restifo in 2016. For these reasons, amongst many others not worth fully recounting here, the Court finds Kiriakidi’s testimony was full of inconsistencies and treaded

precariously close to being intentionally false and constituting perjury. The Court will assume for the purpose of this Decision that Mr. Kiriakidi had a severe memory lapse which may have been induced by his contacts with Mr. Becker following Mr. Becker's discovery of the unsatisfied \$30,000 mortgage.

In direct contrast, Nolan credibly testified from his review of First Charter Abstract's business records that Kiriakidi knew the mortgage was fully paid off in 2004 as evidenced by his brother's notes of a phone call. N.T. Nov. 18, 2020 [Docket Entry 149] at 40. Nolan testified convincingly, as First Charter Abstract's custodian of records, that in 2004 Kiriakidi personally negotiated the \$2,076 payoff amount with James Nolan and subsequently received the \$2,076 payoff check. *Id.* at 25-26; see also N.T. Jan. 22, 2020 [Docket Entry 127] at 138-39. Becker's claim that the \$2,076 payoff check from First Charter Abstract was only meant to pay for interest on the mortgage lacks any credibility and lacks any other factual support in the trial record. The Court gives absolutely no weight to Becker's corresponding exhibit showing a \$2,076 paycheck from First Charter Abstract *that was subsequently altered by hand*. See Ex. Becker-1. This exhibit shows a check from First Charter Abstract that was altered by hand to state the check was meant to pay for "interest" and was not intended as a payoff of the mortgage. *Id.* All other credible testimony and documents admitted into evidence clearly establish that this \$2,076 check was intended only as a payoff and satisfaction of the Kiriakidi loan. See Exs. U.S.-5, D-10 and D-14. The Court finds the altered check was submitted into evidence for the express purpose of attempting to deceive the Court with respect to the true nature of the transaction and to influence the Court in the determination of the ultimate issue in this case regarding title.

Brendan Nolan honestly testified and clarified that an administrative oversight existed, on behalf of First Charter Abstract, with the Kiriakidi mortgage because First Charter Abstract failed to adequately follow up to satisfy the mortgage of record. N.T. Jan. 22, 2020 [Docket Entry 127] at 138-39. Nolan credibly testified he asked Kiriakidi to sign a satisfaction piece on numerous occasions, but

Kiriakidi forgot or failed to comply with the request. When Kiriakidi finally agreed to provide Nolan with a satisfaction piece, Kiriakidi then denied being the named mortgagee on the loan and promised Nolan he would get his father to sign the satisfaction piece. Ex. U.S.-9. However, Kiriakidi never provided Nolan the signed satisfaction piece for the paid off mortgage at any time from any Kiriakidi despite those discussions and assurances, all of which ultimately resulted in the protracted litigation herein.

The Supreme Court of Pennsylvania has stated, “Satisfaction of a mortgage and marking the mortgage satisfied are two separate and distinct actions.” O’Donoghue v. Laurel Sav. Ass’n, 556 Pa. 349, 355 (1999). Under Pennsylvania law, a mortgage is satisfied when “all sums due and owing are tendered to the mortgagee.” Id. (internal quotation marks omitted). Marking a mortgage “satisfied” occurs “when the mortgagee physically notes in the margin of the official mortgage papers, or by a satisfaction piece, that the mortgage has been paid in full.” Id. Additionally, the Pennsylvania Rules of Civil Procedure specifically authorizes the trial court to order a mortgage satisfied when it finds there is no longer a debt owed under a mortgage agreement. See Pa.R.C.P. No. 1066(b)(3).

In this case, the Court finds the Kiriakidi mortgage was paid off in full in 2004 with the \$2,076 check to Kiriakidi from First Charter Abstract *which expressly indicated on its face that it was a payoff*. Ex. D-14. Consequentially, the Court finds Becker’s subsequent foreclosure on the paid off Kiriakidi mortgage was invalid. See Donald J. Weiss & Assocs., P.C. v. Tulloch, 961 A.2d 862, 864 (Pa. Super. 2008). Thus, Becker has failed to meet his burden of proof under Pennsylvania law that the assignment and foreclosure of the Kiriakidi mortgage gave him any valid interest in the property.

