STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: July 9, 2015]

COUNTRYWIDE BANK, N.A. and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., their successors, nominees and assigns	:	
VS.	:	**C.A. No. PC 2010-2880**
LINDSEY M. DONAHUE, ELIZABETH A. DONAHUE, and LISA DONAHUE, Individually and as heirs beneficiaries, successors, and/or assigns of Margaret A. Cappello (deceased)	:	
VS.	:	
LISA M. COTE a.k.a. Lisa M. Donahue et al, and THOMAS FRANCO	:	

DECISION

TAFT-CARTER, J. Before this Court for decision are simultaneous requests, pursuant to G.L. 1956 §§ 9-30-1 et seq., for declaratory relief regarding title to real estate located at 84 Farm Street in Providence (the Providence Property). Plaintiffs Countrywide Bank, N.A. (Countrywide) and Mortgage Electronic Registration Systems, Inc. (MERS) (collectively Plaintiffs) are the holders of a mortgage on the Providence Property, obtained by the now-deceased borrower, Margaret A. Cappello. In 1999, Ms. Cappello had recorded a deed purporting to give a future interest in the Providence Property to her granddaughters, Defendants

Lindsey M. Donahue and Elizabeth A. Donahue (collectively Defendants), while reserving a life estate for herself.[1] The parties dispute the validity of this deed as well as the mortgage.

Plaintiffs ask this Court to declare the 1999 deed invalid for insufficient delivery and acceptance. Alternatively, Plaintiffs seek to reform the mortgage to add the names of the Defendants. Plaintiffs also claim they are entitled to relief pursuant to the doctrines of equitable subordination and unjust enrichment. Conversely, Defendants ask this Court to declare that the 1999 deed is valid and that Plaintiffs' mortgage is discharged. Jurisdiction is pursuant to § 9-30-2 of the Uniform Declaratory Judgments Act (UDJA).

I

Facts and Travel

On or about November 7, 1997, Margaret A. Cappello, the Defendants' grandmother, bought the Providence Property and owned it in fee simple. (Pls.' Pre-Trial Mem., Ex. 7.) At various times between 2004 and the present, Third-Party Defendant Lisa M. Cote, Ms. Cote's long-time boyfriend, Third-Party Defendant Thomas Franco, and the Defendants also lived at the Providence Property.[2] Ms. Cote is Ms. Cappello's daughter. (Defs.' Resp. to Pls.' Req. for Admis., ¶ 6.) The Defendants are the daughters of Ms. Cote, and the granddaughters of Ms. Cappello. Id. at ¶¶ 4, 6.

On December 22, 1999, Ms. Cappello recorded a warranty deed (the 1999 Deed) granting the Defendants "a future interest" in the Providence Property while Ms. Cappello "retain[ed] a

[1] To avoid confusion, the Court refers to the Defendants by their first names.

[2] Lindsey lived at the Providence Property from 2004 to 2008, when she moved to Massachusetts. (Pls.' Pre-Trial Mem., Ex. 15.) She ultimately returned to the Providence Property from February 2010 to August 2010 before moving to Pawtucket, Rhode Island, for the time between August 2010 and February 2011. Id. Lindsey returned to the Providence Property in February of 2011 and currently resides there. Id. Elizabeth has lived at the Providence Property from 2009 to present. Id. at Ex. 14. Ms. Cote lived at the Providence Property from about 2001 to 2011. (Defs.' Pre-Trial Mem., Ex. O.)

life interest." (Pls.' Pre-Trial Mem., Ex. 6). At the time the 1999 Deed was recorded, Defendant Lindsey was about twelve years old, and Elizabeth was about eleven years old. (Ex. 18, Lindsey Dep. Tr. 6.)

At her deposition, Elizabeth testified that she first learned of the 1999 Deed sometime in 2001 when she found it among Ms. Cappello's belongings. (Ex. 19, Elizabeth Dep. Tr. 17). Elizabeth testified that she also showed the 1999 Deed to her sister. Id. at 20. Elizabeth stated that she was not surprised that her name was on the 1999 Deed because her grandmother had previously told her that "if anything happened [to Ms. Cappello] the house would be left to both [Defendants]." Id. At her deposition, Lindsey also testified as to her same understanding that she and her sister would "inherit" the house at their grandmother's death. (Lindsey Dep. Tr. 55.)

Thereafter, on February 9, 2007, Ms. Cappello mortgaged her interest in the Providence Property to Plaintiffs to secure a loan in the amount of $140,000 (the Loan).[3] (Defs.' Resp. to Pls.' Req. for Admis., ¶ 7.) The loan funds were to be secured by a priority mortgage (the Mortgage) in Plaintiffs' favor, encumbering the Providence Property in the amount of the loan. (Compl., ¶ 9). On the date of the closing, the Providence Property was encumbered by an Execution in the amount of $8,299.57 (Pls.' Pre-Trial Mem., Ex. 3.) However, at the closing, Countrywide paid off this existing debt and delivered the entirety of the Loan proceeds to Ms. Cappello. (Defs.' Resp. to Pls.' Req. for Admis., ¶ 21.) The application for the Loan was made in Ms. Cappello's name whereby she indicated that she held title to the Providence Property

[3] Neither party addresses whether a title search on the Providence Property was performed prior to the closing. Nonetheless, Exhibit 20 attached to Plaintiffs' Pre-Trial Memorandum lists $300 due for a "Title Report Fee," $225 for "Title Reports," and $25 for a "Title Search." However, because this exhibit was not properly authenticated, see R.I. R. Evid. 901, the Court is unable to discern whether a title search was actually performed.

"solely by [her]self." (Pls.' Pre-Trial Mem., Ex. 2.) In a Survey Affidavit, Ms. Cappello also attested that she "has conveyed no portion of the premises. . . ." Id. at Ex. 5.

Approximately one month before the closing, Ms. Cappello executed a Land Purchase and Sale Agreement, dated January 11, 2007, for the purchase of real property designated as Lot 2, West Thompson Road in Thompson, Connecticut (the Connecticut Property). Id. at Ex. 12. Ms. Cappello's name is listed as the buyer, while the signature line lists the signatures of both Ms. Cappello and Ms. Cote. Alongside Ms. Cote's signature is the notation "POA 1/11/07."[4] Id. In their depositions, Defendants both testified as to their belief that their grandmother, Ms. Cappello, and their mother, Ms. Cote, had taken out the Loan with the intention of buying the Connecticut Property and building a "log cabin" for the family. (Elizabeth Dep. Tr. 33-35; Lindsey Dep. Tr. 28.) Lindsey testified at her deposition that Ms. Cote and Ms. Cappello wanted to move the family to Connecticut, but it was unclear whether they would sell the Providence Property prior to moving. (Lindsey Dep. Tr. 65.) Lindsey also stated that she was "uncomfortable" with the move because "no one had brought it to [Defendants'] attention." Id. On February 23, 2007, a deed to the Connecticut Property was recorded listing only Ms. Cote as the owner.[5] (Defs.' Third-Party Compl., Ex. C).

