DISTRICT OF COLUMBIA
COURT OF APPEALS

In re MATTHEW LeFANDE	**19-BG-421**

RESPONSE TO MOTION FOR LEAVE

Attorney LeFande hereby replies to the Disciplinary Counsel's Motion for Leave, Disciplinary Counsel now offering a drastically revised recital of the events involving LeFande's participation in a real estate closing in Maryland. Disciplinary Counsel still doesn't quite get the facts right, and again makes allegations that aren't supported by any evidence whatsoever. Relying on documents produced by District Title in the District Court litigation, it now asserts that "LeFande assisted Mr. Day in transferring funds overseas before the district court issued the order enjoining Mr. Day from transferring or dissipating assets - but after District Title moved for the preliminary injunction." There is no evidence whatsoever that LeFande "assisted Mr. Day in transferring funds overseas". There is only evidence that LeFande drove a dying client to an unrelated real estate closing scheduled months earlier. District Title's own documents show that LeFande had no part in the transfer of the funds, other than to allegedly convey his client's wishes as to the disposition of the funds. *District Title v. Warren*, 14-cv-1808, ECF Docket # 94-5.

The attached documents demonstrate that the Maryland property was contracted for sale on September 19, 2014, ***at least five weeks before*** LeFande had made any

appearance in the *District Title* case. The transaction was scheduled for closing on October 30, 2014, but delayed when the buyer could not obtain sufficient financing for the appraised value. The price was reduced, and the closing rescheduled. Four and a half years later, LeFande has no independent recollection of the actual date he drove Day to Baltimore, and can find no records thereof, but the preprinted date of November 20, 2014 listed on the documents fell on a weekend when the title company was unlikely open, and not the same day as the actual closing. LeFande doesn't know the actual closing date, but the parties were operating under a contract from months earlier, and Day was already obligated at that point to timely consummate the transaction.

As thoroughly detailed in the attached court filings of Quicken Loans, the lender for the buyer of the Maryland property, there was no legal encumbrance for Day's sale of the property until weeks or months later. LeFande had no part in this defense of the Maryland lawsuit, but the facts remain the same, there was nothing illegal whatsoever in Day's sale of a property that had nothing to do with the District of Columbia litigation. It was quite evident to any observer, including LeFande, that Day was close to death and he was in the process of winding up his earthly affairs.

What is absolutely certain is, the funds transferred from the Maryland real estate closing had no taint whatsoever of the District of Columbia transaction involving District Title and had nothing to do with Anita Warren. District Title's demand for LeFande's deposition was discovery in execution of Day's judgment after Day was long dead. The District Court lost all jurisdiction to conduct such discovery upon Day's death, had no authority to enter judgment against third parties, and there could be no suggestion of a violation of any court order in the transaction. There was no lawful right to conduct the

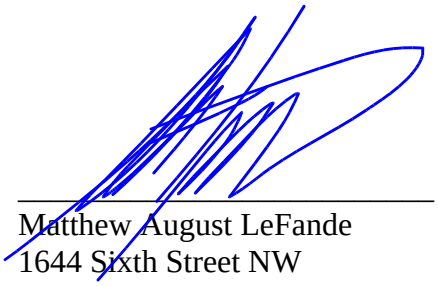
deposition by the District Court. Regardless of the *ex post facto* rationalization of the Circuit Court, which itself sidesteps the issue of jurisdiction, the District Court acted illegally, and LeFande was correct to refuse to take the stand. Years later, Day has never been substituted as a party defendant and the District Court continues to violate its own rules and statutory law by proceeding against Day in a matter that is solely under the authority of a probate court.

When the District Court switched horses and attempted to illegally bypass the probate rules regarding Day's judgment and use Warren to conduct discovery about Day, LeFande properly sought protection for the indigent Warren in bankruptcy. The District Court and District Title then both violated the automatic stay in bankruptcy and proceeded anyway. The Bankruptcy Trustee's final report as attached demonstrates no fraud or impropriety in Warren's bankruptcy. But for the fraudulent acts of District Title employing a Personal Representative for Warren ***to negotiate a settlement with itself,*** this case would be already fully administered and closed. It is a sad commentary on the priorities of the Disciplinary Counsel for it to continue to attack LeFande for his obviously lawful advocacy, when the remainder of this case is so absolutely permeated with fraud and misconduct perpetrated by other parties.

CONCLUSION

For these reasons, and for such other reasons as this court finds to be good and sufficient cause, Attorney Matthew LeFande should be immediately reinstated to the practice of law and this matter closed.

Respectfully submitted, this 18th day of June, 2019.



Matthew August LeFande
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Washington DC 20001
Tel: 202 657 5800
matt@lefande.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Response was served upon interested parties including disciplinary counsel via electronic filing this 18th day of June, 2019.

Matthew LeFande

MARYLAND ASSOCIATION OF REALTORS®

RESIDENTIAL CONTRACT OF SALE

This is a Legally Binding Contract; If Not Understood, Seek Competent Legal Advice

THIS FORM IS DESIGNED AND INTENDED FOR THE SALE AND PURCHASE OF IMPROVED SINGLE FAMILY RESIDENTIAL REAL ESTATE LOCATED IN MARYLAND ONLY. *FOR OTHER TYPES OF PROPERTY INCLUDE APPROPRIATE ADDENDA.*

TIME IS OF THE ESSENCE. Time is of the essence of this Contract. The failure of Seller or Buyer to perform any act as provided in this Contract by a prescribed date or within a prescribed time period shall be a default under this Contract and the non-defaulting party, upon written notice to the defaulting party, may declare this Contract null and void and of no further legal force and effect. In such event, all Deposit(s) shall be disbursed in accordance with Paragraph 19 of this Contract.

1. DATE OF OFFER: 09/19/2014
2. SELLER: Timothy W Day
3. BUYER: Matthew Ashburn

4. PROPERTY: Seller does sell to Buyer and Buyer does purchase from Seller, all of the following described Property (hereinafter "Property") known as 12390 Point Lookout Road located in Scotland CITY, Maryland, Zip 20687 together with the improvements thereon, and all rights and appurtenances thereto belonging.

