**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**WASHINGTON, SC. SUPERIOR COURT**

**(FILED: February 5, 2018)**

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| **MICHELLE ANG** | : | |
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| **V.** | : | **C.A. No. WC-2006-0569** |
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| **HUGO SPIDALIERI, ET AL.** | : | |
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| **V.** | : | |
| | : | |
| **JOHN J. FINAN, III, ESQ.** | : | |

# DECISION

**K. RODGERS, J.** The genesis of this case is an erstwhile relationship between Plaintiff Michelle Ang (Ang or Plaintiff) and Defendant Hugo Spidalieri (Spidalieri). Partial default judgment has previously entered against Spidalieri.[1] The remaining claims before this Court, sitting without a jury, arise from an allegedly fraudulent deed and subsequent mortgage on property located at 1556 Center Road, New Shoreham, Rhode Island (the Block Island Property)[2], at one time owned by Ang and Spidalieri. Ang's Fourth Amended Complaint seeks, *inter alia*, a declaration that the quitclaim deed which purported to transfer her one-half interest in the Block Island Property to Spidalieri is a forgery, and to partition the real estate in accordance with G.L. 1956 §§ 34-15-1 *et seq.* Defendant/Counterclaim Plaintiff J.P. Morgan Chase Bank N.A. (Chase), as successor-in-

[1] Partial judgment was entered against Spidalieri on May 20, 2011, on Plaintiff's counts for fraud, conversion, deceit, breach of contract, and breach of fiduciary duty/breach of confidential relationship for the total award of $1,590,269.00, plus costs and post-judgment interest. Execution on this partial judgment was stayed pending the resolution of the claims addressed herein.

[2] The Block Island Property is identified as Lot 86-5 on the Town of New Shoreham's Tax Assessor's Plat 16.

interest to Washington Mutual Bank, FA (WaMu), is the holder of a promissory note and mortgage securing the Block Island Property and seeks to quiet title to the same real estate. Also before this Court are Ang's claims against Louis Marandola, Esq. (Marandola), Spidalieri's former attorney,[3] alleging fraud, deceit and negligence, and seeking punitive damages.

Jurisdiction of this case is pursuant to G.L. 1956 §§ 9-30-1 *et seq.* For the reasons that follow, this Court grants relief in favor of Chase on Plaintiff's Fourth Amended Complaint and on its Counterclaim. This Court denies relief on all other claims before this Court.

**I**

**Findings of Fact**

Having reviewed the Joint Statement of Facts and all the evidence presented by both parties, the Court makes the following findings of fact.

**A**

**The Relationship and the Couple's Financial Dealings**

Sometime in or around June of 2004, Spidalieri and Ang became romantically involved and moved in together to the Block Island Property that Spidalieri owned. At no point were Ang and Spidalieri married to each other. Notwithstanding, by quitclaim deed dated March 17, 2005, Spidalieri transferred the Block Island Property to himself and "Michelle Ang Spidalieri" as tenants by the entirety. Ang had not asked Spidalieri to give her any interest in the Block Island Property, nor did she provide any consideration

[3] By Rhode Island Supreme Court Order dated September 13, 2016, Marandola was disbarred and is no longer authorized to practice law in this state.

in exchange for that property interest.[4] Ang was familiar with the term "tenants by the entirety" reflecting ownership by married persons but no action was taken to accurately reflect their unmarried status in any subsequent deed.

In April 2005, Ang accessed $200,000.00 from a line of credit she held in her own name and used those funds to purchase the Block Island Fitness Center (Fitness Center) with Spidalieri. Using those very funds, The Intermesh Group, Inc. a/k/a The Intermesh Group, Ltd. (Intermesh), of which Ang served as President and Spidalieri served as Vice President, purchased the Fitness Center on April 18, 2005, for the total sum of $200,000.00. Spidalieri contributed no funds to this business venture. Ang also entered into a five-year employment agreement with Intermesh (the Fitness Center Employment Agreement) by which she was responsible for the management and daily operations of the Fitness Center. Her annual salary under the Fitness Center Employment Agreement was $30,000, with additional compensation for a car and similar expenses to be paid.

In the summer of 2005, Spidalieri suggested to Ang that they, together, refinance the Block Island Property in order to obtain a more favorable interest rate. Ang testified that after they had applied to Fleet Bank, the predecessor-in-interest to Bank of America, to obtain refinancing, a bank representative called her to say he could not accept their joint application because Spidalieri's credit history was too poor, but that he could

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[4] In an Affidavit dated February 21, 2011, which was filed with and considered by the Court in support of Plaintiff's oral proof of claim seeking default judgment against Spidalieri, Ang stated under oath that she had requested of Spidalieri that she be added to the deed to the Block Island Property as security for a business venture that she and Spidalieri were about to enter. After Ang was deposed and acknowledged that the interest she had been given in the Block Island Property was a gift, a revised Affidavit dated May 3, 2011 was filed which excluded any reference to the reason she had been given this interest. While not dispositive of the issues before this Court, Ang's credibility was challenged in this regard. *See* Section IIB, *infra*.

refinance with her individually. According to Ang, it was for this reason that a quitclaim deed was executed on July 22, 2005, transferring Ang and Spidalieri's interest as tenants by the entirety to Ang alone. Thereafter, Ang, individually, applied for a loan in the amount of $1,000,000.00 from Bank of America and, contemporaneously, a $250,000.00 home equity line of credit (HELOC) from Bank of America and represented to the bank that her annual income was $300,000.00. Ang acknowledged at trial that, at the time she submitted that application, her annual income was $35,000.00 and that she provided false information to the bank.[5] On July 22, 2005, the same day the Block Island Property had been transferred to her as sole owner, Ang closed on the $1,000,000.00 loan and $250,000.00 HELOC from Bank of America, each secured by a promissory note, a mortgage on the Block Island Property, and Ang's personal guaranty.[6]

The proceeds from the Bank of America loan were distributed as follows: $740,584.69 was used to pay off Spidalieri's prior mortgage on the Block Island Property; $49,709.41 was used by Ang to pay off a mortgage on a condominium owned by Ang in Massachusetts; and $204,505.25 was used to pay off the balance due on Ang's line of credit that had been used to purchase the Fitness Center just three months earlier.

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[5] It is unclear how Ang calculated her annual salary as $35,000.00 rather than $30,000.00 as set forth in the Fitness Center Employment Agreement. She testified at trial and in her original and revised Affidavits in support of her oral proof of claim against Spidalieri that her annual income was $35,000.00. In her two Affidavits, she also attested to being owed an additional almost $45,000.00 in personal expenses which she claims were due under the Fitness Center Employment Agreement. Although another justice of this Court granted default judgment against Spidalieri based on this higher increased annual salary that remained unpaid <u>and</u> approximately $45,000.00 in personal expenses, it appears to this Court that Plaintiff's accounting involves double-dipping and overstates her annual salary by $5000.00.