Approximately a year later, on February 8, 2008, Ms. Cappello died. (Defs.' Resp. to Pls.' Req. for Admis., ¶ 22.) It is undisputed that she kept the 1999 Deed in her possession until her death.

[4] In her interrogatory answers, Ms. Cote stated that she "assist[ed] [Ms. Cappello] with her finances pursuant to a Power of Attorney." (Defs.' Pre-Trial Mem., Ex. O.)

[5] After Ms. Cappello's death in February 2008, Ms. Cote conveyed the Connecticut Property to herself and Mr. Franco by Quitclaim Deed, which was recorded on July 9, 2009. (Defs.' Third-Party Compl., Ex. D.) In April 2010, Mr. Franco and Ms. Cote then sold the Connecticut Property to a third party. Id. at Ex. E.

After Defendants refused to make payments on the Mortgage, the Plaintiffs instituted the present case against Defendants and Ms. Cote, on or about May 12, 2010, by filing a complaint requesting the following relief: (1) Declaratory Judgment, (2) Equitable Subrogation and Subordination, (3) Injunctive Relief, (4) Action on the Note, (5) Unjust Enrichment. (Agreed Travel of the Case, ¶ 1.) On June 16, 2010, Defendants answered and raised counterclaims seeking declaratory relief and/or a discharge of the Mortgage. Id. at ¶ 2. A default judgment entered against Ms. Cote on November 23, 2010 for her failure to answer the complaint. Id. at ¶ 3. On or about March 7, 2013, Defendants filed a Second Amended Counterclaim against Plaintiffs containing the following five counts: (1) declaratory judgment, (2) equity, (3) unjust enrichment, (4) injunctive relief.[6]

On or about June 4, 2012, Defendants filed a third-party complaint against their mother, Ms. Cote, and Mr. Franco.[7] Id. at ¶ 5. Ultimately, on March 20, 2013, Elizabeth dismissed her Third-Party Complaint against Ms. Cote and Mr. Franco. On October 2, 2013, Lindsey obtained an order of default against Ms. Cote and Mr. Franco for their failure to provide certain documents. Id. at ¶¶ 10-11.

[6] Defendants' Second Amended Counterclaim originally contained a claim under the theory of constructive trust, but this count was voluntarily dismissed on March 7, 2013. (Agreed Travel of the Case, ¶¶ 7-8.)

[7] On July 30, 2012, Defendants filed a Super. R. Civ. P. 7 motion to amend their Third-Party Complaint to add Thomas G. Hetherington, Esq. and the Law Offices of Glenn J. Andreoni, Inc. as third-party defendants. This motion was granted on August 17, 2012. (Agreed Travel of the Case, ¶ 12.) On October 1, 2012, Defendants voluntarily dismissed their action against the Law Offices of Glenn J. Andreoni, Inc. However, no dismissal was filed regarding Attorney Hetherington. Defendants also do not present any arguments concerning their claims against Attorney Hetherington in their Pre-Trial Memorandum. As such, this Court concludes that Defendants' claims against Attorney Hetherington are waived.

On April 17, 2015, the matter was reached for trial. In lieu of live testimony, the parties submitted memoranda, the deposition of each Defendant, the deposition of attorney Thomas Hetherington, an agreed statement of facts, as well as numerous exhibits.

II

Standard of Review

Super. R. Civ. P. 52(a) states that "in all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon. . . ." Accordingly, in non-jury trials, "the trial justice sits as a trier of fact as well as of law." Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). "When rendering a decision in a non-jury trial, a trial justice 'need not engage in extensive analysis and discussion of all the evidence. Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.'" Parella v. Montalbano, 899 A.2d 1226, 1239 (R.I. 2006) (quoting Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998)).

The Rhode Island Supreme Court has stated that "a declaratory judgment proceeding 'is neither an action at law nor a suit in equity but a novel statutory proceeding . . . .'" Northern Trust Co. v. Zoning Bd. of Review of Town of Westerly, 899 A.2d 517, 520, n.6 (R.I. 2006) (quoting Newport Amusement Co. v. Maher, 92 R.I. 51, 53, 166 A.2d 216, 217 (1960)). Accordingly, the UDJA, § 9-30-1, gives this Court the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Sec. 9-30-1. This Court's power pursuant to the UDJA "is broadly construed, to allow the [Court] to 'facilitate the termination of controversies.'" Bradford Assocs. v. R.I. Div. of Purchases, 772 A.2d 485, 489 (R.I. 2001) (quoting Capital Props., Inc. v. State, 749 A.2d 1069, 1080 (R.I. 1999)). Thus, the purpose of the UDJA is remedial—"to settle and to afford relief from uncertainty and insecurity

with respect to rights, status, and other legal relations; and is to be liberally construed and administered." Sec. 9-30-12.

III

Discussion

1

Validity of the 1999 Deed

The Court will first concern itself with the validity of the 1999 Deed. Both Plaintiffs and Defendants seek a declaratory judgment with respect to the validity of the 1999 Deed. To resolve this issue, this Court must decide the following: (1) whether the language of the 1999 Deed created a life estate in Ms. Cappello with the Defendants as vested remaindermen; (2) whether the 1999 Deed was delivered; (3) whether the 1999 Deed was accepted by Defendants; and (4) whether the 1999 Deed created a tenancy in fee tail.

a

Life Estate

Plaintiffs argue that that 1999 Deed did not create a life estate for Ms. Cappello. Rather, Plaintiffs maintain that Ms. Cappello retained fee simple title to the Providence Property and "only transferred a truly 'future interest' to her granddaughters." (Pls.' Mem. at 8.) In this way, Plaintiffs contend that Ms. Cappello was free to mortgage the entire Providence Property rather than the value of a life estate.[8]

[8] While the holder of a life estate can sell or mortgage his or her life interest, he or she cannot sell or mortgage entire fee simple interest. See Thompson v. Watkins, 207 S.E.2d 740, 747 (N.C. 1974) ("A life tenant may mortgage his own interest but unless given the power to convey in the instrument creating his estate, he cannot encumber the entire estate without the joinder of the remaindermen."); 2 Richard R. Powell, Powell on Real Property § 15.03[3] at 15-46 ("Mortgages given by the life tenant do not bind future interest in the land. . . .").