5. ESTATE: The Property is being conveyed: [x] in fee simple or [ ] subject to an annual ground rent, now existing in the amount of _____ Dollars ($_____) payable semi-annually, as now or to be recorded among the Land Records of _____ CITY/COUNTY, Maryland.

6. PURCHASE PRICE: The purchase price is ~~One Hundred~~ Eighty-nine Thousand and 00/100 _____ Dollars ($ ~~100,000.00~~ 89,000). MMA

7. PAYMENT TERMS: The payment of the purchase price shall be made by Buyer as follows:
(a) An initial Deposit by way of check, in the amount of One Thousand and 00/100 _____ Dollars ($ 1,000.00) at the time of this offer.
(b) An additional Deposit by way of na, in the amount of Zero and 00/100 _____ Dollars ($ 0.00) to be paid na _____
(c) All Deposits will be held in escrow by: Action Settlement Group
(If not a Maryland licensed real estate broker, the parties may execute a separate escrow deposit agreement.)
(d) The purchase price less any and all Deposits shall be paid in full by Buyer in cash, wired funds, bank check, certified check or other payment acceptable to the settlement officer at settlement.
(e) Buyer and Seller instruct broker named in paragraph (c) above to place the Deposits in: **(Check One)**
[x] A non-interest bearing account
OR [ ] An interest bearing account, the interest on which, in absence of default by Buyer, shall accrue to the benefit of Buyer. Broker may charge a fee for establishing an interest bearing account.

8. SETTLEMENT: Date of Settlement ~~October 30, 2014~~ NOVEMBER 20, 2014 MMA or sooner if agreed to in writing by the parties.

9. FINANCING: Buyer's obligation to purchase the Property is contingent upon Buyer obtaining a written commitment for a loan secured by the Property as follows:

(Check) [x] Conventional Loan as follows:
Loan Amount $ 85,000.00
Term of Note 30 Years
Amortization 30 Years
Interest Rate 4 %
Loan Program conv
Loan Origination/Discount Fees (as a % of loan amount)
Buyer agrees to pay 0 %;
Seller agrees to pay ~~3~~ 0 %. MMA
Buyer shall receive the benefit of any reduction in fees.

[ ] FHA Financing Addendum
[ ] Gift of Funds Contingency Addendum
[ ] Owner Financing Addendum
[ ] VA Financing Addendum
[ ] Assumption Addendum
[ ] OTHER _____
[ ] No Financing Contingency

Buyer MA / _____ Seller _____ / _____

IN THE CIRCUIT COURT FOR SAINT MARY'S COUNTY, MARYLAND

DISTRICT TITLE, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 18-C-15-000820-ER
	)	
TIMOTHY DAY, et al.,	)	
	)	
Defendants.	)	
	)	

MOTION OF DEFENDANTS MICHAEL LYON, QUICKEN LOANS INC., AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., TO DISMISS PLAINTIFF'S VERIFIED COMPLAINT

Defendants, Michael Lyon, Quicken Loans Inc., and Mortgage Electronic Registration Systems, Inc. (collectively, "Moving Defendants"), by counsel, hereby submit their Motion to Dismiss Plaintiff's Verified Complaint pursuant to Md. Rule 2-322(b)(2) for failure to state a claim upon which relief can be granted. In support thereof, Moving Defendants incorporate the accompanying Statement of Grounds and Authorities. A proposed Order is attached.

REQUEST FOR HEARING

Moving Defendants request a hearing on their Motion pursuant to Md. Rule 2-311(f).

Respectfully submitted,

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Counsel for Defendants Michael Lyon, Quicken Loans Inc., and Mortgage Electronic Registration Systems, Inc.

ATTORNEY CERTIFICATION OF ADMISSION

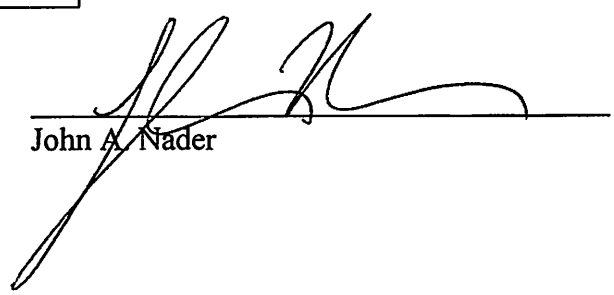
Pursuant to Maryland Rule 1-313, I hereby certify that I am a member of the Maryland Bar, I am in good standing, and that I am authorized to practice law in the State of Maryland.

John A. Nader

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2015, I served a copy of the foregoing Motion to Dismiss on:

David H. Cox, Esq. Brian W. Thompson, Esq. Nathan J. Bresee, Esq. Jackson & Campbell, P.C. 1120 20th Street, N.W. Washington, D.C. 20036 *Counsel for Plaintiff, District Title, Inc.*	Timothy Day 3 Boston Drive Berlin, MD 21811 *Defendant*
Matthew Ashburn 1412 Morse Street, N.E. Washington, D.C. 20002 *Defendant*	



John A. Nader

IN THE CIRCUIT COURT FOR SAINT MARY'S COUNTY, MARYLAND

DISTRICT TITLE, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 18-C-15-000820-ER
	)	
TIMOTHY DAY, et al.,	)	
	)	
Defendants.	)	
	)	

STATEMENT OF GROUNDS AND AUTHORITIES IN SUPPORT OF MOTION OF DEFENDANTS MICHAEL LYON, QUICKEN LOANS INC., AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. TO DISMISS PLAINTIFF'S VERIFIED COMPLAINT

Defendants Michael Lyon ("Lyon"), Quicken Loans Inc. ("Quicken Loans"), and Mortgage Electronic Registration Systems, Inc. ("MERS") (collectively, "Moving Defendants"), hereby submit this Statement of Grounds and Authorities in support of their Motion to Dismiss. A proposed Order is attached.

