UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2103

September Term, 2011

NATIONAL INSTITUTES OF HEALTH
FEDERAL CREDIT UNION

v.

BAC HOME LOANS SERVICING, LP, *et al.*

Woodward,
Graeff,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: October 9, 2014

On April 8, 2005, the National Institutes of Health Federal Credit Union, appellant, gave Michael C. Hill a $250,000 home equity line of credit ("HELOC"), secured by a Revolving Credit Deed of Trust on real property owned by Hill. Appellant's deed of trust securing the HELOC was not recorded–and thus not perfected–until January 4, 2006. Meanwhile, in October 2005, Hill sought to refinance with a $1,000,000 loan from Countrywide d/b/a/ America's Wholesale Lender, an entity that later became BAC Home Loans Servicing, LP, appellee.[1] A title search conducted by appellee on October 6, 2005 did not reveal any lien securing appellant. Hill and appellee closed on the refinance loan on October 26, 2005, and appellee's Deed of Trust was recorded on December 15, 2005, three weeks before appellant's HELOC deed of trust was recorded.

After Hill defaulted on both loans and filed for bankruptcy, appellant filed a declaratory judgment action in the Circuit Court for Prince George's County, seeking a judgment that its HELOC deed of trust was entitled to first priority. After holding a trial on the matter, the circuit court ruled in favor of appellee and entered an order giving the appellee's Deed of Trust first priority over appellant.

On appeal, appellant raises two questions, which we have re-phrased:[2]

---

[1] Many of the events discussed below occurred when BAC Home Loans Servicing, LP, was Countrywide. For the sake of clarity, all references to "appellee" refer to both BAC Home Loans Servicing, LP, and Countrywide.

[2] In its brief, appellant worded its questions presented as follows:

> 1. Was the Circuit Court incorrect as a matter of law when it determined that [appellee's] lien was entitled to priority despite

(continued...)

1. Did the circuit court err in concluding that appellee was entitled to lien priority as a *bona fide* purchaser?

2. Did the circuit court err in ruling that appellee was entitled to equitable subrogation?

As we will explain, we hold that appellee was entitled to equitable subrogation regardless of whether it was a *bona fide* purchaser. Accordingly, we need not reach Question 1, and affirm the judgment of the circuit court on the grounds of equitable subrogation.

BACKGROUND

On November 4, 2003, Hill purchased real property at 12501 Haxall Court, Fort Washington, MD 20744 ("the Property"). The deed for the Property was recorded in the Land Records of Prince George's County at Liber 20325, folio 327. To finance his purchase, Hill obtained a $600,000 loan on November 4, 2003 from Washington Mutual Bank, F.A. ("Washington Mutual"), secured by a deed of trust on the Property.

After Hill's equity in the Property increased, Hill obtained from appellant a $250,000 HELOC. On April 8, 2005, Hill executed a Revolving Credit Deed of Trust in favor of appellant.

---

[2](...continued)
having knowledge of [appellant's] prior unrecorded interest?

2. Was the Circuit Court incorrect as a matter of law in finding that [appellee] was entitled to equitable subrogation based on its $250,050.02 payment to [appellant][?]

In October 2005, Hill contacted Matthew Toland, a broker with The Loan Corporation (TLC), about refinancing of the liens on the Property. Toland identified himself as a representative of appellee. On October 6, 2005, Hill accepted a conditional commitment to a refinance loan obtained by TLC from appellee. Also on that day, TLC retained ServiceLink LLC ("ServiceLink") to perform a title search on the Property, provide lien clearance services, and handle the closing. ServiceLink's Vendor Order Assignment Form notes that Toland ordered lien clearance requests for Washington Mutual and appellant. The title search of the property, however, did not reveal any lien securing the HELOC.