[6] Ang offered conflicting trial and deposition testimony on her understanding of her personal liability on these Bank of America transactions. *See* Section IIB, *infra*.

Notwithstanding the representations to Bank of America that she had a significant annual income and was the exclusive owner of the Block Island Property which she used as collateral, on the same day that she and Spidalieri executed the quitclaim deed to her individually and that she closed on the two transactions with Bank of America, Ang executed a second quitclaim deed, this time transferring title back to herself and Spidalieri, as tenants by the entirety. Although signed by Ang on July 22, 2005, that quitclaim deed was not recorded until July 29, 2005, seven days after Ang had obtained the Bank of America loan and HELOC.

At some time in their relationship, Ang used Spidalieri to invest over $200,000.00 in her own funds.[7] Spidalieri had suggested to Ang that such investments could be used to hide Ang's assets from her ex-husband and therefore avoid paying child support. Ang admitted that such a plan "sounded good" to her.

On February 22, 2006, another quitclaim deed (the 2006 Deed) was recorded in the New Shoreham Land Evidence Records wherein Ang purported to transfer her interest in the Block Island Property back to Spidalieri as sole owner. Ang asserts that she never signed the 2006 Deed, nor granted anyone permission to sign it on her behalf. She additionally testified that she does not know who signed her name to the deed, nor who signed the notarization.

Around the same time that the 2006 Deed was executed in February 2006, Ang claims to have discovered that Spidalieri had been engaging in several fraudulent

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[7] Ang's trial testimony on this subject differs from her sworn Affidavits and/or deposition testimony, thereby leaving this Court unable to determine when and in what amount she had invested funds with Spidalieri. It is unnecessary for this Court to determine the timeframe or the specific amount in order to adjudicate the issues presently before this Court.

schemes, including a plan to dilute her one-half interest in the Fitness Center. She also claims to have discovered that Spidalieri converted funds belonging to the Fitness Center to his own use without her knowledge, and that he had withdrawn $177,000.00 from the Bank of America HELOC without her consent or knowledge. Finally, Ang claims to have discovered that Spidalieri withdrew substantial amounts of her personal funds from an annuity account, allegedly to invest them, but that he had instead converted the funds to his personal use.[8]

In April 2006, Ang learned of the existence of the 2006 Deed when Spidalieri told her that he recorded the 2006 Deed in order to refinance the Block Island Property and pay off her debts and monies that he owed her. Ang did not object to Spidalieri's plan, nor was there any evidence that she in any way protested the manner in which the Block Island Property was transferred to Spidalieri alone vis-à-vis the 2006 Deed. No evidence was offered concerning what attempts, if any, were made to refinance the Block Island Property consistent with what Ang and Spidalieri had discussed.

**B**

**The Lawsuit**

Plaintiff continued to live with Spidalieri at the Block Island Property until August of 2006 when she discovered that he cheated on her. She moved off Block Island that same month. On September 12, 2006, Ang filed the instant action against Spidalieri alleging fraud, deceit, conversion, breach of contract, breach of fiduciary duty, breach of

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[8] It is wholly unclear from Ang's trial testimony, Affidavits, and deposition testimony if all or some of the funds she alleges that Spidalieri converted to his own use are the same funds that she voluntarily gave Spidalieri to invest in order to hide assets from her ex-husband. Again, however, it is unnecessary for this Court to sort out those amounts in order to adjudicate the issues presently before this Court.

confidential relationship, and seeking a declaration concerning the rights and interests of the parties in relation to the Block Island Property. The original Complaint in this action also sought declaratory judgment with regard to two business ventures and their respective interests in the Block Island Property: Intermesh d/b/a Block Island Fitness Center and MFG Ltd. Commercial Bancorp a/k/a MFG, Ltd. (MFG),[9] an entity through which Spidalieri is alleged to have conducted his fraudulent machinations. Contemporaneously with filing this action, Ang caused to be filed a Notice of Lis Pendens in the New Shoreham Land Evidence Records, thus placing the world on notice of a cloud on the title to the Block Island Property.

Following initiation of suit, Ang and Spidalieri engaged in informal settlement discussions wherein, according to Ang, Spidalieri admitted that he had treated Ang badly, promised to make her whole by refinancing the Block Island Property, and stated that he would place her name back on the deed. Again, Ang did not object to Spidalieri's proposal. She thereafter agreed to return to live with Spidalieri at the Block Island Property in October of 2006, but, unbeknownst to Spidalieri, Ang's intent in returning to live with Spidalieri was to obtain evidence and documentation of his fraudulent activities and schemes. Ang moved away from the Block Island Property for good sometime around December of 2006 or January of 2007.[10]

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[9] Although default judgment does not appear to have entered against Intermesh and/or MFG, Ang's motion for entry of default judgment and supporting Affidavits were directed to claims against Spidalieri, Intermesh, and MFG. The Partial Judgment, however, was granted only as to Ang's claims against Spidalieri. Neither Intermesh nor MFG have participated in this trial or in any preliminary matters despite being copied on pleadings throughout this litigation.

[10] There was no evidence or documentation introduced at trial which Ang had purportedly obtained during her brief return to the Block Island Property, nor was an explanation offered why Ang moved away for good in December 2006 or January 2007.

Ang claims to have made efforts to continue to make monthly mortgage payments to Bank of America after she moved off Block Island but ran out of money. Eventually, according to Ang, Bank of America sought to foreclose on the Block Island Property.

On September 4, 2007, a Release of Notice of Lis Pendens was recorded in the New Shoreham Land Evidence Records, purportedly executed by Ang in Medford, MA on August 30, 2007. Alleging that this Release was executed and filed as part of Spidalieri's continued fraudulent actions, Ang caused to be filed a Notice of Invalidity of Release of Notice of Lis Pendens, which was recorded in the New Shoreham Land Evidence Records on September 7, 2007.

**C**

**The WaMu/Chase Loan**

On November 30, 2007, Spidalieri managed to obtain a loan from WaMu[11] in the amount of $1,500,000. Spidalieri executed a promissory note for $1,500,000, secured by a mortgage on the Block Island Property. The mortgage was recorded in the New Shoreham Land Evidence Records. The proceeds from the WaMu/Chase Loan were used to pay off the entirety of the Plaintiff's personal obligations for both the Bank of America loan in the amount of $1,000,486.20, and the Bank of America HELOC in the amount of $253,590.50, for a total payoff of $1,254,076.70. Spidalieri received $199,803.83 in cash from the loan closing.