I. INTRODUCTION

This case arises from a mistake made by Plaintiff, District Title, Inc. ("District Title"), in wiring money to the wrong person. District Title has since commenced multiple civil actions to attempt to rectify its own mistake and to recover the allegedly misdirected money, with this action being the most recent. The claims now asserted against Moving Defendants, however, fail as a matter of law.

District Title contends that Defendant, Timothy Day ("Day"), fraudulently conveyed the property located at 12930 Point Lookout Road, Scotland, MD 20687 (the "Scotland Property"), to Defendant Matthew Ashburn ("Ashburn"), for purposes of hindering, delaying or defrauding District Title, an alleged creditor of Day's. Ashburn purchased the Scotland Property from Day

with the proceeds of a loan from Quicken Loans. The loan is secured by a deed of trust for which Lyon is the trustee, and MERS is the named beneficiary as nominee for Quicken Loans, its successors and assigns.

With respect to the Moving Defendants, District Title asserts three claims: Count I (Fraudulent Conveyance); Count III (Declaratory Judgment); and Count V (Equitable Relief). District Title seeks an order declaring that the sale of the Scotland Property from Day to Ashburn was fraudulent and should be set aside; setting aside the deed of trust; awarding District Title unspecified monetary damages, attorneys' fees and costs; and subordinating the deed of trust to any judgment District Title may receive in this action.

District Title's Complaint fails to state a claim upon which relief may be granted against Moving Defendants, and the Court should dismiss those claims pursuant to Rule 2-322(b). As explained below, Quicken Loans was a *bona fide* purchaser for value, because as a matter of law, it lacked either actual or constructive notice of the claims allegedly affecting title to the Scotland Property. District Title's claims against Moving Defendants are foreclosed by the Court of Appeals of Maryland's decision in Greenpoint Mortg. Funding, Inc. v. Schlossberg, 390 Md. 211 (2005). In short, District Title's failure to record and index a notice of *lis pendens* is fatal to its claim that Moving Defendants had notice of Plaintiff's purported claims relating to the Scotland Property. Second, the Complaint does not state a viable cause of action for fraudulent conveyance against Moving Defendants under Maryland law. Finally, District Title presents no valid reasons to set aside the deed of trust, or to subordinate it to any judgment District Title could obtain. As such, District Title's claims against Moving Defendants fail as a matter of law, and those claims should be dismissed with prejudice.

II. FACTUAL AND PROCEDURAL HISTORY

As pertinent to this motion, District Title contends that on May 25, 1976, Anita K. Warren ("Warren") and William Day, Jr. purchased property in the District of Columbia located at 3205 7th Street, N.E. (the "D.C. Property"). (Compl. at ¶ 10.) On January 11, 2008, William Day, Jr. obtained a $544,185.00 loan from Wells Fargo Bank, N.A. (the "Reverse Mortgage"), secured by deeds of trust recorded against the D.C. Property in favor of Wells Fargo and the Department of Housing and Urban Development. (Id. at ¶¶ 11-12.)

On December 22, 2012, William Day, Jr. allegedly died, and Anita K. Warren became the sole owner of the D.C. Property. (Compl. at ¶ 13.) Warren then allegedly agreed to sell the D.C. Property to a third-party, 3205 7th Street, LLC, for $500,000.00. (Id. at ¶ 14.)

On July 11, 2014, the closing for the sale of the D.C. Property was conducted by District Title. (Compl. at ¶ 16.) District Title contends that at closing, it erroneously failed to include a $293,514.44 line item in the settlement documents, which was intended to satisfy the Reverse Mortgage loan, and which would then result in the release of the underlying deeds of trust. (Id. at ¶ 17.) Instead of paying off Wells Fargo, however, District Title instead mistakenly wired $293,514.44 to an account held by Warren. (Id.)

District Title alleges that Warren and her son, Defendant Timothy Day, then conspired to "convert" the misdirected funds from District Title for their own use. (Compl. at ¶¶ 17 and 18.) District Title contends that Day controlled Warren's financial affairs, and that at Day's direction, Warren allegedly wired the converted funds into an account which Day controlled. (Id. at ¶¶ 20 and 21.) According to District Title, rather than repaying it the $293,514.44, Day and Warren instead used that money to purchase other Maryland properties, along with other personal items. (Id. at ¶¶ 22-25.)

A series of lawsuits followed. First, on September 2, 2014, District Title filed an action in the Superior Court of the District of Columbia against Day and Warren, asserting claims for breach of contract and conversion (the "D.C. Litigation"). (Compl. at ¶ 27.) The D.C. Litigation was subsequently removed to the United States District Court for the District of Columbia, where it was assigned Case No. 1:14-cv-1808. (Id.) The land records show that District Title never filed a notice of *lis pendens* of the D.C. Litigation. On December 15, 2014, the federal District Court entered a preliminary injunction order (the "Preliminary Injunction Order"), against Day and Warren. Among other things, the Preliminary Injunction Order barred Day and Warren from further use of the allegedly converted funds, and barring the transfer or sale of any real property. (Id. at ¶ 30 and Ex. 13.) The Preliminary Injunction Order was recorded, but as explained below, it was recorded ***after*** Quicken Loans obtained and recorded the deed of trust.

On November 5, 2014, District Title filed a Complaint for Injunction in this Court against Day, titled District Title, Inc. v. Timothy Day, Case No. 18-C-14001637 (the "St. Mary's County Litigation"). A true and correct copy of the complete case record of the St. Mary's County Litigation is attached hereto as Exhibit "A".[1] In that action, District Title sought to enjoin Day from disposing of any real property located in the county, including the Scotland Property. (Ex. "A" at p. 14-16.) District Title also sought to establish an equitable lien against the Scotland Property. (Id. at p. 16.) Again, the land records show that District Title never filed a notice of *lis pendens* of the St. Mary's County Litigation. Ultimately, due to District Title's failure to timely serve Day with process, this Court dismissed that action pursuant to Md. Rule 2-507(b) on April 24, 2015.