On October 20, 2005, ServiceLink faxed a "Payoff Request" to appellant, accompanied by a signed authorization from Hill. In response, appellant returned a "Payoff Statement" dated October 21, 2005, which informed ServiceLink that "[o]nly [a] certified check, cashier[']s check, or attorney's escrow check will be accepted made payable to [appellant] for the payoff amount shown . . . ." Below the quoted language, appellant stated that the "Total Amount to Pay Loan in Full" was $250,050.02, and that, as of November 22, 2005, additional interest of $45.84 per day would apply. On Page 2 of the Payoff Statement, appellant printed the following language:

> MARYLAND Release Recording Fee $ 30.00
>
> In addition to this payoff statement a recording fee is necessary to release your lien that was recorded. *The amount listed above is the amount required to release the lien of record.* You (the member) are responsible for the payment of this fee and to have the lien released. **If your closing agent does not send the fee with the pay off check**

> **and instructions you will have to send/approve the funds to us for the recording of the release.**

(Italicized emphasis added; bold emphasis in original).

On October 25, 2005, appellee faxed a "Disbursement Notice," which contained closing instructions on Hill's loan, to Christina Schultz at ServiceLink. Appellee's closing instructions indicated that "Pay-offs indicated must be paid at closing" and commented that the payoffs "will evidence on HUD-1 settlement statement the satisfaction and payoff of [Washington Mutual] . . . and [appellant] . . . ."

On October 26, 2005, the following day, Hill signed a Uniform Residential Loan Application, which he submitted in applying for the $1,000,000 refinance loan. In the application, Hill disclosed his assets and a wide array of credit accounts and other liabilities, including unpaid balances of $609,371 to Washington Mutual, and $246,585 to appellant. Hill then closed on the refinance loan, executing a $1,000,000 note, which was secured by a Deed of Trust in favor of appellee.

On October 31, 2005, ServiceLink disbursed $609,370.34 of the $1,000,000 loan as a payoff to Washington Mutual. Also on October 31, 2005, ServiceLink sent a check for $250,050.02 to appellant, precisely matching the "Total Amount to Pay Loan in Full" listed on appellant's October 21, 2005 Payoff Statement. In the lower left-hand corner of the check, the following appeared:

> Re: Michael C. Hill
> 12501 Haxall Ct., Fort Washington, MD 20744-7042
> **Non Collateral Payoff**

(Emphasis added). In addition, on the Settlement Statement ("HUD-1 Form") $250,050.02 was listed as a "Non Collateral Payoff to [appellant]." Despite the payment, a balance of $685.84 remained on the loan.

On December 15, 2005, appellee's Deed of Trust was recorded. Three weeks later, on January 4, 2006, appellant's HELOC deed of trust was recorded.[3] The HELOC remained open after the October 31, 2005 payment, and Hill continued to draw on the account until he maxed out the credit line.

On May 21, 2008, Hill, having defaulted on his loans, filed for Chapter 7 bankruptcy. Appellee subsequently filed a foreclosure action on the Property on March 30, 2010. On May 25, 2010, the Property was sold at a foreclosure sale for $855,000. Appellant subsequently filed a motion to intervene in the foreclosure action, which the circuit court granted on January 19, 2011. On February 10, 2011, the circuit court stayed the proceedings in the foreclosure action during the pendency of this appeal.

Meanwhile, on July 14, 2010, appellant filed a complaint in the circuit court, seeking declaratory and injunctive relief. Specifically, appellant sought "to establish the priority of its mortgage lien over the competing lien held by appellee." Following discovery in the matter, the circuit court conducted a trial on October 25, 2011. The parties submitted a set

---

[3] Appellee's Deed of Trust is recorded in the Land Records of Prince George's County at Liber 23732, folio 057. Appellant's HELOC deed of trust is recorded in the Land Records of Prince George's County at Liber 23902, folio 153.

of stipulated facts and exhibits, and the court heard testimony from Hill and Robert J. Ulmer, a vice president of appellant.

Having had the opportunity to hear the testimony of the witnesses, and to evaluate their credibility, the circuit court ruled orally in favor of appellee. Specifically, the circuit court concluded that appellee was a "*bona fide* purchaser." As an alternative ruling, the court held that appellee was entitled to first priority under the doctrine of equitable subrogation, because appellant "received [its] $250,000" from appellee.