While Spidalieri may have orchestrated and clearly benefitted from the WaMu/Chase Loan, he was not the lead actor. Instead, a cast of characters, only one of

[11] For ease of reference, this Court will refer to the November 30, 2007 transaction between Spidalieri and WaMu as the WaMu/Chase Loan. When relevant, this Court will refer to actions taken by WaMu as that entity's actions and not the actions of its successor-in-interest Chase.

whom was associated with Spidalieri, performed the various roles needed to complete the transaction. Spidalieri's past attorney, Marandola, served as the director and selected his cast. First, Marandola brought in John J. Finan, III, Esq. (Finan) to serve as the closing attorney on the WaMu/Chase Loan. Marandola told Finan that he himself could not serve as the closing attorney because he had a conflict of interest with Spidalieri arising from $5000.00 due to Marandola for unspecified services previously provided to Spidalieri. Next, Marandola arranged for his former brother-in-law, Jeffrey Prete (Prete), to act as Spidalieri's attorney-in-fact at the closing, despite the fact that Prete never met Spidalieri. Marandola also arranged for a title examination of the Block Island Property to be conducted by Ronald Gauthier (Gauthier). Finally, Marandola's friend, Brian McCaffrey (McCaffrey), was the mortgage broker for the WaMu/Chase Loan, was paid a commission of more than $40,000.00 according to Marandola, and was responsible for performing a title examination on the Block Island Property from August 2, 2007 to November 27, 2007, the date of the closing on the loan. According to Marandola, McCaffrey had never conducted a title examination before.

Despite having a so-called conflict of interest, Marandola was in the thick of this transaction. According to Marandola, Gauthier prepared a title report that covered the period from September 23, 1966 to August 2, 2007, but failed to include the Notice of Lis Pendens filed on Plaintiff's behalf on September 12, 2006. Marandola testified at trial that he was "positive" that the Notice of Lis Pendens had been released from the Block Island Property because Gauthier had not included it in his title report. Like Gauthier, McCaffrey failed to report that a Release of Notice of Lis Pendens and a Notice of Invalidity of Release of Notice of Lis Pendens had been recorded in the New Shoreham

Land Evidence Records on September 4, 2007 and September 7, 2007, respectively. Marandola told Finan that a title examination had been performed on the property and it was "clean." Finan, who passed away after appearing for a deposition but before the trial, relied on Marandola and never ran his own title search for the Block Island Property, nor did he see a formal report from anyone.[12] As a result of Finan's reliance on Marandola's representations, neither Finan nor WaMu had actual knowledge of the Notice of Lis Pendens on the Block Island Property, the Release of Notice of Lis Pendens, or the Notice of Invalidity of Release of Notice of Lis Pendens recorded against the Block Island Property prior to or at the time of the closing on the WaMu/Chase Loan.[13]

Shortly after the closing of the WaMu/Chase Loan and the payoff of Ang's Bank of America loan and HELOC, Finan was notified by Ang's then-attorney that there was a Notice of Lis Pendens on the Block Island Property and that the title was not clear of encumbrances. In his deposition testimony, Finan stated that, even subsequent to learning this, he never notified WaMu, or later Chase, that there were issues with the title. Indeed, Chase did not have any knowledge of the alleged forged 2006 Deed until it was notified of the pendency of this lawsuit in June 2010.

The note and the mortgage on the WaMu/Chase Loan are in default and have been since July of 2008. As of November 10, 2014, the payoff amount of the Chase mortgage

[12] Finan recalled in his deposition testimony reviewing a handwritten summary, but could not recall what it contained nor by whom it was prepared.

[13] Chase filed a Third-Party Complaint against Finan. The parties had agreed to sever that claim from this trial.

was $2,129,577.14, and the value of the Block Island Property as of August of 2014 was $1,700,000.00.[14]

**D**

**Default Judgment Against Spidalieri**

Plaintiff's Fourth Amended Complaint, filed on May 18, 2011, is the operative Complaint in the instant matter. On May 20, 2011, a justice of this Court granted Plaintiff Partial Judgment against Spidalieri on her counts for fraud, conversion, deceit, breach of contract, breach of fiduciary duty, and breach of confidential relationship. The Partial Judgment is in the amount of $1,590,269.00, and includes awards for Plaintiff's 2005 and 2006 unpaid salary under the Fitness Center Employment Agreement in the amount of $66,500.00 and compensation for the remainder of the five-year Fitness Center Employment Agreement in the amount of $105,000.00[15]; personal expenses which should have been covered by the Fitness Center Employment Agreement in the amount of $44,998.00; Spidalieri's theft of $177,000.00 from the Plaintiff; $98,000.00 stolen from Plaintiff's annuity account; early withdrawal penalties from Plaintiff's annuity account in the amount of $41,022.00; and half of the value of the Block Island Property in the amount of $957,500.00. The Partial Judgment specifically prohibited Plaintiff from executing the judgment against the Block Island Property because the Court at that time

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[14] Two other entities, Argo Investment Group, Ltd. (AIG) and BIEP, LLC (BIEP), placed liens on the Block Island Property well after the WaMu/Chase note and mortgage were recorded in November 2007. Specifically, AIG recorded a mortgage on the Block Island Property on July 23, 2009, and BIEP, as a judgment creditor, recorded an execution on the same property on October 29, 2009. AIG defaulted on both Plaintiff's claim and Chase's cross-claim against it for declaratory judgment. BIEP has participated in this litigation through counsel and presumably seeks to collect on its judgment in the amount of $42,194.84.

[15] These two salary figures appear to be calculated based on an inaccurate annual salary of $35,000, as represented by Ang in her Affidavits. *See* note 5, *supra*.

did not make any determinations as to Chase's interest in the Block Island Property and did not want to prejudice Chase in the continuing litigation.

In addition to default judgment entering against Spidalieri on Plaintiff's claims, Spidalieri has been defaulted on Chase's cross-claim against him. The parties have agreed that the mortgage securing the WaMu/Chase Loan encumbers Spidalieri's one-half interest in the Block Island Property.

## II

## Presentation of Witnesses

Four witnesses were called to testify at trial: Dr. Marc Seifer, Ph.D. (Dr. Seifer), Plaintiff Ang, Defendant Marandola, and Frank Dean (Dean). All four witnesses were called in Plaintiff's case-in-chief. The parties also agreed to introduce excerpts of Finan's deposition transcript for this Court's consideration.

### A

### Dr. Seifer

Dr. Seifer was duly qualified and offered expert testimony in handwriting analysis. Dr. Seifer detailed the process by which he compares known handwriting samples to the disputed handwriting or signature, stating that he often tries to obtain as many spontaneous, known samples as possible. The analysis requires the samples to be enlarged and then Dr. Seifer identifies the "ingrained writing patterns," as well as similarities and dissimilarities. At trial, Dr. Seifer compared several known samples of Ang's signature with Ang's purported signature and the notary public's signature which both appear on the 2006 Deed; he also compared several presumed samples of

Spidalieri's printed handwriting and signature with the two signatures on the 2006 Deed.[16]

Dr. Seifer acknowledged that the samples he used to compare both Ang's signature and Spidalieri's handwriting were provided by Ang and that his analysis necessarily presumed the validity of the exemplars provided to him. Additionally, he offered that the individual executing Ang's purported signature was deliberately attempting to disguise his or her handwriting. Dr. Seifer concluded, to a reasonable degree of scientific certainty, that the 2006 Deed was not signed by Ang and that Spidalieri had signed the notary public's signature. Dr. Seifer could not opine to a reasonable degree of scientific certainty that Spidalieri had signed Ang's signature on the 2006 Deed.

