

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

Ciappa Construction, Inc. and)	
Michael Ciappa)	
)	
v.)	C.A. No. 05L-07-035
)	
Innovative Property Resources, LLC,)	
Jonathan Quinn, Christina Quinn,)	
Lewis Quinn, and Connie Quinn)	
)	
Wells Fargo Bank, N.A. DBA)	CONSOLIDATED
Americas Servicing Company,)	
Assignee of Mortgage Electronic)	
Registration Systems, Inc. as)	
Nominee for Cardinal Financial)	
Company, Limited Partnership)	
)	
v.)	C.A. No. 09L-06-047-JRJ
)	
Lewis B. Quinn, Jr. and)	
Stephen R. Davis)	

Submitted: December 17, 2009

Decided: March 29, 2010

Corrected and Amended: June 23, 2010, July 14, 2010

Upon Plaintiff's Motion to Dismiss Intervenor's Claim Against Plaintiff:
DENIED

Upon Intervenor's Motion for Summary Judgment Against Defendant Lewis Quinn:
GRANTED

Upon Michael Ciappa's Motion to Require Lewis Quinn to Satisfy Judgment or Stay Execution: **GRANTED**

OPINION

Douglas A. Shachtman, Esquire, The Shachtman Law Firm, 1200 Pennsylvania Avenue, Suite 302, Wilmington, Delaware, 19806, Attorney for Ciappa Construction Inc. and Michael Ciappa

Thomas D. Barnett, Esquire, Law Office of Thomas Barnett, 512 East Market Street, Georgetown, Delaware, 19947, Attorney for Wells Fargo Bank, N.A.

William W. Erhart, Esquire, 800 North King Street, Suite 303, Wilmington, Delaware, 19801, Attorney for Innovative Property Resources, LLC

John Work, Esquire, Law Office of John V. Work, P.A., 800 N. King St., Suite 303, Wilmington, DE 19801, Attorney for Lewis B. Quinn and Stephen R. Davis

Jurden, J.

Before the Court are three motions: (1) Plaintiff's Motion to Dismiss Intervenor's Claim Against Plaintiff (the "Motion to Dismiss Intervenor's Claim"); (2) Intervenor's Motion for Summary Judgment against Defendant Lewis Quinn ("Intervenor's Motion for Summary Judgment"); and (3) Michael Ciappa's Motion to Require Lewis Quinn to Satisfy Judgment or Stay Execution ("Motion to Satisfy or Stay") The first two motions relate to *Wells Fargo v. Lewis Quinn, Jr. and Stephen R. Davis; with Ciappa Construction, Inc. as Intervenor*, C.A. No. 09L-06-047; the third motion relates to *Ciappa Construction, Inc. and Michael Ciappa v. Innovative Property Resources, LLC, et al.*, C.A. No. 05L-07-035. Pursuant to Superior Court Civil Rule 42(a), the Court is consolidating these two actions under C.A. No. 05L-07-035 (the "Consolidated Cases").

The facts which underlie this dispute were determined previously by this Court. Lewis Quinn ("Quinn"), Innovative Property Resources ("IPR"), and Michael Ciappa ("Ciappa") and his construction company Ciappa Construction, Inc. ("CCI," and collectively with Ciappa, "Plaintiffs"), have been fighting for years.

The motions *sub judice* present the following questions for the Court to decide: (1) whether CCI has standing to pursue claims against Wells Fargo related to a mortgage Wells Fargo insisted that CCI pay off in order for CCI to be able to convey property it owned to a third party, bona fide purchaser (the "Wells Fargo

Mortgage Payoff’); (2) whether Ciappa has a valid claim against Quinn for the Wells Fargo Mortgage Payoff since that mortgage was originally taken out and guaranteed by Quinn, and (3) whether Quinn has the right to collect the on a judgment Ciappa owes Quinn before it is determined whether Quinn has liability for the Wells Fargo Mortgage Payoff. For the reasons that follow, the Court finds that CCI is entitled to judgment from Quinn in the full amount of the Wells Fargo Mortgage Payoff, and that CCI has the option of deducting from the judgment the amount Ciappa owes to Quinn, provided that the decision is made within 30 days of this Opinion. Thus, Intervenor’s Motion for Summary Judgment and the Motion to Stay or Satisfy are **GRANTED**.

