

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

(FILED: August 6, 2013)

MICHELLE ANG

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v.

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C.A. No. WC 2006-0569

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HUGO SPIDALIERI; THE INTERMESH GROUP, INC. a/k/a THE INTERMESH GROUP, LTD.; MFG LTD.; COMMERCIAL BANCORP a/k/a MFG LTD.; WASHINGTON MUTUAL BANK, FA; ARGO INVESTMENT GROUP (AIG), LTD.; BIEP, LLC; and LOUIS MARANDOLA, ESQ.

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v.

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JOHN FINAN

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DECISION

SAVAGE, J. This matter is before the Court on motions for partial summary judgment filed by Plaintiff Michelle Ang (Ang) and Defendant JPMorgan Chase Bank, N.A. (JPMorgan), as successor-in-interest to Defendant Washington Mutual Bank, F.A. (WaMu). In her Motion for Partial Summary Judgment, Ang seeks a declaration that a quitclaim deed dated February 21, 2006 (the February 2006 Deed), by which she purportedly relinquished her one-half interest in a parcel of real estate on Block Island¹ (the Block Island Real Estate) that she held jointly with Defendant Hugo Spidalieri, is a forgery. In addition, Ang requests a declaration that because the

¹ The parties agree that the real estate in question is situated at 1556 Center Road, New Shoreham, Rhode Island and is identified in Ang’s Complaint as Lot 86-5 on the Town of New Shoreham Tax Assessor’s Plat 16. (Agreed Statement of Facts, ¶ 1.)

deed is a forgery, it is null and void.² Ang's theory seems to be that if the February 2006 Deed is determined to be null and void, then the mortgage that WaMu recorded in the New Shoreham

² In her Fourth Amended Complaint, Ang seeks various judgments, as follows:

- (a) Declaring the rights, interests, and obligations of the parties vis-à-vis each other with respect to (i) the Block Island Real Estate; (ii) the proceeds and fruits of the mortgage financing procured by Plaintiff, including the business being operated under the name Block Island Fitness Center; (iii) The Intermesh Group, Ltd; (iv) MGF (sic) Ltd. Commercial Bancorp; (v) the Bank; (vi) Argo Investment Group (AIG), Ltd; and (vii) BIEP, LLC.
- (b) Declaring as null and void any forged deed to the Block Island Real Estate and any other forged document purporting to bear Plaintiff's signature as aforesaid;
- (c) Imposing and declaring the existence of an equitable lien in Plaintiff's favor with respect to Plaintiff's equitable interest as aforesaid in (i) the Block Island Real Estate; (ii) The Intermesh Group, Ltd; and (iii) MGF (sic) Ltd. Commercial Bancorp.;
- (d) Imposing and declaring the existence of a constructive trust in Plaintiff's favor with respect to (i) the Block Island Real Estate; (ii) The Intermesh Group, Ltd.; and, (iii) MGF (sic) Ltd. Commercial Bancorp.;
- (e) Declaring that all of Plaintiff's rights, title and interest in the subject Block Island Real Estate to be superior to that of the Bank's; Argo Investment Group (AIG), Ltd.'s; and (vii) BIEP, LLC's;
- (f) That the Court order partition of the said real estate and appoint a commissioner to make such partition, in accordance with the provisions of section 34-15-24 through 34-15-28 of the General Laws;
- (g) That the costs of this proceeding, including reasonable attorneys fees, may be charged to the defendants or may be apportioned among the parties, in accordance with the provisions of section 34-15-22 of the General Laws;
- (h) Awarding Plaintiff substantial compensatory damages;
- (i) Awarding Plaintiff punitive damages;
- (j) Awarding Plaintiff counsel fees, together with interests and costs; and
- (k) Awarding Plaintiff such other and further relief as the Court may deem necessary and appropriate.

Land Evidence Records on November 30, 2007, in connection with a loan to and promissory note from Spidalieri in the amount of \$1.5 million, was “not secured by an interest in real estate.” (Ang’s Sept. 7, 2011 Mem. at 14.) Therefore, presumably, JPMorgan would not be able to reach Ang’s interest in the Block Island Real Estate on any basis, even though \$1,250,000 of those loan proceeds were used to pay off Ang’s prior Bank of America mortgage.