This Court found Dr. Seifer's testimony to be highly credible and, notwithstanding his reliance on Ang's production of Spidalieri's exemplars having actually come from Spidalieri, adopts his expert opinion that the 2006 Deed was not signed by Ang and that Spidalieri signed the notary public's signature on that same document among its findings of fact. Although Ang's testimony was lacking in credibility, *see* Section IIB, *supra*, this Court is satisfied that the documents from which Dr. Seifer analyzed Spidalieri's exemplar signature and printing were what they purport to be: namely a bank card application and cards from Spidalieri to Ang, and therefore were properly considered by Dr. Seifer in reaching his conclusions.

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[16] No comparison was made between any known or unknown exemplars and the allegedly forged document filed in the New Shoreham Land Evidence Records on September 4, 2007, entitled Release of Lis Pendens.

**B**

**Ang**

In contrast to Dr. Seifer's credible testimony, Ang's testimony was wholly lacking in credibility. Many of Plaintiff's statements made to the Court were found to be contradicted and/or self-serving and demonstrated Ang's proclivity to make a shell game out of her financial picture, right out of Spidalieri's playbook.

Most notable among Ang's questionable conduct and concomitant testimony was with regard to the July 2005 Bank of America mortgage and HELOC. First, Ang was complicit in Spidalieri's scheme to convince Bank of America that she was the sole owner of the Block Island Property and that she made a hefty annual salary of $300,000.00, roughly ten times what her actual salary was.[17] She testified that she knew her salary information to be false, and she was aware but did not disclose that the ownership of the property would revert back to ownership with Spidalieri after the closing was completed. She willingly engaged in fraud upon the bank in securing a $1,000,000.00 mortgage and a $250,000.00 HELOC in her own name. She also offered self-serving testimony at trial that she didn't believe that she would be personally liable on the Bank of America mortgage and HELOC because it was a "joint effort" with Spidalieri. However, in her deposition testimony she acknowledged that she was aware that she was personally liable to Bank of America for those debts.

In addition to her own fraudulent representations to Bank of America, she willingly provided funds to Spidalieri to invest in order to hide assets from her ex-

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[17] This Court concludes that Ang is incorrect in her numerous statements under oath that her annual salary in 2005 was $35,000.00. Under the Fitness Center Employment Agreement, it was $30,000.00. *See* note 5, *supra*.

husband who had been seeking child support. Ang was both aware of the plan to deceive her ex-husband and child and agreed to it because it "sounded good" to her. Whether or not it was at Spidalieri's suggestion is of no moment; Ang deliberately engaged in the concealment of funds that were likely to be the subject of further litigation in another court. It is equally curious that Ang's testimony that Spidalieri "stole" some of her funds from an annuity account seems to include the very funds that she voluntarily gave to Spidalieri to invest and to hide from her ex-husband, thus blurring her financial picture to this Court in the similar manner in which she blurred her financial picture to Bank of America. What is evident is that Ang appears to justify her own bad behavior with suggestions that Spidalieri's conduct was somehow worse.

When it benefitted her, Ang was quick to overlook the February 2006 transfer of the Block Island Property from tenants in the entirety to sole ownership in Spidalieri when he explained that he was going to refinance and pay off the Bank of America mortgage and HELOC, but yet complains in the instant action that the same conduct was fraudulent and deceitful when doing so would support her effort to retain ownership in the Block Island Property. Similarly, when it benefitted Ang to argue in her oral proof of claim against Spidalieri that she had provided some funds toward a business venture with Spidalieri and therefore "requested" that she be added to the deed to the Block Island Property, she attested to the same under oath. However, when she offered deposition testimony that was inconsistent, instead suggesting that Spidalieri's inclusion of her on the deed to the Block Island Property was a gift, she was forced to amend her sworn affidavit. Ang's testimony appears to morph with her changing needs.

Facts as straightforward as where Ang is currently living and whether she and Spidalieri were ever married also present curious misstatements. Ang testified at the outset that she currently lives in "her brother's" condominium in Medford, Massachusetts, a fact that on cross-examination was shown to be false since she admitted that she has owned the condominium in her own name since at least 2004 so that she could take advantage of tax breaks. As for the status of their marriage, Ang acknowledged at trial that she was familiar with the term "tenants by the entirety," that they were not married, yet not one but two deeds were executed—one by her alone—transferring the Block Island Property to her and Spidalieri as tenants by the entirety. By doing so, Ang continued to misrepresent to the world that she and Spidalieri owned the Block Island Property as husband and wife.

Finally, Ang's efforts to obtain evidence against Spidalieri by moving back to the Block Island Property with him under the ruse of rekindling their relationship in the Fall of 2006 demonstrates that Ang was willing to take on Spidalieri at his own game. Whether a jilted lover should engage in such behavior is irrelevant; what is relevant, however, is that Ang, completely of her own accord, engaged in lies and deceit to accomplish what she desired to accomplish, and now presents to this Court as a broken-hearted, destitute woman seeking recompense from not only the man who left her but also from the bank that holds the mortgage on property for which she paid no consideration. This Court cannot countenance bad behavior begetting bad behavior, nor will this Court view Ang's claims in a vacuum.

In sum, Ang's testimony before this Court is wholly unreliable. Ang has continually engaged in fraudulent and deceptive behavior. She has played fast and loose

with her finances to the detriment of banks and her ex-husband, as well as with facts before this Court.

**C**

**Marandola**

The testimony of Defendant Marandola was equally lacking in credibility. It was Marandola who was the center of the web entangling several individuals who all gained financially from the closing on the WaMu/Chase Loan. Although he had an unspecified "conflict" with Spidalieri and advised others that he could not serve as Spidalieri's closing attorney, Marandola recruited his old high school friend McCaffrey, his former brother-in-law Prete, and two acquaintances, Finan and Gauthier, to do the leg work on the WaMu/Chase Loan while he directed and oversaw their work.

That Marandola's behind-the-scenes direction of the closing on the WaMu/Chase Loan was unconventional is an understatement. Gauthier was hired by Marandola to conduct a title examination of the Block Island Property, which was allegedly conducted in early August 2007 and spanned forty years, yet no formal report was generated by Gauthier or McCaffrey for Finan's review. Instead, it was Marandola who simply advised Finan that the title to the Block Island Property was "clean" as of early August 2007, notwithstanding the Notice of Lis Pendens recorded on September 12, 2006. Marandola is outright incorrect in his testimony that Gauthier reported clean title to him because the Release of Notice of Lis Pendens had been filed by early August 2007, when, in fact, the purported Release of Notice of Lis Pendens was not recorded until September 4, 2007, almost a month after Gauthier allegedly conducted a title examination. Marandola further distanced himself from his friend McCaffrey, placing blame on Finan

for hiring McCaffrey when it was Marandola who recruited McCaffrey's services, and blaming Finan for asking McCaffrey, the mortgage broker, to examine the title during the "gap period" between August 2007 and the November 30, 2007 closing date, which McCaffrey had never done before. The closing documents for the WaMu/Chase Loan reveal that Marandola, and not Finan, received $5,995.00 in legal fees for the closing; Finan received compensation for title charges only, despite Finan not performing any part of a title search on the Block Island Property.