The Rhode Island Supreme Court has stated that "[i]n construing a deed, the object sought is to ascertain and give effect to the intention of the parties. The court, however, seeks only to translate the instrument before it, not to create a new and different one." Gaddes, 33 R.I. at 177, 80 A. at 418. Accordingly, "[w]henever possible, the terms of a deed are construed according to their plain meaning." Sakonnet Point Marina Ass'n, Inc. v. Bluff Head Corp., 798 A.2d 439, 442 (R.I. 2002). Here, the 1999 Deed reads as follows:

> I, Margaret A. Cappello, **retaining a life interest**, of 84 Farm Street, Providence, Rhode Island 02908, *for consideration paid*, **grant a future interest** unto [Defendants] . . . . Margaret A. Cappello is retaining a life interest in the aforementioned property

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Nonetheless, Plaintiffs rely on G.L. 1956 § 34-4-2.1 to further support their argument that the Mortgage is enforceable. Section 34-4-2.1 entitled, "Reservation of Life Estate with enhanced powers," reads as follows:

> "A grantor may convey title to real estate and reserve a life estate therein, coupled with the reserved power and authority, during his or her lifetime, to sell, convey, mortgage, or otherwise dispose of the real property without the consent or joinder by the holder(s) of the remainder interest."

Notwithstanding the fact that the statute was enacted in 2014, § 34-4-2.1 simply does not apply to the case at bar. While the Rhode Island Supreme Court has not yet addressed the issue, § 34-4-2.1 cannot be read so that every holder of a life estate automatically retains the power to sell, convey, mortgage or otherwise dispose of the property. The statute clearly states that a grantor "may" convey a life estate "coupled" with the additional numerated powers. Even the title to the statute, "Reservation of Life Estate with enhanced powers," contemplates that § 34-4-2.1 permits a grantor to convey something more than the typical life estate. LaBonte v. New England Dev. R.I., 93 A.3d 537, 541 (R.I. 2014) ("It is a fundamental principle that when confronted with a statute that is 'clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.'" (quoting Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996))). Here, Ms. Cappello made no such reservation of the power to convey, sell or mortgage the Providence Property in the 1999 Deed. This Court will not read into the 1999 Deed language that simply does not exist. See Gaddes v. Pawtucket Inst. for Sav., 33 R.I. 177, 80 A. 415, 418 (1911) ("[T]he intention sought is only that expressed in the deed, and not some secret, unexpressed intention, even though the latter be that actually in mind at the time of execution. This is the fundamental rule of all judicial interpretation."). According to its plain terms, the 1999 Deed created a life estate in Ms. Cappello with none of the enhanced power mentioned in § 34-4-2.1. Thus, § 34-4-2.1 is not applicable to the present case.

> for the rest of her natural life." (Emphasis in original). (Pls.' Pre-Trial Mem., Ex. 6.)

Although "no particular words in a deed are required to create a life estate . . . a deed will operate to convey a life estate where, from a consideration of the entire instrument, such appears to be the grantor's intent." 26A C.J.S. Deeds § 300.

Typically, "'a conveyance 'to B during his life' or 'to B until his death' or other similar words of limitation will create a life estate in B.'" Hershman-Tcherepnin v. Tcherepnin, 891 N.E.2d 194, 203 (Mass. 2008) (quoting H.J. Alperin & L.D. Shubow, Summary of Basic Law § 17.15, at 584 (3d ed. 1996)). For example, in Jenison v. Jenison, the Rhode Island Supreme Court held that a testatrix's bequest to her son "to have and hold his life[,]" created a life estate in the son. 51 R.I. 388, 155 A. 246, 247 (1931). In so holding, the court reasoned that "[a] life estate is limited by ordinary words, and the words used by the testatrix in this case are apt words to create a life estate. The words used by the testatrix are clear and unequivocal and there is no need for judicial construction or interpretation." Id.

Here, the 1999 Deed clearly states that Ms. Cappello was "retaining a life interest" in the Providence Property. Like the court found in Jenison, these are "apt words to create a life estate." Id. Thus, the 1999 Deed created a life estate for Ms. Cappello with the remainder to the Defendants. It is well-settled that "[a] remainder limited to one or more ascertained persons, without words of condition, is vested." Simes and Smith, The Law of Future Interests § 142 at 126 (3d Borron ed. 2004). Significantly, "[r]emainder estates [ ] do not necessarily become contingent because they are limited to take effect on the death of a life tenant." 31 C.J.S. Estates § 87. Accordingly, contrary to Plaintiffs' arguments, the 1999 Deed granted Defendants "a vested, indefeasible remainder interest in the Property." Berrett v. Standard Fire Ins. Co., 888

A.2d 1189, 1196 (Md. 2005) aff'd, 910 A.2d 1072 (Md. 2006); see also 31 C.J.S. Estates § 87 ("A vested remainder subject to a life estate is a fee simple interest in property.").

b

Delivery

Next, Countrywide claims that the 1999 Deed is invalid because there was insufficient delivery. It is well-settled that a deed must be "delivered" in order to pass title. See § 34-11-4;[9] Lambert v. Lambert, 77 R.I. 463, 468, 77 A.2d 325, 327 (1950) ("It is well settled that a deed must take effect upon its execution and delivery, or not at all."); Johnson v. Johnson, 24 R.I. 571, 54 A. 378, 378 (1903) ("In order to convey title to real estate, it is necessary that the deed thereof shall be delivered to the grantee or to someone for his use."); 23 Am. Jur. 2d Deeds § 102 ("There is no question but that a deed, to be operative as a transfer of realty, must be delivered."). However, "[a]lthough delivery is essential to the validity of a deed, no particular form of proceeding is required to effect it." Oldham v. Oldham, 58 R.I. 268, 192 A. 758, 763 (1937).

Under Rhode Island law, "the ordinary test of delivery is: Did the grantor, by his acts or words, or both, intend to divest himself of the title to the estate described in the deed? If so, the deed is delivered. But if not, there is no delivery; and hence no title passes." Johnson, 24 R.I. at

[9] Section 34-11-4, entitled "Delivery of conveyance sufficient to pass title," reads as follows:

> "Any form of conveyance in writing, duly signed and delivered by the grantor, or the attorney of the grantor duly authorized, shall be operative to convey to the grantee all the possession, estate, title and interest, claim, demand or right of entry or action, of the grantor, absolutely in and to the land conveyed, unless otherwise expressly limited in estate, condition, use or trust, and if otherwise expressly limited, shall convey such property for the time or estate or on the condition, use or trust as declared, without any other act or ceremony; and if also duly acknowledged and recorded, shall be operative as against third parties."