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[1] The Court may consider the pleadings from the St. Mary's County Litigation in considering this motion to dismiss. See Lerner v. Lerner Corp., 132 Md.App. 32, 40-41 (2000) (taking judicial notice of circuit court records in related litigation, and noting that Md. Rule 5-201(b) permits a court to take judicial notice of facts that readily can be determined by examination of a source whose accuracy account be questioned, including "facts relating to the records of the court").

Day became the record owner of the Scotland Property – the property at issue in this case – back in 2008, by virtue of a June 18, 2008 deed from Warren to Day. A true and correct copy of the June 18, 2008 deed is attached hereto as Exhibit "B."[2] Therefore, Day was the owner of the Scotland Property before the dispute with District Title began in 2014. On November 20, 2014, Day sold the Scotland Property to Ashburn for $89,000.00. (Compl. at ¶ 38.) This was ***before*** the court in the D.C. Litigation entered the Preliminary Injunction Order. (Id. at ¶ 31 and Ex. 3.) Ashburn purchased the Scotland Property using the proceeds of a loan he obtained from Quicken Loans. (Id. at ¶ 38.) The loan was secured by a deed of trust (the "Deed of Trust"), on the Scotland Property, which named Lyon as the trustee, and MERS as the named beneficiary as nominee for Quicken Loans, its successors and assigns. (Id. at ¶ 36.) A true and correct copy of the Deed of Trust is attached hereto as Exhibit "C."

The timing and sequence of events is important to this motion. The Deed of Trust on the Scotland Property was recorded in the land records for St. Mary's County on January 13, 2015. (Compl. at ¶ 39.) District Title did not record the Preliminary Injunction Order from the D.C. Litigation in the land records of St. Mary's County until January 23, 2015 – two months ***after*** the sale of the Scotland Property, and ten days ***after*** the Deed of Trust was recorded. (Id. at ¶ 38.) On June 17, 2015, District Title filed this action. On August 19, 2015, this Motion followed.

For the Court's reference, the pertinent chronology is as follows:

- June 18, 2008 – Day becomes the record owner of the Scotland Property;
- July 11, 2014 – District Title conducts the closing for the sale of the D.C. Property. District Title erroneously wires the funds intended to pay off Wells Fargo to Warren;

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[2] See Lerner, 132 Md.App at 40-431 (noting that Md. Rule 5-201(b) permits a court to take judicial notice of facts that readily can be determined by examination of a source whose accuracy account be questioned, including "facts relating to the records of the court").

- September 2, 2014 – District Title files the lawsuit that becomes the D.C. Litigation (no notice of *lis pendens* is filed);
- November 5, 2014 – District Title files the St. Mary's County Litigation (no notice of *lis pendens* is filed);
- November 20, 2014 – Day sells the Scotland Property to Ashburn, and Ashburn signs the Deed of Trust in connection with the loan from Quicken Loans;
- December 15, 2014 – Court in the D.C. Litigation enters the Preliminary Injunction Order;
- January 13, 2015 – Deed of Trust on the Scotland Property is recorded in the land records for St. Mary's County;
- January 23, 2015 – District Title records the Preliminary Injunction Order from the D.C. Litigation; and
- April 25, 2015 – The St. Mary's County Litigation is dismissed for lack of timely service pursuant to Md. Rule 2-507(b).

III. LEGAL ARGUMENT

A. Standard of Review

A motion to dismiss is properly granted if a complaint does not disclose, on its face, a legally sufficient cause of action. Md. Rule 2-322(b)(2); Allied Inv. Corp. v. Jasen, 123 Md.App. 88, 96 (1998). A complaint fails to state a claim when, even if the allegations of the complaint are true, the plaintiff nevertheless is not entitled to relief as a matter of law. Ricketts v. Ricketts, 393 Md. 479, 491 (2006); Lubore v. RPM Associates, Inc., 109 Md.App. 312, 322 (1997), *cert. denied*, 343 Md. 565. When considering a motion to dismiss for failure to state a claim, the court only examines the sufficiency of a pleading, and assumes the truth of all of the well-pled facts in the complaint and attached exhibits, and the reasonable inferences drawn from them. Lubore, 109 Md.App. at 322; and 120 West Fayette St., LLP v. Mayor and City Council of Baltimore, 407 Md. 253, 261 (2009). A plaintiff, to withstand a motion to dismiss for failure

to state a claim, must allege facts with specificity; "bald assertions and conclusory statements . . . will not suffice." Bobo v. State, 346 Md. 706, 708-709 (1997).

B. Moving Defendants Are Protected Under The *Bona Fide* Purchaser Doctrine.

The claims asserted against Moving Defendants fail as a matter of law because Moving Defendants are entitled to the protections of *bona fide* purchasers for value. Quicken Loans gave value in the form of a loan to Ashburn, secured its interest in the Scotland Property through the Deed of Trust, and it did so without notice knowledge of Day's alleged fraud or the then-pending litigation. MERS and Lyon are also entitled to *bona fide* purchaser status because the Moving Defendants are similarly situated relative to their respective interests in the Scotland Property. MERS is Quicken Loans' nominee under the Deed of Trust, and therefore the secured party on Quicken Loans' behalf. Lyon is the trustee named in the Deed of Trust. The property interest implicated in this action affects all three Moving Defendants based on their respective interests in the property as stated in the Deed of Trust.

It is a "well-settled principle that one who purchases real property without notice of prior equities is protected as a *bona fide* purchaser for value." Frederick Ward Assocs. v. Venture, Inc., 99 Md.App. 251, 256 (1994). In In re People's Banking Co. v. Fidelity & Deposit Co., 165 Md. 657 (1934), the Court of Appeals identified the essential elements of an "innocent purchaser":

> (a) That he [or she] must have given value for the property; (b) that he [or she] must have dealt in good faith with respect to the purchase; and (c) without notice or knowledge of any infirmity in the title of his [or her] vendor.