Marandola's demeanor while testifying as well as his cavalier, blame-casting statements suggest to the Court that he fancies himself a sharp dealmaker. There is a fine line, however, between a dealmaker and a scam artist, and it is the latter category that this Court places this witness. His testimony is worthy of no belief. Instead, this Court concludes that Marandola was aware of the existence of the title defects and that he deliberately misrepresented clean title to the Block Island Property to Finan in order that the WaMu/Chase Loan would close and he would collect a fee on a deal and his friend, Spidalieri, would gain approximately $200,000.00.

**D**

**Frank Dean**

Dean is an employee of Chase and provided testimony on Chase's acquisition of the subject loan from WaMu. His testimony was uncontested, and the Court accepts his testimony as truthful in all respects, thus conclusively demonstrating that Chase is the holder in due course of the promissory note and mortgage on the Block Island Property that Spidalieri used as security for the WaMu/Chase Loan.

### E

### Finan

This Court would be remiss if it did not reflect on the inconsistencies between Finan's sworn deposition testimony and the trial testimony of Marandola. As an attorney with a relatively fair amount of real estate transactional work, Finan testified under oath that he essentially dropped the ball by simply relying on another attorney's word that a title examination had been conducted and was clean. He was so embarrassed by how he handled the WaMu/Chase Loan closing that he did not want his actions to be revealed to Mortgage Guarantee, a local title insurer from which Finan otherwise would have obtained a title policy but for learning, after the closing took place, about the existence of the title defects. Reflecting on his mistaken reliance on Marandola, Finan acknowledged, "I guess we live and learn."

As compared to Marandola, whose testimony is of no value to this Court, Finan accepted his role in this matter and did not cast blame on any of the cast of characters engaged by Marandola. Finan fell on the proverbially sword while Marandola played the blame-game and deflected criticism of his role. This Court accepts Finan's representation that, because he believed Marandola's statement that title to the Block Island Property was clean, he did not otherwise review any title report or learn that there was a cloud on the title before the November 30, 2007 closing on the WaMu/Chase Loan. Just as Finan did not have knowledge of the liens on the Block Island Property, so too did WaMu, and Chase, lack knowledge of such liens at the time of the closing on November 30, 2007.

## III

## Standard of Review

Rule 52(a) of the Superior Court Rules of Civil Procedure provides that, "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon[.]" Super. R. Civ. P. 52(a). In a non-jury trial, "'[t]he trial justice sits as a trier of fact as well as of law.'" *Parella v. Montalbano*, 899 A.2d 1226, 1239 (R.I. 2006) (quoting *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984)). "'Consequently, he [or she] weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.'" *Id.* (quoting *Hood*, 478 A.2d at 184). It is well established that "assigning credibility to witnesses presented at trial is the function of the trial justice, who has the advantage of seeing and hearing the witnesses testify in court." *McBurney v. Roszkowski*, 875 A.2d 428, 436 (R.I. 2005) (citations omitted). The trial justice may also "'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.'" *DeSimone Elec., Inc. v. CMG, Inc.*, 901 A.2d 613, 621 (R.I. 2006) (quoting *Walton v. Baird*, 433 A.2d 963, 964 (R.I. 1981)).

Furthermore, "[w]hen 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*, 899 A.2d at 1239 (quoting *Donnelly v. Cowsill*, 716 A.2d 742, 747 (R.I. 1998) (citation omitted)). The trial justice need not "'categorically accept or reject each piece of evidence in his [or her] decision for [the Supreme] Court to uphold it because implicit in the trial justices [sic] decision are sufficient findings of fact

to support his [or her] rulings.'" *Notarantonio v. Notarantonio*, 941 A.2d 138, 147 (R.I. 2008) (quoting *Narragansett Elec. Co. v. Carbone*, 898 A.2d 87, 102 (R.I. 2006)).

## IV

## Analysis

Plaintiff argues that when a deed is forged, it is void as a matter of law, and therefore, Chase's mortgage on the Block Island Property, which was obtained pursuant to a forged deed, must also be void. Chase counters that even if the deed is void, the doctrine of equitable subrogation protects Chase's mortgage against Plaintiff's one-half interest in the Block Island Property because its mortgage was used to pay off the prior mortgage and equitable factors should allow it to stand in the shoes of the prior mortgagee. In the alternative, Chase asserts that it is entitled to an equitable lien or a constructive trust to enforce the WaMu/Chase mortgage against Plaintiff's one-half interest in the Block Island Property.

With regard to Defendant Marandola, Plaintiff asserts that Marandola was engaged in a civil conspiracy with Spidalieri to defraud Plaintiff, that he is liable for negligence, and that she is entitled to punitive damages.

### A

### The Forged Deed

The evidence clearly demonstrates that the 2006 Deed was not executed by Ang. Dr. Seifer presented as a competent and credible expert witness. He concluded to a reasonable degree of scientific certainty that the 2006 Deed was not signed by Ang, although he could not conclude that Ang's signature was done by Spidalieri. This Court accepts Dr. Seifer's findings and concludes that the 2006 Deed was a forgery.

It follows, then, that the forged deed is void as a matter of law. The ownership of the Block Island Property is established through the earlier deed recorded on July 29, 2005, and lies with Spidalieri and Ang as tenants by the entirety.[18]

**B**

**Doctrine of Equitable Subrogation**

Having found that ownership in the Block Island Property lies with Plaintiff and Spidalieri, the Court next turns to Plaintiff and Chase's rights and interests in the real estate and, specifically, whether the doctrine of equitable subrogation applies to allow Chase to step into the shoes of Bank of America and enforce Bank of America's rights against Ang's current one-half interest in the Block Island Property. While Chase maintains that the facts of this case warrant application of the doctrine of equitable estoppel, Ang contends that the doctrine does not apply because Chase should be charged with inexcusable neglect for failing to identify the existence of title defects on the property.

Rhode Island law recognizes that "[s]ubrogation is the 'substitution of one person in the place of another with reference to a lawful claim or right[,]' and 'is a device adopted by equity to compel the ultimate discharge of an obligation by the party who in good conscience ought to pay it.'" *Jennings v. Nationwide Ins. Co.*, 669 A.2d 534, 536 (R.I. 1996) (quoting *U.S. Inv. and Dev. Corp. v. R.I. Dep't of Human Servs.*, 606 A.2d 1314, 1317 (R.I. 1992)). Although the Rhode Island Supreme Court has not directly addressed the doctrine of equitable subrogation, it is a well-recognized legal doctrine in many states and it logically follows our own jurisprudence. *See* 73 Am. Jur. 2d

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[18] The parties have not sought any declaration as it relates to the validity of the ownership by Spidalieri and Ang as tenants by the entirety when they were never married.