JPMorgan takes no position with respect to Ang’s allegation that the February 2006 Deed is a forgery. It argues that regardless of the validity of the February 2006 Deed, JPMorgan may enforce an equitable lien on the Block Island Real Estate, up to the amount of approximately \$1,250,000, on the basis of equitable subrogation. In its own Motion for Partial Summary Judgment, JPMorgan requests summary judgment as to Counts VI (Declaratory Judgment)³ and

(Emphasis added.) This request for declaratory relief is not connected with a specific count in Ang’s Fourth Amended Complaint, as it should be, but appears in the “Wherefore” clause following the ten-count complaint. In her instant Motion for Partial Summary Judgment, Ang seeks a declaratory ruling only as to subsection (b) of the above. Notwithstanding the improper form of this pleading, this Court will treat Ang’s request for declaratory relief as if it were connected with Count VI of her Fourth Amended Complaint for Declaratory Judgment as against the Bank and address her Motion for Partial Summary Judgment accordingly.

³ Count VI of Ang’s Fourth Amended Complaint appears as follows:

COUNT VI

*(Declaratory Judgment as against the Bank,
Argo Investment Group (AIG), Ltd., and, BIEP, LLC)*

38. Plaintiff repeats and incorporates herein by reference the allegations set forth in paragraphs 1 through 37 of this Complaint.

39. An actual controversy has arisen and now exists between Plaintiff and the Bank, as well as defendant Argo Investment Group (AIG), Ltd., and BIEP, LLC, as there is a need for the rights and interests of the parties vis-à-vis each other with respect to the Block Island Real Estate to be adjudicated and declared pursuant to the provisions of the Rhode Island Declaratory Judgment Act RIGL § 9-30-1, *et seq.*

VII (Partition Action)⁴ of Ang's Fourth Amended Complaint, as to JPMorgan's own Counterclaim against Ang for a Declaratory Judgment,⁵ and as to JPMorgan's Cross-claims for Declaratory Judgment⁶ against various Cross-claim Defendants.⁷

As noted, it is not entirely clear to this Court what specific declaratory relief Ang seeks in reference to this count or whether it includes the declaratory relief contained in the "Wherefore" clause at the end of the Fourth Amended Complaint, as described in n.2 to this Decision.

⁴ Count VII of Ang's Fourth Amended Complaint appears as follows:

COUNT VII
(Partition Action)

40. Plaintiff repeats and incorporates herein by reference the allegations set forth in paragraphs 1 through 39 of this Complaint.

41. This count is made for partition of certain real estate pursuant to the provisions of General Laws of Rhode Island, 1956, Title 34, Chapter 15.

42. Plaintiff has alleged that the February 2006 deed is a forgery, which, if true, would mean that Plaintiff and defendant Spidalieri are seized in fee simple, as co-tenants, of the Block Island Real Estate as described in Exhibit A attached hereto and incorporated herein by reference, subject to the rights of the Bank and the other aforesaid parties-in-interest.

43. The title and interests of Plaintiff and defendant Spidalieri and the Bank are derived as follows:

- (a) Plaintiff and defendant Spidalieri initially acquired their interest in the property by virtue of the deed dated March 17, 2005.
- (b) Thereafter, in or about February 2006, as alleged by Plaintiff, defendant Spidalieri forged Plaintiff's signature on a deed purporting to relinquish her interest in the Block Island Real Estate.
- (c) Thereafter, in November 2007, the Bank granted defendant Spidalieri a mortgage on the property, apparently or ostensible (sic) believing him to be the record owner thereof.

44. Plaintiff and defendant Spidalieri are of full age and sound mind and of full capacity.

45. Plaintiff is desirous of having said premises partitioned. Such partition can be justly and beneficially made by selling the property pursuant to the provisions of section 34-15-15 of the General Laws, and dividing the funds among the parties herein in accordance with their respective interests in the Block Island Real Estate.

46. Defendant JP Morgan Chase & Co. is the successor-in-interest to a mortgage instrument held by the Bank, as mentioned in additional detail, above.

47. Defendant Argo Investment Group (AIG), Ltd., is a party-in-interest by virtue of a purported mortgage recorded in the New Shoreham Land Evidence Record beginning at Book 410, at Page 041.