On November 8, 2011, the circuit court entered a final judgment memorializing its ruling. The order stated, in pertinent part,

> For the reasons articulated by the Court in its oral ruling from the bench placed on the record after consideration of the stipulated facts, documentary evidence and witness testimony presented at trial it is . . . hereby:
>
> **ORDERED** that [appellee] is secured by a first position lien on the real property known as 12501 HAXALL COURT, FORT WASHINGTON, MD 20744 Tax ID # 05-0373613 (the "Haxall Court Property") as evidenced by the Deed of Trust recorded in the Land Records of Prince George's County on December 15, 2005 at Liber 23732, Folio 057[.]

A timely appeal followed. Additional facts will be set forth below as necessary to our discussion.

STANDARD OF REVIEW

Because the present appeal arises from a case that was tried in the circuit court without a jury, our review is limited by the standard set forth in Maryland Rule 8-131(c). Rule 8-131(c) states that as an appellate court, we (1) "will review the case on both the law

and the evidence," and (2) "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." "A finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Columbia Town Ctr. Title Co. v. 100 Inv. Ltd. P'ship*, 203 Md. App. 61, 72 (2012) (citation omitted), *aff'd in part and rev'd in part on other grounds*, 430 Md. 197 (2013).

As we further explained in *Columbia Town Center*,

> under the clearly erroneous standard, this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case. Nor is it our function to weigh conflicting evidence. Our task is limited to deciding whether the circuit court's factual findings were supported by substantial evidence in the record. And, to that end, we view all the evidence in a light most favorable to the prevailing party.
>
> Although the factual determinations of the circuit court are afforded significant deference on review, its legal determinations are not. The clearly erroneous standard for appellate review in Maryland Rule 8-131 section (c) does not apply to a trial court's determinations of legal questions or conclusions of law based on findings of fact. Indeed, the appropriate inquiry for such determinations is whether the circuit court was legally correct.

Id. (internal quotation marks and citations omitted).

ANALYSIS

Scope of Review

Appellant challenges both grounds of the circuit court's ruling, *i.e.*, that appellee was (1) a *bona fide* purchaser, and (2) entitled to equitable subrogation. Appellee's status as a

bona fide purchaser, however, does not resolve whether it is entitled to equitable subrogation. *See, e.g., Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534, 551 (2013) ("Although Petitioners are not afforded the protections of a *bona fide* purchaser, they are entitled nonetheless to some relief under the doctrine of equitable subrogation.").

In the instant matter, a determination that appellee is entitled to equitable subrogation would support the judgment below and render the issue of it being a *bona fide* purchaser moot. We conclude that equitable subrogation is appropriate in the instant matter, and thus do not reach the question of appellee's status as a *bona fide* purchaser. *Remsburg v. Montgomery*, 376 Md. 568, 578 (2003) ("Because we find the answer to the second question dispositive of this matter, we reach and decide only that question.").

Application of the Doctrine of Equitable Subrogation

"Subrogation substitutes one creditor for another, with the substitute creditor having only the rights of the previous creditor." *Fishman*, 433 Md. at 553. The doctrine of equitable subrogation provides:

> "Where a lender has advanced money for the purpose of discharging a prior encumbrance in reliance upon obtaining security equivalent to the discharged lien, and his money is so used, the majority and preferable rule is that if he did so in ignorance of junior liens or other interests he will be subrogated to the prior lien."

Egeli v. Wachovia Bank, N.A., 184 Md. App. 253, 265 (2009) (quoting *G.E. Capital Mortgage Servs., Inc. v. Levenson*, 338 Md. 227, 231-32 (1995)). "In other words, equitable subrogation prevents the inequity of a party possessing a superior lien accepting payment

from a third party without releasing its lien, thus enjoying the benefit of the payment while maintaining a superior lien priority to the payor." *Egeli*, 184 Md. App. at 266.