*Subrogation* § 11 (citing voluminous supporting case law); *see also* Restatement (Third) *Property (Mortgages)* § 7.6(a) (1997). The Michigan Supreme Court has explained the doctrine or equitable subrogation as follows:

> "[e]quitable subrogation is a legal fiction through which a person who pays a debt for which another is primarily responsible is substituted or subrogated to all the rights and remedies of the other. It is well-established that the subrogee acquires no greater rights than those possessed by the subrogor, and that the subrogee may not be a 'mere volunteer.'" *Auto-Owners Ins. Co. v. Amoco Prod. Co.*, 468 Mich. 53, 59, 658 N.W.2d 460, 463 (2003) (quoting *Commercial Union Ins. Co. v. Med. Protective Co.*, 426 Mich. 109, 117, 393 N.W.2d 479 (1986)).

Likewise, the Supreme Court of New Hampshire has articulated the reasoning behind the doctrine:

> '"[t]he purpose behind subrogation is to place the responsibility where it ultimately should rest by compelling payment by the one who in good conscience ought to pay it. It also prevents [individuals] from recouping a windfall . . . . In any subrogation case, the burden of proving entitlement is on the subrogee, which generally includes proof of: the existence and applicability of equitable principles or contractual provisions as to subrogation and reimbursement."' *Chase v. Ameriquest Mortg. Co.*, 155 N.H. 19, 26, 921 A.2d 369, 376 (2007) (quoting *Wolters v. Am. Republic Ins. Co.*, 149 N.H. 599, 601, 827 A.2d 197 (2003)).

In the case of a mortgage lien, the doctrine of equitable subrogation "operates by treating the new lien as 'a revival and assignment of the discharged obligation and security, rather than [as] a substitution of a new obligation in place of another.'" *Joondeph v. Hicks*, 235 P.3d 303, 306 (Colo. 2010) (citing *Land Title Ins. Corp. v. Ameriquest Mortg. Co.*, 207 P.3d 141, 145 (Colo. 2009)).

Several courts have adopted a framework for determining when to apply equitable subrogation. Generally, courts have required that the following elements be satisfied: (1) the subrogee made the payment to protect his or her own interest; (2) the subrogee did 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 others. *In re Stevenson*, 789 F.3d 197, 201 (D.C. Cir. 2015); *E. Sav. Bank, FSB v. Pappas*, 829 A.2d 953, 961 (D.C. 2003); *E. Boston Sav. Bank v. Ogan*, 701 N.E.2d 331, 334 (Mass. 1998); *Chase*, 155 N.H. at 26, 921 A.2d at 376. "The amount recoverable by operation of equitable subrogation is limited by the 'general rule . . . that a subrogee is entitled to indemnity to the extent only of the money actually paid by him to discharge the obligation, or the value of the property applied for that purpose.'" *Chase*, 155 N.H. at 28, 921 A.2d at 377 (quoting 73 Am. Jur. 2d *Subrogation* § 67).

In reviewing the conduct of WaMu, as predecessor to Chase, the first four elements are readily satisfied. WaMu was under no obligation to pay Ang's outstanding debts to Bank of America but did so in order to protect its own priority interest in the Block Island Property that secured the debt and, therefore, was not acting as a volunteer. *See Chase*, 155 N.H. at 27, 921 A.2d at 376-77 (merging the first two elements into the definition of "volunteer"). WaMu paid off the entirety of Ang's debts to Bank of America when it was not primarily liable for such debts owed to Bank of America.

The remaining issue to be resolved, then, is whether equitable subrogation would work an injustice to others, including Ang. Ang maintains that the doctrine of superior equities, a corollary of the doctrine of equitable subrogation, warrants a finding that Ang's equities are superior to Chase's and therefore she should not be divested of her

one-half interest in the Block Island Property. Specifically, Ang asserts that the title defects here were obvious, that WaMu was in the best position to discover the fraudulent and deceitful conduct of Spidalieri, and that its failure to discover such fraud constitutes culpable or inexcusable neglect. Chase responds that several jurisdictions have held that a lender without actual knowledge of a claimed defect in title and who is not charged with "culpable and inexcusable neglect" may still satisfy the elements of equitable subrogation.

The common thread in cases considering equitable subrogation is the obvious: "'[t]he right to subrogation rests upon equity.'" *E. Boston Sav. Bank*, 701 N.E.2d at 333 (quoting *Massachusetts Hosp. Life Ins. Co. v. Shulman*, 299 Mass. 312, 316, 12 N.E.2d 856 (1938)); *see also In re Stevenson*, 789 F.3d 197, 202 (D.C. Cir. 2015) (citing *Burgoon v. Lavezzo*, 92 F.2d 726, 734-35 (D.C. Cir. 1937)); *Lawyers Title Ins. Corp. v. Feldsher*, 42 Cal. App. 4th 41, 53-54 (Cal. Ct. App. 1996); 734-35); *GMAC Mortg., LLC v. Pharis*, 328 Ga. App. 56, 58, 761 S.E.2d 480, 482 (2014); *Chase*, 155 N.H. at 26-27, 921 A.2d at 376; *Fed. Ins. Co. v. Arthur Andersen & Co.*, 75 N.Y.2d 366, 376, 552 N.E.2d 870, 875 (1990). Thus, in considering the equitable nature of the rule, the Supreme Court of Georgia reiterated as follows:

> "'Where one advances money to pay off an encumbrance on realty either at the instance of the owner of the property or the holder of the encumbrance, either upon the express understanding or under circumstances under which an understanding will be implied that the advance made is to be secured by the senior lien on the property, in the event the new security is for any reason not a first lien on the property, the holder of the security, if not chargeable with culpable or inexcusable neglect, will be subrogated to the rights of the prior encumbrancer under the security held by him, unless the superior or equal equity of others would be prejudiced thereby.'" (quoting *Davis v. Johnson*, 241 Ga.

> 436, 438 246 S.E.2d 297 (1978)). "'The principle of subrogation is applied for the purpose of doing of complete, essential, and perfect justice between all the parties, without regard to form, and its object is the prevention of injustice. The courts incline rather to extend than restrict the principle.'" (quoting *Greer v. Provident Bank*, 282 Ga. App. 566, 568, 639 S.E.2d 377 (2006)). *GMAC Mortg.*, 328 Ga. App. at 58, 761 S.E.2d at 482 (emphasis added).