As to the Motion to Dismiss Intervenor’s Claim, Wells Fargo seeks to have this Court dismiss Plaintiffs’ claims against it for the same reasons that it initially opposed CCI’s motion to intervene. Basically, Wells Fargo argues that CCI lacks standing to assert the claims it has raised against Wells Fargo. For the same reasons that the Court allowed CCI to intervene, the Court finds that CCI has standing to assert claims against Wells Fargo until Quinn satisfies the judgment related to this Opinion. In the event that Quinn does not satisfy the judgment, CCI will be free to pursue its claims against Wells Fargo. Thus, the Motion to Dismiss Intervenor’s Claim is **DENIED** for the time being.

BACKGROUND

On January 6, 2004 Lewis Quinn and Stephen R. Davis purchased 935 East Hazeldell Avenue, in New Castle Delaware (the “Property”) and financed the purchase with a Note for \$50,000 (the “Quinn Note”) from Cardinal Financial Company, which was later assigned to Wells Fargo Bank. The Quinn Note was secured by a mortgage on the Property (the “Quinn Mortgage”). Sometime thereafter, Quinn and Davis deeded the Property to Innovative Properties, LLC (“IPR”).¹ Lewis Quinn was one of four owners of IPR.²

IPR hired CCI to raze the existing structure on the Property and to build a new home. The Property was under contract to be sold to a third party but that buyer walked away from the settlement. IPR then transferred title to the Property to Jonathan and Christina Quinn, Lewis Quinn’s daughter and son-in-law. CCI brought suit against IPR for its construction costs and IPR filed counterclaims.

A bench trial was held in *Ciappa Construction, Inc. and Michael Ciappa v. Innovative Property Resources, LLC, et al.*, C.A. No. 05L-07-035 on August 18, 2006 and the Decision After Trial was rendered on October 19, 2006 (“*Ciappa I*”) and amended on December 8, 2006.³ In *Ciappa I*, the Court found that IPR contracted with CCI to raze and rebuild a home on the Property. A buyer offered to buy the Property and the new house but the buyer walked away because IPR did

¹ Stephen Davis’s name is on the Quinn Note and Quinn Mortgage and on the pleadings in this case, but he has not entered an appearance and no one has claimed that he remains liable for the debt. For the purposes of this opinion, it is assumed that Quinn is solely liable for the debt.

² The other owners of IPR were: Connie Quinn, Jonathan Quinn and Christina Quinn.

³ The Amended opinion was issued to correct a date on page 7 of the October 2006 opinion.

not agree with CCI's claimed construction costs.⁴ The Court held that CCI was entitled to full compensation for its mechanic's lien and certain provable lost profits. In connection with *Ciappa I*, Quinn claimed that it lent Ciappa \$30,000 towards construction costs and that such amount remained unpaid. Ciappa did not dispute its liability to Quinn for the \$30,000, and the Court therefore awarded Quinn the \$30,000.

In *Ciappa I*, the Court found that Jonathan Quinn was not a credible witness and that IPR's conduct in the litigation justified a departure from the traditional rule that each party bear its own attorney's fees. CCI was awarded reimbursement of its attorney's fees.

During the bench trial, no evidence was presented as to why the Quinn Note was not satisfied at the time that the Property was deeded to IPR, or when IPR deeded the Property to Lewis Quinn's son-in-law and daughter, Jonathan and Christina Quinn. Apparently, the Quinn Mortgage remained on the Property and the Quinn Note was not satisfied in connection with either of these title transfers. The Quinn Note and Mortgage are at the core of these Consolidated Cases.

The Facts Leading Up To The Current Disputes

IPR did not pay the judgment entered in *Ciappa I*, and CCI was forced to further engage counsel to collect the judgment which was attached to the Property.

⁴ See *Ciappa I* at 3.

In an attempt to satisfy its judgment, CCI filed for a Sheriff's sale of the Property. Days before the Sheriff's sale, Jonathan and Christina Quinn filed for bankruptcy, delaying the sale for months. Ultimately, CCI obtained relief from the stay and purchased the Property at Sheriff's sale on February 8, 2008. CCI financed the purchase with a loan from PNC. The Quinn Mortgage remained on the Property.