Id., 165 Md. at 664. Similarly, in Westpark, Inc. V. Seaton Land Co., 225 Md. 443 (1961), the Court of Appeals stated:

> [t]he general rule is that a purchaser of real estate takes subject to outstanding equitable interests in the property, which are enforceable against him [or her] to

> the same extent they are enforceable against the vendor, where the purchaser is not entitled to protection as a *bona fide* purchaser, and one who purchases the equitable title to real estate is not protected as a *bona fide* purchaser where he [or she] receives notice of a prior equity before he [or she] acquires the legal title; or where he [or she] receives notice before he [or she] has paid all or substantially all of the purchase price.

Id., 225 Md. at 450.

Lenders who secure their interest with a mortgage or deed of trust (as Quicken Loans did here), are entitled to protections available to *bona fide* purchasers for value, where such lenders were without notice of the mortgagor's allegedly fraudulent conduct. Washington Mut. Bank v. Homan, 186 Md.App. 372, 390 (2009). In Silver v. Benson, 277 Md. 553 (1962), the Court of Appeals observed that "a mortgagee not a party to the fraud is entitled to the protection afforded a bona fide purchaser by a court of equity, to the extent of his [or her] interest." Id., 277 Md. at 560. See also Homan, 186 Md. at 392 (citing Life Sav. & Loan Assoc. of Am. v. Bryant, 125 Ill.App.3d 1012 (1984) ("A mortgagee of realty is regarded as a purchaser, and, if the mortgage is supported by consideration and is taken in good faith, the mortgagee will be protected against adverse claims of which it has no notice. Where, however, the mortgagee, at the time of taking the mortgage, has knowledge or legal notice of a prior conveyance, it is not entitled to the protection of a *bona fide* purchaser"); Blaise v. Ratliff, 672 S.W.2d 683, 688 (Mo. Ct. App. 1984) ("A bank that loans money to a customer and takes a Deed of Trust to secure that loan, although technically speaking is not a *bona fide* purchaser for value because it purchases nothing, is in effect an innocent purchaser for value as the result of its loan on the property. A mortgagee of real property is regarded for some purposes as a purchaser and is entitled to the same protection given a *bona fide* purchaser if it meets certain tests.")

Here, Quicken Loans gave value for the Deed of Trust by extending Ashburn a loan in the amount of $89,100. (Compl. at ¶¶ 37-38; and Ex. C.) As a result, the "value" requirement of

the *bona fide* purchaser doctrine is easily satisfied. District Title does not allege otherwise in the Complaint.

Instead, District Title appears to suggest that Moving Defendants had knowledge of the dispute between District Title and Warren and Day. The Complaint does ***not*** allege that Moving Defendants had "actual" knowledge of the dispute, any alleged fraud, or the impact on the Scotland Property. Rather, District Title suggests that Moving Defendants had "constructive" knowledge of the dispute by virtue of the St. Mary's County Litigation or the D.C. Litigation, to which Moving Defendants were not even parties. (Compl. at ¶ 35.)

As explained below, any suggestion that Moving Defendants had constructive notice of alleged fraud committed by Warren and Day, or the litigation purporting to cloud title to the Scotland Property, fails as a matter of law. As the Court of Appeals held in Greenpoint, to provide constructive notice of litigation affecting real property, a notice of *lis pendens* must be recorded and indexed in the land records. Id., 390 Md. 211. Without recordation and indexing, the mere filing of a complaint, without more, does not provide notice of a pending action. Id., 390 Md. at 324-325. Because District Title did not record a *lis pendens*, Moving Defendants are *bona fide* purchasers for value of the Scotland Property without notice of District Title's claims. Accordingly, the Complaint against Moving Defendants must be dismissed with prejudice.

1. District Title's failure to record a *lis pendens* is fatal to its claims against moving defendants.

The crux of District Title's argument is that the mere filing of Complaints in the St. Mary's and D.C. Litigation[3] was enough to operate as a *lis pendens* of its claims against Warren

[3] As explained more fully in §B(2) below, District Title cannot rely on litigation filed ***outside*** Maryland as somehow providing notice to Moving Defendants of a dispute over land in Maryland. See Rule 12-102 (stating that it applies only to "an action filed in a circuit court or in the United States District Court for the District of Maryland that affects title to or a leasehold interest in real property located in this State." Id. at § 12-102(a) ("Scope").

and Day. That argument fails as a matter of law because it is directly contrary to the controlling decision of the Court of Appeals in Greenpoint. Because District Title failed to record a *lis pendens* in connection with either the St. Mary's or D.C. Litigation, the Complaints filed in those actions were not sufficient to operate as constructive notice to Moving Defendants.

In Greenpoint, the Court of Appeals held that a notice of *lis pendens* must be recorded and indexed to effect constructive notice of claims against real property. Id., 390 Md. at 234-235. Greenpoint had its origins in a divorce action in Washington County between Moses Karkenny and Nahil Karkenny. Id. at 217. Receivers were appointed to preserve and liquidate the Karkennys' properties in Prince George's and Montgomery County. Id. The receivers filed notices of *lis pendens* in the Circuit Courts for Prince George's and Montgomery County, listing the real property which was subject to the divorce proceeding. Id. The notices were accepted for recording; however, the clerks failed to properly index them because they were indexed under the wife's name, rather than the husband's. Id. at 218. After the notices were recorded but indexed incorrectly, the husband encumbered two of the properties with deeds of trust which secured loans from lenders. Id.

The receiver filed an action for declaratory relief against the husband and the lenders. Greenpoint, 390 Md. at 218. The complaint included copies of the notices of *lis pendens* marked "filed" by the court clerks. The lenders sought judgments in their favor due to the mis-indexed notices of *lis pendens*. Id. at 219. The lenders argued that there was no way that they could have learned of the notices if they were mis-indexed. Therefore, they argued that they lacked notice of the wife's alleged interest in the properties, and that their deeds of trust were valid, enforceable, and superior to the wife's claims. Id. at 220.

The Circuit Court concluded that both deeds of trust were inferior in priority to the receivership. Greenpoint, 390 Md. at 221. The court relied solely on the language of Md. Rule 12-102(b), which states, in pertinent part, that "in any action to which the doctrine of *lis pendens* applies, the filing of the complaint is constructive notice of the *lis pendens* as to real property in the county in which the complaint is filed." The Circuit Court reasoned that the rule did not require the recording and indexing of a notice of *lis pendens* to establish constructive notice. Id. The lenders appealed, but before the Court of Special Appeals could consider the matter, the Court of Appeals granted *certiorari*. Id. at 215.