571, 54 A. at 378. Accordingly, "[t]he question of the delivery of a deed is generally one of intention of the parties, and it is essential to a valid delivery that there should be some act or declaration from which an intention to deliver may be inferred." Taylor v. Taylor, 90 A. 746, 751 (R.I. 1914) (citation omitted). As such, "[w]hether there is a valid delivery ordinarily depends upon the facts of each case." Lambert, 77 R.I. at 468, 77 A.2d at 327.

In Johnson, the Rhode Island Supreme Court found insufficient delivery where the grantor gave the deed to a third party with specific instructions that the deed would still be subject to the grantor's control during her life. 24 R.I. at 571, 54 A. at 378. The grantor also instructed that in case of her death, the third party was to deliver the deed to the grantee so long as the grantor had not previously disposed of the property. Id. For the remainder of her life, the grantor "advertised [the subject property] for sale, and in other ways attempted to effect a sale thereof; she paid the taxes, collected the rents, and paid the interest on the mortgage thereon, and generally treated the estate as her absolute property." Id. Thus, the Court concluded that delivery was invalid because "while there was a parting with the manual possession of the deed by the grantor, she did not part with the control thereof; and hence a very essential element of delivery was lacking." Id. at 571, 379. The Court also voided the deed since the donor intended the deed to be effective only in the event of her death and "an instrument which is intended to operate as a will, without being executed in accordance with the provisions of the statute relating thereto . . . cannot be allowed to have the effect of a will." Id.

Similarly in Lambert, the Rhode Island Supreme Court determined that delivery was insufficient where the donor had given the deed to the grantee but "intended the deed to take effect only after his death[.]" 77 R.I. at 468, 77 A.2d at 327. Consequently, the Court held "that notwithstanding the surrender of the manual possession of the deed [the grantor] did not

presently intend to part with the control thereof so as to divest himself absolutely of the title; and that in the circumstances a very essential element of legal delivery was lacking." Id. at 468, 327-28. The Court also noted that while "possession of the deed by a grantee is prima facie evidence of delivery there is no valid delivery in law where it appears that the grantor's intention was that . . . the deed should not take effect until his death. In such circumstances the deed is void as it is an attempt to make a testamentary disposition of property without complying with the statute of wills." Id.

By contrast, in Alker v. Alker, the court found sufficient delivery where the grantor delivered the deed to the grantee, but instructed that the deed should not be recorded until after the grantor's death. 54 R.I. 326, 172 A. 887, 888 (1934). The Court reasoned that although "[the grantor] intended to collect and use the rents of the property during her lifetime, . . . she actually delivered the deed to the respondent and never again had it in her custody." Id.; see also Rowan v. Betagh, 83 R.I. 5, 7, 111 A.2d 841, 842 (1955).

Here, the factual circumstances of the present suit are distinguishable from the referenced cases. First, unlike the grantor in Johnson, supra, Ms. Cappello recorded the 1999 Deed. The fact that Ms. Cappello lived and used the property is not as significant a fact as it was in Johnson since Ms. Cappello explicitly retained a life interest in the property. 31 C.J.S. Estates § 35 ("A life estate is not merely a right to occupy the property. During the life of the life tenant he or she is, as a general rule, an owner of the property.") (footnote omitted). Moreover, unlike the grantor in Alker, Ms. Cappello kept the 1999 Deed in her possession until her death and never turned it over to Defendants.

The most significant distinction from these cases concerns Ms. Cappello's retention of the life estate in the Providence Property. Since the life estate preserves Ms. Cappello's interest

in the property for her life, the present case is not on all fours with the above articulated tests that require a grantor to completely divest herself of title.

Nonetheless, other courts have determined that a grantor's reservation of a life estate raises a presumption of valid delivery, "since there would be no object in reserving a life estate if the deed were not to be effectual as a conveyance or was retained to prevent its taking effect until the death of the grantor." Id.; see, e.g., White v. Hogge, 291 S.W.2d 22, 24 (Ky. 1956) ("The fact that a deed contains a reservation of a life estate in the grantor has been held to create a strong presumption of delivery, on the theory that the reservation indicates an intent that title should immediately vest in the grantee."). For instance, in Clodfelter v. Van Fossan, daughters of the grantor filed suit to declare certain deeds executed by their now deceased father to be declared void for, inter alia, lack of delivery. 67 N.E.2d 182, 182-83 (Ill. 1946). The Supreme Court of Illinois determined that a deed granting a life estate in the appellants was validly delivered, because "where there is a reservation of a life estate, especially in cases of voluntary settlement, a strong presumption is raised that title should vest immediately in the remaindermen; otherwise there would be no necessity for the reservation." Id. at 185. However, this presumption can be rebutted. See Keesee v. Collum, 67 S.E.2d 120, 122 (Ga. 1951) ("Though the grantor by reserving a life interest in the property raised a prima facie presumption of delivery, such presumption, like the presumption from the execution of a deed or the record thereof, is one that may be rebutted.").

Moreover, two additional presumptions recognized in other jurisdictions weigh in favor of valid delivery in this case. First, a presumption of delivery attaches to the 1999 Deed since it

was recorded.[10] See, e.g., Schmidt v. Jennings, 102 N.W.2d 589, 593 (Mich. 1960) ("[T]he recording of a deed raises a presumption of delivery. . . ."); Halleck v. Halleck, 337 P.2d 330, 332 (Or. 1959) ("The recording of a deed creates a presumption of delivery. If the deed is recorded by the grantor the presumption can be supported on the ground that his conduct in placing the deed on record is evidence that he executed the deed with the intent to make it legally

[10] The common law presumption in favor of delivery for a recorded deed is codified in § 34-11-35, which reads as follows:

> "When a duly signed and acknowledged instrument recorded on or after May 8, 1969 purporting to affect the title to real estate has been on record for a period of six (6) years, and, as to instruments recorded prior to May 8, 1969, for a period of six (6) years including two (2) years after May 8, 1969, it shall be conclusive evidence, in favor of purchasers and encumbrancers for value without notice claiming thereunder, that such instrument was in fact duly delivered by the person, persons, party, or parties executing the instrument to the person, persons, party, or parties, if any, named in the instrument as the grantee(s), mortgagee(s), or other recipient(s) thereof."

Here, while the 1999 Deed was recorded, Defendants are not purchasers or encumbrancers for value. No consideration for value was exchanged between Ms. Cappello and the Defendants for the 1999 Deed. As such, in determining that a presumption of valid delivery attaches to the 1999 Deed, this Court relies primarily on the above-cited cases rather than on § 34-11-35.