Here, Finan, WaMu, and Chase had no actual knowledge of the title defect. Even having constructive knowledge of the title defects vis-à-vis the various recordings in the New Shoreham Land Evidence Records does not, in and of itself, constitute culpable or inexcusable neglect which would deny the relief under the doctrine of equitable subrogation. *See GMAC Mortg.*, 328 Ga. App. at 60, 761 S.E.2d at 483 (reversing summary judgment and finding that equitable subrogation is an available remedy notwithstanding undiscovered deed securing debt of mortgagor's then-husband); *E. Boston Sav. Bank*, 428 Mass. at 331-32, 701 N.E.2d at 335 (declining to adopt bright line test on subrogee's actual or constructive knowledge but rather considering subrogee's behavior in the equitable analysis). Likewise, the negligence of an agent in failing to uncover fraud or mistake with respect to an intervening right also does not mandate the denial of equitable subrogation. *See Chase*, 155 N.H. at 28, 921 A.2d at 377 (negligence in failing to uncover forged mortgage instrument does not invalidate right to subrogate); *Branscomb v. JP Morgan Chase Bank N.A.*, 223 Cal. App. 4th 801, 809-10 (Cal. Ct. App. 2014) (escrow agent's negligence in failing to reconvey a third lien that would have been subject to first and second lienholders' refinancing agreements did not prevent first and second lienholders from invoking equitable subrogation).

In *Chase*, the plaintiff and her husband executed a mortgage note and deed in 1996 with Bankers Trust Company of California, using their home as collateral. *See*

*Chase*, 155 N.H. at 20, 921 A.2d at 371. In 2002, the husband forged the plaintiff's name on a mortgage instrument with Ameriquest Mortgage Company and obtained a $90,000.00 loan, secured by the parties' home; part of the proceeds of the Ameriquest mortgage was used to pay off the Bankers Trust mortgage in full. *Id.* The parties later divorced and the plaintiff became the sole owner of the marital property, but ultimately was unable to keep up with the obligations on the Ameriquest mortgage and Ameriquest sought to foreclose on the once-marital home. *Id.* at 20-21, 921 A.2d at 372. In reaching the doctrine of equitable subrogation,[19] the court concluded that although Ameriquest was alleged to have been negligent in not uncovering the forgery on the mortgage instrument, it still was entitled to equitable subrogation and relief for the amount it had paid to Bankers Trust. *Id.* at 28, 921 A.2d at 377. The court concluded: "To hold otherwise would potentially yield a windfall for the plaintiff and could encourage collusive deception against lenders." *Id.*

Here, like in *Chase*, a signature was forged and a new mortgage was obtained, paying off in full the prior mortgage on the property. While negligent in not requiring and reviewing a title examination on the Block Island Property, WaMu, through its agent Finan, is still entitled to have this Court consider the relative equities as between Ang and its successor-in-interest Chase to determine if equitable subrogation applies, otherwise Ang would receive a windfall. While it is evident that WaMu did not take every available precaution to protect its interest in the Block Island Property, Ang's attempt to spin her position as one of an innocent victim is unpersuasive. The record is replete with

[19] The Court first addressed the statutory homestead exemption under New Hampshire law and found that such exemption did not apply. *Chase*, 155 N.H. at 22-23, 921 A.2d at 373.

evidence of Plaintiff's own fraudulent acts and manipulations, which need not be repeated here. *See* Section IIB, *supra*. Ang paid nothing for the Block Island Property, had $1,000,486.20 paid to fully satisfy the Bank of America loan and $253,590.50 paid to fully satisfy the Bank of America HELOC, and has received partial judgment against Spidalieri in the amount of $1,590,269.00, which includes $957,500.00 representing half the value of the Block Island Property. Ang was aware of and agreed not once but twice—in April 2006 when she learned of the forged 2006 Deed and again after she filed suit in September 2006—that Spidalieri would refinance the Block Island Property and pay off her debts to Bank of America. That he ultimately did so was to her benefit, for which she had been waiting. To now claim that she will be prejudiced by granting Chase the right to equitable subrogation to step into the shoes of Bank of America under these circumstances would be nothing short of a windfall for Ang.

By comparison, WaMu and its agent Finan's actions in closing on a substantial loan without requiring a written title examination to review were sloppy and misguided. However, such actions or inactions were neither manipulative nor deceitful, as Ang's own conduct repeatedly was.

This Court finds that, considering the equities on both sides, it would be unjust and inequitable to allow Plaintiff to gain a one-half interest in property, free and clear of any encumbrances, for which she paid nothing. This Court is mindful that "[t]he purpose behind subrogation is to place the responsibility where it ultimately should rest by compelling payment by the one who in good conscience ought to pay it [and] prevents [individuals] from recouping a windfall . . . ." *See Chase*, 155 N.H. at 26, 921 A.2d at 376. Ang knowingly and willingly obtained the Bank of America loan and HELOC that

was subsequently paid off by the WaMu/Chase Loan. The responsibility should fairly be placed on Ang to repay that debt. Granting equitable subrogation to Chase leaves Ang in exactly the position she would have been had Spidalieri not used the forged 2006 Deed to obtain the WaMu/Chase Loan and pay off Ang's debts to Bank of America, and prevents Plaintiff from obtaining a windfall. Chase is entitled to equitable subrogation to place them in the shoes of Bank of America, which was paid a total of $1,254,076.70 by Chase. Chase is entitled to enforce its rights against Ang's one-half interest in the Block Island Property up to the amount of $1,254,076.70 because that is the amount for which Ang would have been liable to Bank of America. Chase is not entitled to the amount it lent to Spidalieri as Ang "should not be made to bear an increased financial burden because [WaMu and/or its agent Finan] was not vigilant" in its lending practices. *Chase*, 155 N.H. at 28, 921 A.2d at 377.

Accordingly, this Court grants the competing claims for declaratory relief in Chase's favor based upon the doctrine of equitable subrogation.[20] Chase maintains a superior interest in both halves of the Block Island Property, with Ang's half being enforceable only up to $1,254,076.70. Ang's interest in her one-half of the Block Island Property is subject to Chase's interest. This Court denies Ang's request for partition pursuant to § 34-15-15 in light of the amount owed to Chase and the assessed value of the Block Island Property. Chase is entitled to foreclose on and sell the Block Island Property. Additionally, the only remaining lien that was not otherwise defaulted in this litigation is BIEP's recorded security interest in the amount of $42,194.84. In the event there are <u>any</u> proceeds remaining from the foreclosure and sale of the Block Island

[20] Based upon this holding, the Court need not address Chase's alternative theories of equitable lien or constructive trust.

Property, whether from Spidalieri's one-half interest or from Ang's one-half interest, such funds shall be deposited with the Registry of the Court and subject to further consideration by the Court, upon motion filed, to address BIEP's interest in such funds.

### C

### Claims against Marandola

Plaintiff asserts that Marandola engaged in a civil conspiracy to defraud Plaintiff.[21] She argues that his conduct in assisting Spidalieri in obtaining the WaMu/Chase Loan demonstrated his agreement and intention to conspire against Ang by engaging the cast of characters to do the legwork to close on the WaMu/Chase Loan.