The Court of Appeals reversed the Circuit Court, and concluded that the Circuit Court erred in finding that mere filing of a notice of *lis pendens* pursuant to Rule 12-102(b) was sufficient to put the lenders on constructive notice of the divorce action. Id. The Court also held that the recorded but mis-indexed notices of *lis pendens* were a legal nullity because they were incapable of providing notice. Id.

The Court's reasoning in Greenpoint is directly applicable to this case. The receiver argued that because Rule 12-102 contains no express recording or indexing requirements, notice of *lis pendens* is perfected through the mere filing with the court. The Court of Appeals expressly rejected that argument. Instead, the Court concluded that the filing of notices of *lis pendens* under Rule 12-102 must be read in conjunction with Maryland's recording and indexing statutes. Greenpoint, 390 Md. at 229. Under Md. Code, Real Property, § 3-301(a), the clerk of the Circuit Court is obligated to "record every deed and other instrument affecting property in well-bound books to be named 'Land Records.'" Id. at 228-29 (emphasis omitted) (citations omitted). Further, under Md. Code, Real Property, §§ 3-302(a) the clerk must maintain a "full and complete general alphabetical index of every deed, and other instrument." Id. at 229

(emphasis omitted) (citations omitted). The Court held that if "any instrument affecting title to real property" must be recorded in land records, then it also must be indexed. Id. (emphasis omitted). As it relates to the filing of notices of *lis pendens* under Rule 12-102, the Court relied on that rule's stated purpose of providing constructive notice of any action that "affects title to . . . real property." Id. (citing Rule 12-102(a). As a consequence, the Court held that notices of *lis pendens* must be recorded and indexed to provide constructive notice to the world of litigation affecting real property. Id. As the Court stated:

> adoption of Rule 12-102, and its language as to filing, ***must be considered in light of the requirements of the statutes and common law it was intended to facilitate, and thus must be read broadly as incorporating the indexing (and other) requirements of the various statutes.***
>
> Were the court to hold that because the rule does not contain a direct indexing requirement, it affords notice without indexing, we in effect, would overrule the statutory requirement that instruments affecting title must be indexed. Such an interpretation would change the statutory requirements for the placing of notices, i.e., instruments affecting title to real property in the land records of a county and that they be indexed.

Greenpoint, 390 Md. at 229-230 (emphasis added). The Court then made its holding clear: "[t]oday, instruments affecting title, ***including notices of lis pendens are required to be recorded and indexed*** – the indexing provisions require that any instrument in land records must be indexed." Id. at 235 (emphasis added).

The Court also based its decision on the absurdity that would result if it held the other way – if the mere filing of a *lis pendens*, without recording or indexing, were sufficient to provide constructive notice under Rule 12-102. Without recording and correct indexing, a title examination would be impossible. Rather, it would require a complete review of ***all*** public records without a reference point – including Maryland's state and federal court dockets, and judgment indexes, for any action or instrument which might affect title. Greenpoint, 390 Md. at

236-237 ("The contrary position, *i.e.* indexing is not required, would result in millions of documents having to be reviewed to certify a clear title. It would be an impossible task. . . . Everything depends on indexing. Without indexing nothing works.").

In light of the Court's holding and reasoning in Greenpoint, District Title's claims against Moving Defendants fail as a matter of law. District Title relies on only the filing of the Complaints in the St. Mary's County and D.C. Litigation to argue that Moving Defendants had constructive knowledge of the dispute over the Scotland Property. That reasoning was rejected by Greenpoint. Rather, constructive notice under Rule 12-102 is conditioned on the proper recordation and indexing of a notice of *lis pendens*. Greenpoint, 390 Md. at 235. District Title failed to comply with this requirement. District Title does not allege that it recorded and indexed notices of *lis pendens* – or even copies of the Complaints from the St. Mary's County and D.C. Litigation – in the land records of St. Mary's County. Indeed, the land records for the Scotland Property confirm that no such notice was recorded and indexed. A true and correct copy of the complete land records for the Scotland Property are attached hereto as Exhibit D.[4] Accordingly, whether indexed under Day, Ashburn, or District Title, there is no record of a notice of *lis pendens* (with the exception of the Preliminary Injunction Order, which is irrelevant for purposes of providing constructive notice, a discussed in below § B.2, below). A true and correct copy of aforementioned search results are attached hereto as Exhibit E.[5] Because District Title failed to record and index the Complaints from St. Mary's County and D.C. Litigation, Moving Defendants did not have constructive notice of those actions, and there is no allegation that Moving Defendants had actual notice.

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[4] See Lerner, 132 Md.App. at 40-41 (2000) (providing for judicial notice under Md. Rule 5-201(b) relating to facts that readily can be determined by examination of a source whose accuracy account be questioned, including "facts relating to the records of the court," such as land records).

[5] See Id.

Nothing in Fishman v. Murphy ex rel. Estate of Urban, 433 Md. 534 (2013), requires a different result. Although the Court in Fishman concluded that a lender could not be a *bona fide* purchaser if it had constructive notice of a complaint pertaining to land, nothing in Fishman overturned or distinguished Greenpoint. Greenpoint still stands for the proposition that a *lis pendens* must be properly recorded and indexed to provide constructive notice. That issue was not discussed in Fishman – there was no argument on the issue of whether the underlying complaint was recorded and indexed. In fact, the opinions from both the Court of Special Appeals and the Court of Appeals suggest that the complaint was properly recorded. See Fishman, 207 Md.App. at 297 ("[the Estate] contends that the Lender would have gained notice of the existence of the Estate Lawsuit by the title search conducted before settlement or recordation of the []deed of trust . . . and, that the lender had . . . at a minimum, inquiry notice of the matter"); Fishman, 433 Md. at 556-557 (noting that perhaps, the lender should have investigated the land records more thoroughly before closing on the loan).