Appellant contends that the circuit court erred in ruling that appellee was entitled to priority under the doctrine of equitable subrogation, because appellee (1) did not view appellant's loan as a "prior encumbrance," and (2) did not make the payment "for the purpose of discharging" appellant's prior lien interest, as evidenced by the fact that payment to appellant was listed as a "non collateral payoff." Appellee responds that it did in fact make the payment to appellant precisely "for the purpose of discharging" appellant's "prior encumbrance." We agree with appellee.

The trial court found that it was the intention of the parties that appellant would release the lien of the HELOC deed of trust upon payment of $250,050.02. The court pointed to the Payoff Statement that was sent by appellant to ServiceLink, which requested payment of the "payoff amount shown below," and stated there that the "Total Amount to Pay Loan *in Full*" was $250,050.02. (Emphasis added). As the trial court explained, this statement effectively informed appellee that appellant was "releasing [its] lien in favor of $250,000 and some change." *See Fishman*, 433 Md. at 555 ("We affirmed the circuit court, determining that [the lender] intended to have the priority lien because ordinarily [the lender] would not have expended $56,283.14 of the loan proceeds to pay off the previous mortgage." (citing *Levenson*, 338 Md. at 242)).

Effectively, appellant asks this Court to allow it to leap-frog into the first priority position on the basis of over $850,000 appellee spent[4] to discharge all of the liens on the Property. Such outcome would result in unjust enrichment and demands the application of equitable subrogation on behalf of appellee. *See Levenson*, 338 Md. at 242 ("Equity views [the lender] as subrogated to the released, first priority claim . . . in order to prevent unjust enrichment of [the secondary lien holder].)."

The* Egeli *Decision

Appellant contends that, notwithstanding appellee's expenditure, their equity interest was an "open-ended line of credit." Therefore, appellant argues, appellee's "failure to ensure that the credit line was closed out would prevent it from asserting equitable subrogation." In support of this argument, appellant relies exclusively on *Egeli v. Wachovia Bank*.

In *Egeli*, the borrower-homeowners at issue executed a HELOC with the first lender, which required the homeowners' written consent in order to be closed. 184 Md. App. at 256-57. The HELOC was secured by a deed of trust, which was promptly recorded. *Id.* Later, the homeowners took out multiple loans from a second lender. *Id.* at 257. The second lender received a payoff statement from the first lender, and then mailed a check for the exact amount stated therein, with "MORTGAGE PAYO [sic]" listed as the "Purpose" on the check. *Id.* at 258.

---

[4] As stated above, appellee disbursed $609,370.34 to Washington Mutual, and $250,050.02 to appellant, for a total payoff of $859,420.36.

The homeowners continued to draw on the first lender's HELOC and subsequently defaulted on both loans. *Id.* at 258-59. A foreclosure sale occurred, after which the two lenders fell into a dispute over the priority of their respective liens. *Id.* at 258-59. The circuit court ruled at trial that the second lender was entitled to first priority, because it had paid the full payoff amount to the first lender. *Id.* at 261.

On appeal, we reversed the circuit court's decision and held that the first lender was entitled to first priority. *Id.* at 268. We reasoned that, under the first lender's deed of trust, the first lender had an obligation to keep the HELOC open for the homeowners, even after receiving the payoff amount from the second lender. *Id.* at 261-62. We explained that the first lender was not obligated to release its lien, because there was no evidence that the first lender had been given authorization to close the HELOC account on behalf of the homeowners. *Id.* at 263.

We rejected the second lender's argument that its ignorance of the open credit line weighed in its favor. *Id.* at 262, 267. We explained that although the second lender was not a party to the HELOC agreement, it was "constructively on notice of the terms contained in [the first lender's] duly recorded deed of trust," because

> [the first lender's] deed of trust provided sufficient notice, especially to a sophisticated party such as [the second lender], that the type of account at issue was an open-ended equity credit account. Consequently, [the second lender], at a minimum, was on notice that there may have been additional requirements to satisfy the terms of the contract creating the account other than mere payment of the balance.