Relatedly, Plaintiffs claim the 1999 Deed is void for lack of consideration. In so arguing, Plaintiffs rely on the fact that although the 1999 Deed states that Ms. Cappello grants a future interest to Defendants "for consideration paid," the 1999 Deed also states that "this conveyance is such that no revue stamps are required . . . ." See G.L. 1956 § 44-25-1 ("In the event no consideration is actually paid for the lands, tenements, or realty, the instrument of conveyance shall contain a statement to the effect that the consideration is such that no documentary stamps are required."); see also Bionomic Church of Rhode Island v. Gerardi, 414 A.2d 474, 476 n.3 (R.I. 1980) ("When no consideration has been paid for the transfer, the deed must contain a statement that 'the consideration is such that no documentary stamps are required.'"). However, "[l]ack of consideration, failure of consideration, or insufficient consideration is not fatal, in the absence of fraud, to a deed's effective transfer of title." Ward v. Ward, 874 N.E.2d 433, 438 (Mass. App. Ct. 2007); see also 14 Richard R. Powell, Powell on Real Property § 81A.04[1][b] at 81A-44 ("[A]t the most fundamental level, consideration is irrelevant and unnecessary for the validity of a deed.") (footnote omitted.) Since there is no evidence or claims of fraud in the present case, Plaintiffs' argument that the 1999 Deed fails for want of consideration is unavailing.

operative."). Courts have reasoned that such a presumption attaches upon recording a deed because "if [the court] were to permit the official record of title to land to be other than what it purports to be, we would greatly reduce the credibility and significantly jeopardize the stability of land titles in this state to the ultimate detriment of many from this time forward." Dinius v. Dinius, 448 N.W.2d 210, 217 (N.D. 1989). However, courts have cautioned that the issue of the grantor's intent remains paramount: "recording a deed in the appropriate registry of deeds does not per se operate as such a delivery, nor does it obviate the need for proof thereof." Hood v. Hood, 384 A.2d 706, 707-08 (Me. 1978); see also Spielvogel v. City of Kansas City, 302 S.W.3d 108, 113 (Mo. Ct. App. 2009) ("Although recording a deed does create a presumption of delivery, recording does not, in itself, operate as delivery of the deed."); Murphy v. Hanright, 130 N.E. 204, 205 (Mass. 1921) ("A deed may remain undelivered, although it has been recorded.").

Second, a presumption of delivery arises since at the time of the deed's execution, the grantees (the Defendants) were minors. See, e.g., Mumpower v. Castle, 104 S.E. 706, 709 (Va. 1920) ("[C]onstructive delivery is often applied to deeds in favor of infants and other persons who from the nature of the case cannot be expected to be present or in any wise participating in the transaction at the time of the delivery of the deed."); Kunkel v. Johnson, 109 N.E. 279, 281 (Ill. 1915) ("[I]n the case of a voluntary settlement, and particularly in the case of a minor grantee, the presumption of the delivery of a deed is stronger than in case of bargain and sale."). For instance, in Hill v. Kreiger, the plaintiff filed suit to declare a deed, executed by her father to the plaintiff and her minor children, declared void for want of delivery. 95 N.E. 468, 469 (Ill. 1911). Similar to the case at bar, the grantor in Hill retained a life estate in the property and, while he recorded the subject deed, he did not manually deliver it to the grantees. Id. In

determining that the deed was valid, the court in Hill noted that "[a]s an infant or one under disability is incapable of making any formal and valid acceptance, his knowledge of the conveyance is not necessary, and it is the duty of the court to declare an acceptance for him where the conveyance is beneficial." Id. at 470. The court went on to state that "[t]he grantor's intention to presently vest title in the grantee in the case of a voluntary settlement is regarded as of more importance than the mere manual possession of the deed, and in the case of a conveyance to an infant the recording of a deed by the grantor or by his direction is prima facie evidence of a delivery." Id.

Accordingly, as in Hill, manual delivery of the 1999 Deed to the Defendants was not necessary for valid delivery since, at the time the deed was executed, the Defendants were minors. Further, while the fact that Ms. Cappello held the deed in her possession would typically weigh in favor of insufficient delivery, her retention of a life estate nullifies said presumption. 4 Tiffany Real Prop. § 1039 (3d ed.) ("While a presumption of nondelivery is said ordinarily to arise from the grantor's possession of the instrument, no such presumption arises, it is said, if the grantor, by the terms of the instrument, reserves a life estate in the property, for the reason that there is no object in such a reservation unless the instrument is to operate before the grantor's death.").

Although these presumptions favor valid delivery, Ms. Cappello's actions regarding the subject Mortgage still cast some doubt as to whether she intended to divest herself of title to property in fee simple. Ms. Cappello indicated in the Mortgage Application that she owned the Providence Property by herself, and in the Survey Affidavit, Ms. Cappello attested that she "has conveyed no portion of the premises . . . ." (Pls.' Pre-Trial Mem., Ex. 5.) Thus, despite the fact

that she had only a life estate in the Providence Property, Ms. Cappello represented in her Loan Application that she still held the Providence Property in fee simple.

However, irrespective of Ms. Cappello's representations in 2007, "[t]he acts of parties and the circumstances attending the execution of a deed are important as indicating their purpose and intent in determining whether there has been a delivery of the deed." Frankowich v. Szczuka, 71 N.E.2d 761, 762 (Mass. 1947) (emphasis added); see also Paliotta v. Celletti, 68 R.I. 500, 30 A.2d 108, 110 (1943) ("In the absence of proof to the contrary, delivery of a deed is presumed to have been on the date of the deed."). In 1999, when the deed was executed, the grantee Defendants were minors, and Ms. Cappello recorded the deed. As such, the above-described strong presumptions of delivery attach to the 1999 Deed. Moreover, as the Defendants point out in their memorandum, in 1999, it was common practice for elderly individuals to retain life estates in real property they owned for "Medicaid Planning."[11] (Defs.' Pre-Trial Mem. at 7); see Janel C. Frank, How Far Is Too Far? Tracing Assets in Medicaid Estate Recovery, 79 N.D. L. Rev. 111, 132 (2003) ("Life estates are commonly seen in the Medicaid context because they are excluded assets under some Medicaid programs."); see also N.Y. Elder Law Practice § 14:31 (2015 ed.) ("The retention of a life estate will also offer significant capital gains tax advantages in certain cases. For Medicaid purposes, the retention of a life estate has an additional

[11] The advantages of a grantor retaining a life estate for purposes of Medicaid planning are described as follows:

> "[T]he utility of an asset transfer retaining a life estate includes reducing, but not eliminating, the value of nonexempt assets in the applicant's Medicaid estate; thereby, decreasing the total value of nonexempt assets the applicant will have to deplete by other means." Amber R. Cook, Estate Planning with Medicaid: Qualification and Planning for the Elderly, 99 W. Va. L. Rev. 155, 165 (1996).

advantage.").[12] Thus, the fact that Ms. Cappello made representations that she owned the Providence Property herself a decade after the deed was executed and recorded does not constitute clear and convincing evidence necessary to overcome such presumptions of validity.

c

Acceptance

In addition to challenging the validity of delivery, Plaintiffs also argue that the 1999 Deed was not properly accepted by Defendants. The Rhode Island Supreme Court has made clear that "delivery of a deed requires the grantee's acceptance." People's Credit Union v. Berube, 989 A.2d 91, 93-94 (R.I. 2010); see also 4 Tiffany Real Prop. § 1055 (3d ed.) ("The grantor, it is said, divests himself of the title by the delivery of the deed and the acceptance is the act by which the grantee is invested with the title, and their concurrent existence is essential to the transfer.") (footnote omitted). "At common law, a grantee who is without knowledge of a deed conveyance 'could disclaim and repudiate the transaction, thereby revesting the title in the grantor.'" Berube, 989 A.2d at 93 (quoting Oldham, 58 R.I. at 277, 192 A. at 763).