Apparently, payments on the Quinn Note were made from 2004 through October 2008. On May 29, 2009, Wells Fargo brought this action *in rem, sci fa. sur mortgage*, against Lewis B. Quinn, Jr. and Stephen R. Davis. Wells Fargo did not file against Quinn and Davis personally, and sought relief only against the Property that was then owned by CCI. To avoid losing the Property at a foreclosure sale, CCI sold the Property privately. In order to convey clear title, CCI had to pay the Wells Fargo Mortgage Payoff and thus satisfy the Quinn Note, and also pay off its PNC Loan at the settlement table. CCI's complaint against Wells Fargo raises claims related to the amount of the Wells Fargo Mortgage Payoff, including the fact that it was forced to pay a loan that Quinn was liable for and should have been paid in connection with the prior transfers of the Property, and asserts that Wells Fargo improperly inflated the payoff amount.

Had IPR paid the judgment from *Ciappa I*, CCI would not have needed to execute against the Property, with its title clouded by the Quinn Mortgage. Further, had payments continued on the Quinn Note, Wells Fargo may not have

sought its remedy against the Property. But IPR did not pay its judgment, CCI sought to satisfy the judgment through the only asset available to it, the Property, and several months later, loan payments ceased on the Quinn Note which was still secured by the Property.⁵

What was not before the Court at trial in *Ciappa I*, and what is before the Court now, is the liability for the Quinn Note – a Note that Quinn and Davis originally gave in connection with the loan they used to purchase the Property in 2004. It is not clear to the Court why the Quinn Mortgage was not required to be repaid when the title to the Property was transferred from Lewis and Davis to IPR, or from IPR to Jonathan and Christina Quinn. That issue may be considered as part of the Intervenor’s complaint.⁶

It is clear that Lewis Quinn and Stephen Davis were fully liable for the Quinn Note and that it was their responsibility to satisfy. The fact that CCI was required to pay off the Quinn Note to secure release of the Quinn Mortgage to convey the Property to a third party does not absolve Quinn and Davis of their liability. While the fact that CCI purchased the Property at Sheriff’s sale may mean that CCI’s title was clouded by the Quinn Mortgage, the Sheriff’s sale did

⁵ The record does not establish who made the payments on the Quinn Loan through October 2008. Neither party disputed the allegation in CCI’s papers that the payments on the Quinn Loan stopped in October 2008. That fact is undisputed for purposes of this Motion.

⁶ The Court realizes that some or all of Intervenor’s Claims against Wells Fargo will become moot once the judgment of this Court is satisfied, but until CCI is fully repaid, Wells Fargo may have liability to CCI to the extent that it allegedly overcharged or otherwise violated banking rules in connection with its collection of the repayment amount at the settlement table.

not relieve Quinn and Davis from their liability – indeed by virtue of equitable subrogation, Wells Fargo transferred its right to collect under the Quinn Note to CCI when it collected the money for the Quinn Note from CCI.

In his Motion to Dismiss, Quinn argues that CCI's complaint should be dismissed and that it is not entitled to summary judgment because CCI has not pled the elements of unjust enrichment. He argues that there is neither an enrichment or an impoverishment and therefore there is no relationship between the non-existent enrichment and impoverishment. Quinn further argues that granting the requested relief would be circumventing the well established law of Sheriff's sales. Quinn claims that because the Quinn Mortgage was on the Property at the time CCI acquired it at Sheriff's sale, CCI's price at Sheriff's sale reflected the price CCI was willing to pay for the Property, and CCI's purchase of the Property effectively transferred all of the burdens of that mortgage to CCI. In his response to Intervenor's Motion for Summary Judgment, Quinn argues that CCI has not established the elements of unjust enrichment and that CCI's reliance on the case of *Oldham v. Taylor*⁷ means that CCI is now seeking relief under an equitable subrogation theory. Quinn is asking this Court to narrowly read Plaintiffs' complaint and the law.

⁷ 2003 WL 21786217 (Del. Ch., Aug. 4, 2003).