Further, Moving Defendants are not arguing that constructive notice under Rule 12-102 can never apply to *bona fide* purchasers, which was the issue in Fishman. Rather, the issue in this case is how that notice must be ***perfected***. Under Greenpoint, to perfect constructive notice under Rule 12-102, a notice of *lis pendens* must be properly recorded and indexed. Id., 340 Md. at 229-230. Because that did not happen here, there is no merit to District Title's argument that Moving Defendants had notice under Rule 12-102. As a result, Moving Defendants were *bona fide* purchaser for value, and the claims against them must be dismissed with prejudice.

2. Moving Defendants did not have actual or constructive knowledge of the Preliminary Injunction Order prior to the sale of the Scotland Property.

District Title also suggests that Moving Defendants had notice of the Preliminary Injunction Order from the D.C. Litigation, but the allegations of the Complaint demonstrate that this is false. The Property was sold to Ashburn on November 20, 2014. (Compl. at ¶ 38.) Plaintiff admits that the Preliminary Injunction Order was issued by the federal district court in the D.C. Litigation on December 15, 2015. (Id. at ¶ 30 and Ex. 13.) District Title further concedes that it waited until January 23, 2015 to record the Preliminary Injunction Order in the land records of St. Mary's County. (Id. at ¶ 36.) Therefore, Moving Defendants could not have had notice of the Preliminary Injunction Order before the sale of the Scotland Property. Because the Preliminary Injunction Order was not recorded and indexed before the Deed of Trust, it has no effect on Moving Defendants' status as *bona fide* purchasers for value.

In fact, neither District Title's amended complaint, nor its motion for preliminary injunction, in the D.C. Litigation expressly referred to the Scotland Property. True and correct copies of District Title's amended complaint, and its motion for preliminary injunction (without accompanying exhibits) are attached hereto as Exhibit "F" and "G". As recognized by the Court of Appeals in Greenpoint, the doctrine of *lis pendens* applies only to a proceeding ***directly relating*** to the thing or property in question. Id., 390 Md. at 223 (quoting Fiegley v. Fiegly, 7 Md. 537, 556 (1855) ("[t]he principle of *lis pendens* is that the specific property must be so pointed out by the proceedings as to warn the whole world that they meddle with it at their peril"). Nothing in the D.C. Litigation suggested that the Scotland Property was the object of or implicated in that action.

Finally, by its express terms, Rule 12-102 does not apply to actions initiated ***outside*** the State of Maryland. Rather, that rule applies only to "an action filed in a circuit court or in the United States District Court for the District of Maryland that affects title to or a leasehold interest in real property located in this State." Id. at § 12-102(a) ("Scope"). The D.C. Litigation was filed outside of the State of Maryland; therefore, Rule 12-102 has no application. A finding to the contrary would effectively create a rule that a party seeking to acquire an interest in land must search civil dockets in every state court, and every federal district of the United States, to look for actions that could potentially affect an interest in land in Maryland.

Accordingly, the Complaint fails as a matter of law against Moving Defendants, and should be dismissed with prejudice.

C. The Complaint Fails To State A Cognizable Claim Against Moving Defendants Under The Maryland Uniform Fraudulent Conveyance Act.

Not only are Moving Defendants protected as *bona fide* purchasers for value, each of the claims asserted against them fails on its merits.

In Count I, District Title purports to assert a claim against Moving Defendants based on the Maryland Uniform Fraudulent Conveyance Act, (Md. Code, Comm. Law, 15-201, *et seq.*) (the "MUFCA"). Count I fails as a matter of law. There are no bases alleged in the Complaint to support the conclusion that the sale of the Scotland Property by Day to Ashburn was fraudulent, or intended to hinder, delay, or defraud Day's purported creditor, District Title. Moreover, even if Day were District Title's supposed debtor (which, based on the facts alleged, he is not), Ashburn gave fair value in consideration for the purchase of the Scotland Property. The claim against Moving Defendants is then even more attenuated – Quicken Loans is even further removed from the chain of events, and gave fair consideration for the Deed of Trust through a loan to Ashburn.

To state a claim under the MUFCA, a creditor must show that a conveyance was made without fair consideration and either: (i) was committed by a person or entity who is or will be rendered insolvent by the conveyance (Md. Code, Comm. Law, § 15-204) (ii) was committed by a person or entity engaged or about to be engaged in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital (id. at § 15-206), or (iii) was committed by a person or entity who intends to or believes that he will incur debts beyond his ability to pay when he undertakes the conveyance. (Id. at § 15-205). See also In re Rood, 482 B.R. 132, 142-143 (D.Md. 2012), *aff'd* 532 Fed.Appx. 370, (4th Cir. 2013), *aff'd* 533 Fed.Appx. 228 (4th Cir. 2013). The MUFCA also imposes liability for conveyances made with actual intent to hinder, delay, or defraud present or future creditors, regardless of whether there was fair consideration for the transfer. Md. Code, Comm. Law, § 15-207. The only remedies available under MUFCA are that the creditor may seek to set aside the conveyance or levy or garnish the property transferred by the conveyance. See Id. at § 15–209; and Frain v. Perry, 92 Md.App. 605, 620 n. 7 (1992), *cert. denied*, 328 Md. 237 (1992) ("under Maryland law, once a conveyance is proven to be fraudulent, a creditor has the option of either having the conveyance set aside or attaching the property conveyed").

The Complaint does not appear to assert claims for fraudulent conveyances under §§ 12-204, 12-205 or 12-206 of the MUFCA. (Compl. at ¶ 44-53.) Instead, District Title alleges that the sale of the Scotland Property by Day to Ashburn was a fraudulent conveyance because (i) Ashburn and the Moving Defendants allegedly had actual or constructive knowledge of the D.C. Litigation and the St. Mary's County Litigation; (ii) Day intended to hinder, delay or defraud District Title; and (iii) the consideration paid by Ashburn was allegedly below the actual value of

the Scotland Property. (Compl. at ¶¶ 48-49.) None of these arguments supports a fraudulent conveyance claim against Moving Defendants.