Thus, Plaintiffs contend that Defendants never accepted the deed. Alternatively, Plaintiffs argue that even if Defendants did accept the 1999 Deed, "such acceptance only took place in 2012, well after the subject mortgage was effectively executed." (Countrywide Mem. at 17.) However, this Court is mindful that a grantee's "express statement of acceptance" is not required. 14 Richard R. Powell, Powell on Real Property § 81A.04[2][b] at 81A-78. In fact, "so

[12] It should be noted that Rhode Island recently disallowed such Medicaid Planning. See G.L. 1956 § 40-8-3.1 ("An applicant or recipient who, by a deed created, executed and recorded on or before June 30, 2014, has reserved a life estate in property that is his or her principal place of residence with the reserved power and authority, during his or her lifetime, to sell, convey, mortgage, or otherwise dispose of the real property without the consent or joinder by the holder(s) of the remainder interest, shall not be ineligible for Medicaid on the basis of such deed, regardless of whether the transferee of such remainder interest is a person or persons, trust or entity.").

long as the conveyance is beneficial to the grantee, acceptance will be presumed." Id.; see also Gianakos v. Magiros, 197 A.2d 897, 904 (Md. 1964) ("We think that since the deed was obviously beneficial to the grantees, acceptance before then is to be presumed, even though the grantees did not know of the conveyance."); Maciaszek v. Maciaszek, 173 N.E.2d 476, 478 (Ill. 1961) ("A presumption of acceptance prevails where the conveyance is beneficial to the grantee, whether or not the grantee knows of its execution."); Sweeney v. Sweeney, 11 A.2d 806, 808 (Conn. 1940) ("There is a rebuttable presumption that the grantee assented since the deed was beneficial to him.").

Nonetheless, in arguing that the Defendants never accepted the 1999 Deed, Plaintiffs rely on Hood, 384 A.2d at 706. In that case, the grantor deeded the subject property to her son and then recorded the deed. Id. at 707. Although the son was unaware of the transfer at the time the deed was recorded, when the grantor ultimately told him about the deed, "her son informed her he wanted no part of the property, and he requested his mother to 'take it right back' to herself." Id. Consequently, the Supreme Judicial Court of Maine upheld the trial court's factual determination that there was no acceptance of the deed. Id. at 708.

Thus, the present case is factually distinguishable from Hood in that there is no evidence here that Defendants disclaimed the transfer. See Richard R. Powell, Powell on Real Property § 81A.04[2][b] at 81A-78 ("If the grantee should decide that he or she does not desire to accept the conveyance, it may be rejected or disclaimed . . . and communicated to the grantor with reasonable promptness after the grantee learns of the conveyance.") (footnote omitted). In fact, Defendants testified at their depositions that they had actual knowledge, at an early age, of the 1999 Deed and the fact that they were to receive the Providence Property upon their

grandmother's death. See Elizabeth Dep. Tr. 20; Lindsey Dep. Tr. 55. Thus, the 1999 Deed was validly accepted by the Defendants.

d

Fee Tail

Plaintiffs further argue that even if the 1999 Deed was delivered and accepted, the Mortgage is still enforceable pursuant to § 34-4-14. That section, entitled "Liability of lands for debts of tenant in tail," reads as follows:

> "All lands held in fee tail shall be liable for the debts of the tenant in tail in his or her lifetime like estates in fee simple; and when sold on execution, or when sold by guardians, the creditor or purchaser shall hold the lands in fee simple, but this shall not extend to lands in which the debtor has only an estate tail in remainder." Sec. 34-4-14.

However, this section is simply not applicable to the present case since the 1999 Deed did not create a tenancy in fee tail. Black's Law Dictionary defines a fee tail as "[a]n estate that is heritable only by specified descendants of the original grantee, and that endures until its current holder dies without issue (e.g., "to Albert and the heirs of his body"). Black's Law Dictionary 692 (9th ed. 2009). Notably, "[a]pt words for the creation of a fee tail under a deed are to one and the heirs of his or her body; or to one and his or her body or bodily heirs." 26A C.J.S. Deeds § 299 (footnotes omitted). Since the 1999 Deed does not contain these key phrases, the deed did not create a fee tail. See 96 C.J.S. Wills § 1408 ("It has been held that in no estate has the law been so rigid with respect to the language required to create it as a fee tail[.]") (footnote omitted). As such, Plaintiff's reliance on § 34-4-14 is misplaced as said section has no bearing on the case at bar.

e

Conclusion Regarding Declaratory Relief

The final issue to be addressed is whether the life tenant has the authority to mortgage the property and bind those holding a vested future interest in the land to the mortgage. It is clear that the 1999 Deed created a valid life estate in Ms. Cappello in the Providence Property, with the remainder passing to Defendants in fee simple upon her death. This fact was ascertainable upon a review of the 1999 Deed. As such, at the time of the Mortgage, Ms. Cappello did not hold the property in fee simple and therefore could not mortgage the fee simple property.

As a life tenant, it is well-settled that "although a life tenant's interest may be mortgaged, unless the life tenant is given the power to convey in the instrument creating the estate, the tenant cannot encumber the entire estate without joinder of the remaindermen. Mortgaging the property will not give the mortgagee any legal or equitable rights against the remainderman." 51 Am. Jur. 2d Life Tenants and Remaindermen § 116; see, e.g., Tcherepnin, 891 N.E.2d at 208; Thompson, 207 S.E.2d at 747 ("A life tenant may mortgage his own interest but, unless given the power to convey in the instrument creating his estate, he cannot encumber the entire estate without the joinder of the remaindermen."); Stewart v. Stewart's Estate, 94 A.2d 912, 915 (Me. 1953) ("The life tenant whether legal or equitable cannot, as a general rule, incumber the remainder.") (internal quotation marks omitted). Significantly, the Restatement (First) of Property provides as follows:

> "When a person, having only an estate for life, purports to transfer an estate greater than the estate for life, his conveyee acquires thereby, as against the owner of a future interest in such land, no right, privilege, power or immunity greater than those had by the conveyor. Restatement (First) of Property § 124 (1936).