Consequently, the Court finds the Quitclaim Deed Becker prepared for execution by Emily Cipriano as Administratrix of the Estate of Richard Restifo did not convey any valid interest in the property. The Supreme Court of Pennsylvania has made clear that quitclaim deeds “are used when a party wishes to sell or otherwise *convey an interest he may think he has in land* but does not wish to warrant

his title.” Baker v. Cambridge Chase, Inc., 725 A.2d 757, 770 (Pa. Super. 1999) (internal citation omitted) (emphasis added). It is well settled law that a quitclaim deed “does not convey anything more than the interest of the grantor at the time of its execution.” Id. The Court finds the Estate of Restifo had no ownership interest in the real property in May of 2018 when Cipriano, acting as Administratrix of the Restifo Estate, provided Becker her Quitclaim Deed to settle his claims against the Estate. See Ex. P-4. As previously discussed, U.S. Bank had already acquired lawful ownership of the property in December of 2017 through its foreclosure and Sheriff’s Deed of the property. After that date, the Restifo Estate had no interest in the property to convey to Becker. Even if it did have an interest to convey, the Quitclaim Deed at issue was ultimately based on a paid off and satisfied mortgage and was invalid and a nullity.

Upon considering the foregoing evidence presented at trial and weighing the credibility of that evidence, the Court finds U.S. Bank has shown by a preponderance of the evidence that it has superior title to the property through its foreclosure of its mortgage and the resulting Sheriff’s Deed.

## V. CONCLUSION

For the foregoing reasons, the Court finds U.S. Bank has good and valid title to the property located at 5 Brendon Knoll, Solebury Township, Bucks County, Pennsylvania 18902. The Court further finds the Kiriakidi mortgage was paid off in 2004 and any alleged amounts due thereunder shall be satisfied of record by the Prothonotary, Recorder of Deeds and any other appropriate Parties. Additionally, the Court finds Becker’s Quitclaim Deed conveyed no interest to the subject property and said Deed shall be marked accordingly by the Recorder of Deeds and all Parties herein. Finally, the Court denies Becker’s Motion for Permanent Injunction against E. Keith Darrow because Becker is not the property’s owner and he acquired no interest in said property. Accordingly, the Court enters the attached Order in full disposition of these consolidated cases.

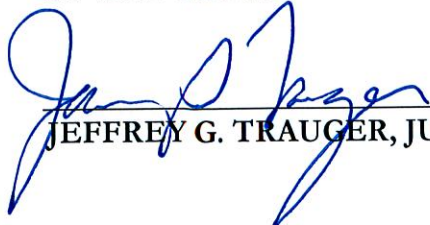
**ORDER**

**AND NOW**, this 5<sup>th</sup> day of **March, 2021**, upon consideration of all the evidence presented at trial and the post-trial submissions and arguments made by the Parties, it is hereby **ORDERED** as follows:

1. U.S. Bank's Sheriff's Deed issued by the Bucks County Sheriff's Office for the property located at 5 Brendon Knoll, Solebury Township, Bucks County, Pennsylvania 18902, recorded on December 29, 2017 and title conveyed therein, is hereby quieted in favor of U.S. Bank against all other claims.
2. The Prothonotary, Recorder of Deeds and all necessary Parties shall mark the 2001 Kiriakidi Mortgage paid off and satisfied of record.
3. All of Becker's quiet title claims are denied and dismissed with prejudice.
4. Becker's Quitclaim Deed to the property located at 5 Brendon Knoll, Solebury Township, Bucks County, Pennsylvania 18902, recorded on May 16, 2018 did not and does not convey any valid interest in the property to Becker and shall be marked as such by the Recorder of Deeds, Prothonotary and all necessary Parties.
5. A copy of the Court's Decision and Order herein shall be filed and indexed with respect to the subject property located at 5 Brendon Knoll, Solebury Township, Bucks County, Pennsylvania 18902.
6. Any and all other outstanding claims related to any of the foregoing cases that are inconsistent with Paragraphs 1 - 4 above are hereby denied and dismissed with prejudice.

**N.B. It is your responsibility to notify all interested parties of the above action.**

**BY THE COURT:**

  
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**JEFFREY G. TRAUGER, JUDGE**

Date: March 5, 2021