"To prove a civil conspiracy, plaintiff[] had to show evidence of an unlawful enterprise." *Read & Lundy, Inc. v. Washington Trust Co. of Westerly*, 840 A.2d 1099, 1102 (R.I. 2004). "Furthermore, civil conspiracy is not an independent basis of liability. It is a means for establishing joint liability for other tortious conduct; therefore, it 'requires a valid underlying intentional tort theory.'" *Id.* (quoting *Guilbeault v. R.J. Reynolds Tobacco Co.*, 84 F. Supp. 2d 263, 268 (D.R.I. 2000)). "An action for common-law fraud, or deceit, requires a showing of a false statement of fact, not an opinion or estimate, knowingly made, which the plaintiff can show he or she justifiably relied and acted upon." *514 Broadway Inv. Trust, UDT 8/22/05 ex rel. Blechman v. Rapoza*, 816 F. Supp. 2d 128, 139 (D.R.I. 2011) (citing *Fournier v. Fournier*, 479 A.2d 708, 714 (R.I. 1984); *E. Providence Loan Co. v. Ernest*, 103 R.I. 259, 236 A.2d 639, 642 (1968)).

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[21] While argued in her pre-trial memorandum and post-trial memorandum as a civil conspiracy, Plaintiff's Fourth Amended Complaint sets forth claims against Marandola for fraud/deceit, negligence, and punitive damages, only the latter of which vaguely references a scheme with Spidalieri. *See* Fourth Am. Compl., Counts VIII, IX, and X. This Court will consider generally Plaintiff's civil conspiracy theory along with the individual torts alleged, as this Court is required to do.

"Intent to defraud may be inferred by the factfinder based on the totality of the circumstances." *Id.* (citing *Palmacci v. Umpierrez*, 121 F.3d 781, 789 (1st Cir. 1997)).

Here, this Court is satisfied by a preponderance of the evidence that Marandola was aware of the existence of the title defects yet kept such information from Finan when he stated to Finan that the title on the Block Island Property was clean. It was a false statement that Marandola made to Finan, which Finan and his principal, WaMu, relied and acted upon. At no time did Marandola make a false statement of fact to Ang which Ang then relied upon. Indeed, Ang was aware of the existence of the title defects, having caused the Notice of Lis Pendens and the Notice of Invalidity of Release of Notice of Lis Pendens to be recorded. Moreover, Ang was aware of the forged 2006 Deed as early as April 2006. Ang has failed to demonstrate the required elements to support a claim of fraud or deceit by Marandola, let alone that Marandola was jointly liable with Spidalieri to Ang for forging the 2006 Deed and/or obtaining the WaMu/Chase Loan.

With regard to Ang's claim of negligence, even if this Court were to conclude that Marandola's actions did not comport with an unspecified standard of care,[22] this Court cannot conclude that Ang has demonstrated that such negligence was the proximate cause of any damages she incurred. Indeed, by virtue of the WaMu/Chase Loan, she received the benefit of her Bank of America debts being paid in their entirety, a benefit she was told on two occasions by Spidalieri to be forthcoming. Further, any "damages" in terms of what may be due to Chase under the doctrine of equitable subrogation is limited to the amount paid by Chase to Bank of America to satisfy her debts. Plaintiff is in no different

[22] At no time did Ang specify the action or inaction of Marandola that constitutes negligence, whether legal malpractice or otherwise.

position than she was before the WaMu/Chase Loan was closed and therefore has not proven any damages.

Finally, Ang seeks an award of punitive damages against Marandola for "orchestrating defendant Spidalieri's ability to secure the [WaMu/Chase Loan]." Fourth Am. Compl. ¶ 55. The law of punitive damages is well settled in Rhode Island. In *Palmisano v. Toth*, 624 A.2d 314 (R.I. 1993), our Supreme Court stated that the "nature of punitive or exemplary damages is twofold: to punish the tortfeasor whose wrongful conduct was malicious or intentional and to deter him or her and others from similar extreme conduct." *Id.* at 317-18. The burden rests with the party seeking punitive damages to prove "'evidence of such willfulness, recklessness or wickedness, on the part of the party at fault, as amount[s] to criminality, which for the good of society and warning to the individual, ought to be punished.'" *Id.* at 318 (quoting *Sherman v. McDermott,* 114 R.I. 107, 109, 329 A.2d 195, 196 (1974)). An award of punitive damages requires a showing that the defendant acted with malice or in bad faith. *Id.* (citing *Morin v. Aetna Cas. and Sur. Co.*, 478 A.2d 964, 967 (R.I. 1984)).

To be clear, this Court does not in any way condone the conduct of Marandola. Indeed, if any party was defrauded by Marandola's conduct, it was Chase.[23] However, Plaintiff has failed to demonstrate that Marandola is liable to her under any cause of action claimed in this litigation, let alone for the extraordinary award of punitive damages. This Court declines Ang's invitation to punish Marandola and award her damages.

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[23] No cross-claim was filed by Chase against Marandola.

## V

## Conclusion

For all of the foregoing reasons, this Court declares that Defendant Chase is entitled to the remedy of equitable subrogation as the superior lienholder in Plaintiff's one-half interest in the Block Island Property in the amount of $1,254,076.70. Chase also has a superior interest in Spidalieri's one-half interest in the Block Island Property. Accordingly, judgment shall enter for Chase on its Counterclaim for declaratory relief and quiet title. The Court denies all relief sought by Plaintiff against Chase. Chase is entitled to initiate foreclosure on the Block Island Property upon the expiration of the twenty-day appeal period from entry of the Judgment, with the proceeds of said foreclosure distributed in accordance with this Decision.

Judgment shall enter against Plaintiff on all her claims against Marandola.

There being no just reason for delay, the Judgment as set forth herein shall enter in accordance with Rule 54(b) of the Superior Court Rules of Civil Procedure.

Counsel shall confer and submit a Judgment consistent with this Decision.

**RHODE ISLAND SUPERIOR COURT**
***Decision Addendum Sheet***

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| **TITLE OF CASE:** | **Michelle Ang v. Hugo Spidalieri; Intermesh Group, Inc. a/k/a Intermesh Group, Ltd.; MFG Ltd. Commercial Bancorp a/k/a MFG, Ltd.; J.P. Morgan Chase Bank N.A., as successor-in-interest to Washington Mutual Bank, FA; Argo Investment Group (AIG), Ltd.; BIEP, LLC; and Louis Marandola, Esq. v. John Finan** |
| **CASE NO:** | **WC-2006-0569** |
| **COURT:** | **Washington County Superior Court** |
| **DATE DECISION FILED:** | **February 5, 2018** |
| **JUSTICE/MAGISTRATE:** | **K. Rodgers, J.** |
| **ATTORNEYS:** | |
| **For Plaintiff:** | **Nicholas Gorham, Esq.**<br>**David M. D'Agostino, Esq.** |
| **For Defendant:** | **Patricia A. Buckley, Esq.**<br>**Robert F. McNelis, Esq.**<br>**Gerard M. Decelles, Esq.** |