48. Defendant BIEP, LLC is a party-in-interest by virtue of an Order Granting Partial Judgment and Execution against Defendant Spidalieri recorded in the New Shoreham Land Evidence Record beginning at Book 410, at Page 216.

⁵ JPMorgan's "Counterclaim" against Ang recounts alleged facts underlying this litigation and states that "a dispute has arisen between the parties as to their respective rights, duties, status and obligations under the Mortgage." The Counterclaim states no specific causes of action. In a "Wherefore" clause at the end of the Counterclaim, unattached to any cause of action, JPMorgan then requests a declaration concerning "the rights, duties, status and obligations under the Mortgage," as follows:

- a. that an Order enter that the Mortgage is valid;
- b. that an Order enter that the entire Property is subject to the Mortgage;
- c. that an Order enter that whatever interest the plaintiff may have in the Property is subject to the Mortgage;
- d. that an Order enter that imposes a constructive trust on the Property with respect to the amounts due under the Note;
- e. that an Order enter that JPMorgan has an equitable lien against the Property to satisfy the amounts due under the Note;
- f. that an Order enter that the defendant may proceed with foreclosure proceedings relative to the property; and
- g. that the Court award such other and further relief as this Court deems proper and just.

⁶ JPMorgan's "Cross-claim" against the Cross-claim Defendants recounts alleged facts underlying this litigation and states that "a dispute has arisen between the parties as to their respective rights, duties, status and obligations under the Mortgage." The Cross-claim states no specific causes of action. In a "Wherefore" clause at the end of the Cross-claim, unattached to any cause of action, JPMorgan then requests a declaration concerning "the rights, duties, status and obligations under the Mortgage," as follows:

- a. that an Order enter that the Mortgage is valid;
- b. that an Order enter that the entire Property is subject to the Mortgage;

In addressing Ang's Motion for Partial Summary Judgment, this Court notes that the party alleging a forgery has the burden of proving it. See Wooddell v. Hollywood Homes, Inc., 105 R.I. 280, 286, 252 A.2d 28, 31 (1969). "Knowledge of the fact of forgery may be established by circumstantial evidence as well as by direct testimony." State v. Mulholland, 111 R.I. 154, 156, 300 A.2d 271, 272 (1973). Summary judgment shall properly enter where it is concluded that "no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law." Estate of Sheldon Malinou v. The Miriam Hospital, et al, 24 A.3d 497, 508 (2011).

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- c. that an Order enter that whatever interest Argo Investment Group (AIG), Ltd. may have in the Property is subject to the Mortgage;
 - d. that an Order enter that whatever interest BIEP, LLC may have in the Property is subject to the Mortgage;
 - e. that an Order enter that whatever interest Intermesh Group, Inc. a/k/a The Intermesh Group, Ltd. may have in the Property is subject to the Mortgage;
 - f. that an Order enter that whatever interest MFG, Ltd. Commercial Bancorp, a/k/a MFG, Ltd. may have in the Property is subject to the Mortgage;
 - g. that an Order enter that imposes a constructive trust on the Property with respect to the amounts due under the Note;
 - h. that an Order enter that JPMorgan has an equitable lien against the Property to satisfy the amounts due under the Note;
 - i. that an Order enter that the defendant may proceed with foreclosure proceedings relative to the property; and
 - j. that the Court award such other and further relief as this Court deems proper and just.

⁷ The "Cross-claim Defendants" are: (1) Argo Investment Group (AIG), Ltd.; (2) BIEP, LLC; (3) Intermesh Group, Inc. a/k/a The Intermesh Group, Ltd.; and (4) MFG, Ltd. Commercial Bancorp, a/k/a MFG, Ltd.

Ang's Motion for Partial Summary Judgment to determine that the deed is a forgery rests only on Ang's own statements and testimony provided in this case. Specifically, she relies on her deposition testimony from June 15, 2007 and April 15, 2011. She also relies on sworn testimony that she provided in the Superior Court. In addition, she relies on her First Affidavit in which she claimed that the deed was forged. JPMorgan does not admit that the deed in question was forged, but it has not objected to Ang's claim of forgery nor has it contradicted any of her sworn statements with any other sworn testimony or evidence. Spidalieri, who might have knowledge pertinent to this issue, has been defaulted.