Thus, "[m]ortgages given by the life tenant do not bind future interests in the land . . . ." 2 Richard R. Powell, Powell on Real Property § 15.03[3] at 15-46.

In the present case, while Ms. Cappello purported to mortgage a fee simple estate, all she could mortgage was the value of her life estate. See, e.g., Busby v. Thompson, 689 S.W.2d 572, 574 (Ark. 1985) ("A life tenant can mortgage no more than the tenancy for life."); Jones v. Hendricks, 431 N.E.2d 1361, 1363 (Ill. App. Ct. 1982) ("It is basic property law that a life estate holder cannot convey a greater interest in the property than is possessed by the life estate holder."); Haywood v. Briggs, 41 S.E.2d 289, 292 (N.C. 1947) ("The life tenant could not create an estate to endure beyond the termination of her own estate . . . ."); Tscherne v. Crane-Johnson Co., 227 N.W. 479, 481 (S.D. 1929) ("[The grantee] therefore owned, not a fee-simple estate, but a life estate. All that she could mortgage was this life estate."). Since the Mortgage cannot encumber the Providence Property beyond the period of Ms. Cappello's life, the Mortgage terminated upon Ms. Cappello's death. See, e.g., Thompson, 207 S.E.2d at 747 ("A mortgage by the life tenant purporting to cover the fee is effective as to the life estate only."); Matlack v. Kline, 190 S.W. 408, 409 (Mo. Ct. App. 1916) ("There can be no question but that the life tenant, without the consent or concurrence of the remaindermen, had no power to lease or otherwise incumber this land beyond the period of his life, and that any such lease or incumbrance would ipso facto terminate on and by his death."). Accordingly, this Court finds and declares that Defendants are entitled to fee simple title of the Providence Property, clear of the Mortgage.

2

Equity

Notwithstanding the validity of the 1999 Deed, Plaintiffs contend they are entitled to reimbursement of certain funds in equity. Specifically, Plaintiffs seek reimbursements for (1) the remaining Loan principal; (2) an Execution, dated April 3, 2003, encumbering the Providence

Property in the amount of $8299.57,[13] that was discharged by the Mortgage funds (the 2003 Execution) (Pls.' Pre-Trial Mem., Ex. 20); and (3) tax and insurance payments that Plaintiffs have made on the Providence Property. In so arguing, Plaintiffs rely on the doctrines of equitable subrogation and unjust enrichment.[14]

As an initial matter, the doctrine of equitable subrogation is inapplicable to the present case. "Subrogation" is defined as the "substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor." Black's Law Dictionary 1563-64 (9th ed. 2009); see also Restatement (Third) of Property (Mortgages) § 7.6 (1997) ("One who fully performs an obligation of another, secured by a mortgage, becomes by subrogation the owner of the obligation and the mortgage to the extent necessary to prevent unjust enrichment."). "Equitable subrogation is generally appropriate where (1) the subrogee made the payment to protect his or her own interest, (2) the subrogee did

[13] Although the 2003 Execution lists the judgment amount as $8299.57, Plaintiffs claim that "the owed amount of $11,438.40 was paid to the lienholder's attorney [a]t [the Mortgage] closing." (Pls.' Pre-Trial Mem. at 29.) In support of this statement, Plaintiffs cite to Exhibit 3 and Exhibit 4. Exhibit 3 is the 2003 Execution which lists the amount owed as $8299.57. Exhibit 4 is a HUD Settlement Statement between Ms. Cappello and Countrywide dated February 9, 2007. Line 104 under the title "Summary of Borrower's Transaction" of this document states that $11,438.40 was paid to "Nicolas Barrett and Associates." (Pls.' Pre-Trial Mem., Ex. 4.) Plaintiffs have provided no other evidence or explanation supporting the fact that the $11,438.40 paid to "Nicolas Barrett and Associates" relates to the 2003 Execution.

[14] Plaintiffs also rely on the doctrine of "equitable subordination," using this term interchangeably with equitable subrogation. Equitable subordination is defined as "[a] court's act of lowering a claim's priority for purposes of equity, esp. when the claimant engaged in unfair conduct toward junior claimants." Black's Law Dictionary 1653 (10th ed. 2014). As one court explained, "[e]quitable subordination is a doctrine of equity that is applied almost exclusively in bankruptcy proceedings, generally where there is inequitable conduct by a claimant resulting in injury to other creditors." City of Parkersburg v. Carpenter, 203 W. Va. 242, 245, 507 S.E.2d 120, 123 (W. Va. 1998) (citing 4 Lawrence P. King, Collier on Bankruptcy, 510.05[1] at 510–13 (15th ed. rev. 1998)); see also In re Hyperion Enterprises, Inc., 158 B.R. 555, 559 (D.R.I. 1993) ("Equitable subordination has long been recognized as a power of a bankruptcy court to act as a court of equity.") As such, this doctrine does not apply to the present case.

not act as a volunteer, (3) the subrogee was not primarily liable for the debt paid, (4) the subrogee paid off the entire encumbrance, and (5) subrogation would not work any injustice to the rights of the junior lienholder." In re Bevan, 327 F.3d 994, 997 (9th Cir. 2003). Thus, under the above doctrine, "a person who pays off a prior lien may be equitably subrogated to the position of the prior lienholder as against a later lienholder." Id.

By contrast, this is not a case of competing lien interests. Plaintiffs held the only mortgage on the Providence Property. While the Mortgage funds were used to discharge the 2003 Execution, subrogation in this context would not entitle Plaintiffs to any relief against Defendants. It appears from the record that the 2003 Execution was issued by the Providence County Sixth Division District Court on behalf of Coastway Credit Union against Ms. Cappello in the amount of $8299.57. (Pls. Pre-Trial Mem., Ex. 3.) Thus, even if Plaintiffs' mortgage interest was subrogated to the position of the 2003 Execution, it would not entitle Plaintiffs to recover from Defendants since the 2003 Execution occurred well after the execution of the 1999 Deed. It is well-settled that "[w]hen the estate for life ends with the death of the debtor, the creditor's power to reach the estate similarly ends, and the land passes to the person next entitled free from any lien." 2 Richard R. Powell, Powell on Real Property § 15.03[5] at 15-52. Therefore, like the Mortgage, the 2003 Execution could only affect Ms. Cappello's life estate and can have no binding effect on the Defendants' interest. See Whalin v. Whalin's Adm'r, 98 S.W.2d 501, 504 (Ky. 1936) ("[T]he estate of the life tenant having ceased upon his death, the land could not thereafter be subjected to a lien for the payment of the debt of the life tenant.").