Plaintiffs are entitled to the relief sought. CCI was not just any stranger to the Property who acquired property at Sheriff's sale. CCI was a builder who was not paid for his work on the Property and was looking to collect on its mechanic's lien judgment against the only asset readily available to it – the Property.

As far as which legal theory applies, at the outset, the Court notes that it really does not matter exactly how Plaintiffs may have styled their claim for relief – it is clear that it is seeking repayment of the loan they paid on Quinn's behalf. Nonetheless, the Court finds that Plaintiffs prevail under a theory of unjust enrichment, which the Restatement (Third) of Property makes clear includes equitable subrogation:

[S]ubrogation is appropriate to prevent unjust enrichment if the person seeking subrogation performs the obligation: (1) in order to protect his or her interest; (2) under a legal duty to do so; (3) on account of misrepresentation, mistake, duress, undue influence, deceit, or other similar imposition; or (4) upon a request from the obligor or the obligor's successor to do so, if the person performing was promised repayment and reasonably expected to receive a security interest in the real estate with the priority of the mortgage being discharged, and if subrogation will not materially prejudice the holders of intervening interests in the real estate.⁸

⁸ Restatement (Third) of Property § 7.6.

Subrogation is an equitable remedy which “when right and justice demand it the tendency is to extend, rather than restrict, its application.”⁹ A person is entitled to subrogation when one pays the debt of another at his direct or indirect request.¹⁰ Equitable subrogation is the substitution of another person in place of a creditor.¹¹ The doctrine of equitable subrogation is intended to remedy the unjust enrichment that occurs when one party pays off the debt of another.

In terms of the present case, Quinn has been unjustly enriched by CCI’s Wells Fargo Mortgage Payoff. CCI suffered an “impoverishment” when it had to seek a remedy against the Property to collect on the judgment of this Court in *Ciappa I*, when it sought relief from the bankruptcy court stay, and when it was required to pay-off the Quinn Loan to remove the Quinn Mortgage from the Property. And Quinn was certainly enriched when CCI paid his debt. CCI’s Wells Fargo Mortgage Payoff relieved Quinn of his obligations under the Quinn Note. The payment of the mortgage was the enrichment and the impoverishment. Plaintiffs are entitled to a remedy.

Under equitable subrogation, because it paid the Quinn Note, CCI’s name is substituted for that of Wells Fargo on the Quinn Note. Quinn now owes the debt to

⁹ *Eastern States Petroleum Co., Inc. v. Universal Oil Products Co.*, 44 A.2d 11, 15 (Del. Ch. 1945).

¹⁰ *Id.* Giving Quinn’s argument the benefit of the doubt, he is asserting that CCI is not entitled to subrogation because it volunteered to buy the Property subject to the Quinn Mortgage “without invitation, compulsion or the necessity for self-protection” and therefore lacks standing for the equitable remedy of subrogation. *See id.* But CCI had to take the Property subject to the mortgage to protect its rights under *Ciappa I*, and thus, CCI was not a volunteer and did not preclude its right to subrogation when it purchased the Property at Sherriff’s sale.

¹¹ *Oldham*, 2003 WL 21786217, at *5 (citing *Eastern States Petroleum*, 44 A.2d at 15).

CCI to the same extent and under the same terms that Quinn previously owed the debt to Wells Fargo. Unfortunately for CCI, the debt is not secured by a mortgage on real property. The judgment of this Court, however, will attach to any property owned by Quinn in the State of Delaware from the time it is recorded.¹²

The next question is the amount of the judgment. The amount shall start at the exact amount of the Wells Fargo Mortgage Payoff plus interest from the date that amount was paid. However, since Ciappa owed money to Quinn, in the interest of simplicity and justice, the Court granted Plaintiffs the option of deducting the amount Ciappa owed to Quinn from the Quinn judgment. Plaintiffs elected the option and submitted a Form of Order which was approved by Quinn's counsel and which was entered as an Order of the Court on April 29, 2010.

CCI has the option to seek reimbursement for its reasonable attorney's fees incurred in connection with Ciappa's defense against Quinn's efforts to collect the \$30,000 against CCI when Quinn's judgment was only against Ciappa.

IT IS SO ORDERED.

Jan R. Jurden, Judge

¹² 10 *Del.C.* § 4901.