While the failure of JPMorgan to raise a genuine issue of material fact as to forgery might, at first blush, appear to entitle Ang to summary judgment on her request for a declaratory judgment establishing that the February 2006 deed is forged, this Court declines to so rule on the state of this record. JPMorgan inexplicably appears to have no interest in either disproving the forgery or admitting that the deed is forged. In addition, Ang has the burden of proving the forgery, which ultimately may depend, at trial, on her credibility as well as expert handwriting analysis and other evidence. While she has testified that the signature on the deed in question is not hers, she has not excluded the possibility that the deed was signed by someone else at her direction or with her consent. She has not sought to reconcile the apparent similarity between that signature and her signature on other documents that she does not claim were forged. Based on her prior sworn statements alone, and given the inconsistencies in her affidavits and the absence of a fully developed trial record, this Court is not prepared to find, on the state of this record, that she has proven forgery, by a preponderance of the evidence, as a matter of law. See Kevorkian v. Glass, 913 A.2d 1043, 1050 (R.I. 2007) (quoting Fatone, 104 R.I. 426, 244 A.2d 848 (1968) (quoting Barron & Holtzoff, Federal Practice & Procedure, § 1232.2 at 78 (1967

Supp.))) (“A court should be cautious in granting a motion for summary judgment where state of mind is involved, or where the facts are peculiarly in the knowledge of the moving party . . .”).

Moreover, even assuming that Ang has proven that her signature on the 2006 deed was forged, this Court does not find that JPMorgan is necessarily forestalled from protecting and enforcing its interest in the Block Island Real Estate on the basis of equitable subrogation. Numerous cases support the proposition that where a loan has been obtained by means of a fraudulent mortgage instrument, and the proceeds used to pay off existing encumbrances against the property, the mortgagee under the void mortgage is entitled, in the absence of countervailing equities, to be subrogated to the right of the prior mortgagee. See, e.g., Home Owners’ Loan Corp. v. Papara, 3 N.W.2d 730, 733 (Wis. 1942) (“[E]quity will protect one advancing money secured by a forged mortgage to pay an existing valid lien.”); Equitable Life Assur. Soc. v. McFadden, 72 P.2d 795, 797 (Okla. 1937) (“In the absence of any countervailing equities, one who makes a loan upon a forged real estate mortgage is upon the principle of subrogation entitled to subject the land to the repayment to him of such part of the money lent, as was used in taking up existing valid liens.”); Kusky v. Staley, 28 P.2d 728 (Kan. 1934) (“[I]f money is loaned on a forged mortgage, supposed to be valid, to be used, and which was used, to pay off a valid mortgage, the mortgagee or his assignee may be subrogated to the rights of the prior mortgagee, if there are no intervening liens or encumbrances.”). Yet, it is premature for this Court to address the issue of equitable subrogation as well as the Motion for Partial Summary Judgment filed by JPMorgan, which seeks much broader declaratory and equitable relief than the parties have addressed in their memoranda or than is justified on the state of this record. If the February 2006 Deed is determined not to be forged or if Ang fails to prove forgery by a

preponderance of the evidence, then it would be unnecessary for the Court to reach the issues raised in JPMorgan's Motion for Partial Summary Judgment.

Accordingly, Ang's Motion for Partial Summary Judgment is denied. JPMorgan's Motion for Partial Summary Judgment is also denied, without prejudice. Counsel shall confer and submit to this Court forthwith for entry an Order that is consistent with this Decision.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Michelle Ang v. Hugo Spidalieri; Intermesh Group, Inc. a/k/a The Intermesh Group, Ltd.; MFG, Ltd. Commercial Bancorp a/k/a MFG, Ltd.; Washington Mutual Bank, F.A.; Argo Investment Group (AIG), Ltd.; JPMorgan Chase Bank, N.A.; BIEP, LLC; and Louis Marandola

CASE NO: WC 2006-0569

COURT: Providence Superior Court

DATE DECISION FILED: August 6, 2013

JUSTICE/MAGISTRATE: Savage, J.

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