Moreover, Plaintiffs have no equitable rights against Defendants to recover the mortgage funds:

> "[A]lthough a life tenant's interest may be mortgaged, unless the life tenant is given the power to convey in the instrument creating

> the estate, the tenant cannot encumber the entire estate without joinder of the remaindermen. Mortgaging the property will not give the mortgagee any legal or equitable rights against the remainderman . . . ." 51 Am. Jur. 2d Life Tenants and Remaindermen § 116. (footnotes omitted) (emphasis added).

For example, in Ashbaugh v. Wright, 188 N.W. 157, 157 (Minn. 1922), the grantor recorded a deed granting his son a life estate in the property with the remainder to his son's children. The deed at issue explicitly forbid the son (the life tenant) from mortgaging or otherwise placing a lien upon the subject property. Id. Despite this prohibition, the son conveyed the property to his wife for the purpose of having a mortgage placed on the property. In holding that the mortgage did not bind the remaindermen, the court in Wright held that "a life tenant may mortgage his interest, and his estate may be sold under foreclosure proceedings without affecting the interest of the remainderman, nor will the procedure give the mortgagee any legal or equitable rights against him." Id. Additionally, "[e]quity will not relieve one from the consequences of his own negligence." Hines v. Saart Bros. Co., 51 R.I. 436, 155 A. 533, 534 (1931). Here, Defendants could have avoided this complex and costly litigation by conducting a proper title search as the 1999 Deed was recorded.[15] See Missouri Cent. Bldg. & Loan Ass'n v. Eveler, 141 S.W. 877, 878-79 (Mo. 1911) ("When the plaintiff loaned these sums of money to the life tenant, it did so with the constructive notice imparted by the will of the life tenant's father. That the title was defective could have been ascertained and this lawsuit averted is evident. The situation is harsh, but was not made by these defendants.").

Nonetheless, Plaintiffs argue the equitable doctrine of unjust enrichment entitles them to reimbursement for the tax and insurance payments they have made on the Providence Property. "Under Rhode Island law, unjust enrichment is not simply a remedy in contract and tort but can

[15] Despite the fact that 1999 Deed was recorded and could have easily been found by a proper title search, the parties have not addressed whether a title search was performed.

stand alone as a cause of action in its own right." Dellagrotta v. Dellagrotta, 873 A.2d 101, 113 (R.I. 2005). The Rhode Island Supreme Court has made clear that "[t]o recover for unjust enrichment, a claimant must prove: (1) that he or she conferred a benefit upon the party from whom relief is sought; (2) that the recipient appreciated the benefit; and (3) that the recipient accepted the benefit under such circumstances 'that it would be inequitable for [the recipient] to retain the benefit without paying the value thereof.'" Id. (quoting Bouchard v. Price, 694 A.2d 670, 673 (R.I. 1997)).

Here, as holders of the property in fee simple since Ms. Cappello's death in 2008, Defendants were obligated to pay the taxes and insurance on the Providence Property. Thus, by paying the property taxes and insurance for the Providence Property after Ms. Cappello's death, Plaintiffs conferred a benefit on Defendants. It would be inequitable to allow Plaintiffs to bear these costs when they should be borne entirely by Defendants. Significantly, Defendants admit that Plaintiffs are entitled to the amount of property taxes paid since 2008. (Defs.' Mem. at 35.) This Court fails to see how the same reasoning does not apply to the insurance payments.

However, Plaintiffs have failed to provide sufficient proof as to the amount of tax and insurance payments made. In their Pre-Trial Memorandum, Plaintiffs refer to Exhibit 21A, which Plaintiffs claim "reflects that a total of $27,046.42 in tax and insurance payments were made by the mortgagee through March 27, 2015." Yet, Exhibit 21A is simply a spreadsheet of various numbers with incomplete explanations. Plaintiffs have attached no affidavit, deposition testimony, or other evidence explaining or attesting to the validity of this exhibit. Exhibit 21A is also not listed as an "admittedly authentic exhibit" in Plaintiffs' Pre-Trial Memorandum. (Pls.' Pre-Trial Mem. at 4-6.).

Rule 901 of the Rhode Island Rules of Evidence provides that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence to support a finding that the matter in question is what its proponent claims." The Rhode Island Supreme Court has stated that "'[i]n making Rule 901 determinations, trial justices must decide whether there is enough support in the record to conclude that it is 'reasonably probable' that the evidence is what its offeror proclaims it to be.'" State v. Oliveira, 774 A.2d 893, 926 (R.I. 2001) (quoting State v. Griffin, 691 A.2d 556, 558 (R.I. 1997)). Since Exhibit 21A is simply a spreadsheet without any attached affidavit attesting to its validity or explaining it contents, the exhibit is not properly authenticated. Consequently, the Court directs Plaintiffs to submit an affidavit and proof of claim as to the amount of taxes and insurance payments made on the Providence Property since the date of Ms. Cappello's death (February 8, 2008).[16]

IV

Conclusion

For the foregoing reasons, this Court hereby declares that the 1999 Deed is valid, thus creating a life estate in Ms. Cappello with the Providence Property passing in fee simple to Defendants upon her death. Since Ms. Cappello could only mortgage her life estate, the subject mortgage could not secure the fee simple estate. Thus, Plaintiffs' mortgage is discharged. However, Plaintiffs are entitled to an award for the property tax and insurance payments made after Ms. Capello's death pursuant to the doctrine of unjust enrichment. Counsel shall submit an Order consistent with this Decision.

[16] It should also be noted that Exhibit 21A references dates prior to Ms. Cappello's death on February 8, 2008. It is well-settled that "the life tenant is ordinarily under an obligation to pay the taxes as they accrue from year to year." 1 Tiffany Real Prop. § 63 (3d ed.). Thus, while Plaintiffs may have a claim against Ms. Cappello's estate for the property tax and insurance payments made prior to her death, they can only recover from Defendants those payments made after Ms. Cappello's death.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Country Wide Bank, N.A., et al. v. Lindsey M. Donahue, et al. v. Lisa M. Cote a.k.a. Lisa M. Donahue, et al.
CASE NO:	PC 2010-2880
COURT:	Providence County Superior Court
DATE DECISION FILED:	July 9, 2015
JUSTICE/MAGISTRATE:	Taft-Carter, J.
ATTORNEYS:	
For Plaintiff:	James P. Marusak, Esq.
For Defendant:	Mark B. Laroche, Esq.; Lisa Cote a.k.a. Lisa M. Donahue, *pro se* and Thomas Franco, *pro se*