Id. at 262. We acknowledged that the second lender may have reasonably believed that it obtained first priority, but held that a "sophisticated party such as [the second lender] must make a more comprehensive inquiry when making such a payment to ensure the release of the lien at issue" in order to claim entitlement to equitable subrogation. *Id.* at 267.

In our view, the instant case distinguishable from *Egeli* in several significant ways. First, appellee had no notice of any kind that the HELOC credit line remained open, or that appellant required authorization from Hill to release the lien. Appellee was not a party to the loan agreement, and it does not appear that the agreement was ever disclosed to appellee prior to its acquiring a lien interest in the Property. Further, appellant failed to record its HELOC deed of trust prior to when appellee acquired its lien interest. Thus, unlike the second lender in *Egeli*, appellee did not have the ability to obtain the deed of trust from the land records and read through the terms of the loan agreement. *See id.* at 262. Accordingly, although appellee is a sophisticated party, it lacked both actual notice of the agreement itself, or constructive knowledge of the agreement through the land records, unlike the second lender in *Egeli*.

Second, unlike the payoff statement at issue in *Egeli*, the October 21, 2005 Payoff Statement provided by appellant to appellee contained *affirmative representations* about the release of appellant's lien. At the top of Page 2 of that document, appellant stated, in pertinent part:

> MARYLAND Release Recording Fee $ 30.00

> In addition to this payoff statement a recording fee is necessary *to release your lien that was recorded. The amount listed above is the amount required to release the lien of record* . . . .

(Italicized emphasis added). In contrast to *Egeli*, where the payoff statement provided by the first lender was silent on the issue of release, the language quoted above evidences a clear intention by appellant to release its lien, albeit a release conditioned on the receipt of a nominal fee. Having performed a title search and discovered no *recorded* lien, which was a requisite condition for triggering the release fee, appellee reasonably concluded that its $250,050.02 check was sufficient to release appellant's lien.

Finally, the second lender in *Egeli* was barred from recovery under the doctrine of laches, which we do not find applicable to appellee in the case *sub judice*. In *Egeli*, the second lender waited nearly three years after submitting its payment to the first lender before it "formally asserted" its lien priority. 184 Md. App. at 264. This Court determined that the multi-year delay was prejudicial to the first lender, because in the intervening period, the borrowers continued to draw funds from the first lender's account. *Id.* at 265. Thus we concluded that, "were [the first lender], as the circuit court ruled, equitably estopped from claiming a superior lien priority to [the second lender], [the first lender] would receive none of the proceeds of the foreclosure sale it initiated and completed." *Id.*

Conversely, in the instant appeal, there is no evidence that appellee delayed in recording its lien after closing on the loan with Hill; indeed, appellee recorded its lien interest within two months of acquiring it. Furthermore, *appellant* waited until July 14, 2010 to file

complaint and assert its right to priority, *over four years* after its own lien was recorded in January 2006. Until that time, appellee was under the impression that it was in first lien priority. Because laches only "applies when there is an unreasonable delay in the assertion of one's rights and that delay results in prejudice to the opposing party," we conclude that the doctrine of laches does not bar appellee from recovery in this case. *Id.* (quoting *Liddy v. Lamone*, 398 Md. 233, 244 (2007)).

Egeli, therefore, does not alter our analysis. We conclude that appellee made the payments to Washington Mutual and appellant with the intention of paying off both loans, and without knowledge that the HELOC credit line would remain open. Accordingly, we hold that the trial court did not err by concluding that appellee is entitled to equitable subrogation.[5]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; APPELLANT TO PAY COSTS.

---

[5] We further note that the order of the trial court gave appellee's lien full first priority. Under our decision, however, appellee would only be subrogated to the extent of $859,420.36. According to the record, the Property was sold at a foreclosure sale for exactly $855,000. For this reason, the trial court's order need not be modified to reflect the rights of the parties as determined by this opinion