First, as explained above, neither by November 5, 2014 (the filing of the St. Mary's County Litigation), nor by November 20, 2014 (the sale of the Scotland Property), was District Title a creditor of Day. Instead, District Title alleges that ***Warren***, Day's mother, was inadvertently wired the funds intended for Wells Fargo. (Compl. at ¶ 17.) District Title admits that it was not until December 15, 2014, that Day was under any order enjoining him from conveying any property, or using any personal funds. Therefore, at the time of the sale of the Scotland Property from Day to Warrant, District Title was ***not*** Day's creditor, nor was Day subject to any court order as it pertains to the Scotland Property.

District Title also contends that the consideration paid by Ashburn for the Scotland Property (based on loan proceeds from Quicken Loans), was "far below the actual value of the Property." (Compl. at ¶ 51.) The Complaint contains no factual basis to support this conclusory allegation, and as such, it cannot withstand this Motion to Dismiss. See Bobo, 346 Md. at 708-709 (in ruling on a motion to dismiss, "bald assertions and conclusory statements . . . will not suffice"). More importantly, mere inadequacy of price, without other circumstances, is not sufficient to establish fraud which would invalidate a conveyance as against creditors. See Fuller v. J.B. Brewster & Co., 53 Md. 35, 36 (1880) ("It may be easy to say as a matter of law, what disparity between the real value of the property and the consideration set forth in the deed shall constitute an inadequacy of consideration. This must depend upon the facts and circumstances of each particular case. We may safely say, however, that to justify the inference of fraud, ***the disparity must be so glaring as to satisfy the court that the conveyance was not made in good faith.***") (citations omitted) (emphasis added); City of Baltimore v. Williams, 6 Md. 235, 271

(1854) (finding that inadequacy of price is only a circumstance to be considered in connection with other proof); and Drury v. State Capital Bank of Easter Short Trust Co., 163 Md. 84 (1932) ("mere disparity between the real value of the property conveyed and the consideration does not constitute an inadequacy of consideration that would require the deed to be set aside, but, in equity, it would remain as security for the consideration to protect a bona fide grantee"). The Complaint lacks any basis to conclude that the $89,000.00 price was not fair consideration.

District Title also claims that Ashburn had actual or constructive knowledge of the St. Mary's County Litigation and the D.C. Litigation, and therefore, he did or should have known that Day was intending to defraud his District Title through the sale. (Compl. at ¶ 49.) First, this allegation is not based any well-pleaded facts which might otherwise cause the Complaint to survive a motion to dismiss. See Bobo, 346 Md. at 708-709. Instead, District Title couches this conclusion as fact by contending that Ashburn and Day were friends (id. at ¶ 40), and that a company allegedly controlled by Ashburn was represented by an attorney who represents Warren and Day in the D.C. Litigation. (Id. at ¶ 41.) None of those factors alone or taken together, support the conclusion that the sale of the Property was done with actual intent to hinder or delay District Title.

Moreover, Plaintiff does not allege that Ashburn also shared Day's intent to defraud District Title. Without an intention to defraud on the part of both Day (the grantor), and Ashburn (the grantee), the Complaint does not state a viable claim for fraudulent conveyance under Maryland law. See Berger v. Hi-Gear Tire & Auto Supply, Inc. 257 Md. 470, 475 (1970) ("[e]ven if the grantor has a fraudulent intent, this will not vitiate or impair a conveyance ***unless the grantee participates in the fraudulent intent***") (emphasis added) (citing Long v. Dixon, 201 Md. 321, 323 (1953); Kennard v. Elkton Banking and Trust Co., 176 Md. 499, 503 (1939); and

McCauley v. Shockey, 105 Md. 641, 645 (1907)). There is certainly no allegation that Moving Defendants – effectively, grantees of the Deed of Trust – shared in any fraudulent intent.

Finally, District Title's contention that Moving Defendants had constructive knowledge of the St. Mary's County Litigation or the D.C. Litigation – and thus, Day's intent to hinder, delay or defraud District Title – fails as a matter of law for all the reason stated above. District Title also does not and cannot plausibly allege that the Moving Defendants shared Day's allegedly fraudulent intent, which is required to support a fraudulent conveyance claim under Maryland law. Long, 201 Md. at 323.

In sum, District Title's claims against Moving Defendants stretch well beyond the limits of cognizable fraudulent conveyance claims under Maryland law. Moving Defendants are entirely too removed from the underlying alleged fraud committed by Warren and Day to fall within the scope of a claim for fraudulent conveyance. Accordingly, Count I for fraudulent conveyance must be dismissed with prejudice.

D. Because The Complaint States No Cognizable Claim To Set Aside The Sale Of The Scotland Property, There Is No Basis For The Boot-Strap Claims For Declaratory Judgment (Count III) and Equitable Relief (Count V).

In Count III, District Title purports to state a claim for declaratory relief in the form of a first priority lien against the Scotland Property. (Compl. at ¶¶ 64-65.) In Count V, District Title demands an equitable lien against the Scotland Property, and "whatever equitable relief" the Court may grant. (Id. at ¶ 79.) These claims are nothing more than conclusions of law. Neither states any valid reason to invalidate the sale of the Scotland Property, or to subordinate the Deed of Trust.

First, District Title is not entitled to a first priority because it does not have any judgment against Day, Warren, or Ashburn which might take the form of a lien against the Scotland

Property. Further, Quicken Loans is a *bona fide* purchaser for value, for all the reasons set forth above. Second, there is no merit to District Title's claims for an "equitable lien." To demonstrate the right to an equitable lien under Maryland law, a "specific intent to create a lien must be made manifest, as, for instance, where a written instrument evidences an intent to create a lien but the instrument is imperfect in some regard . . . ." Equitable Trust Co. v. Imbesi, 287 Md. 249, 260 (1980) (surveying the circumstances under which equitable liens were found to exist). In contrast, an equitable lien could not apply here because there is nothing evidencing an intent between District Title, Day, or Ashburn to create an encumbrance on the Scotland Property. Finally, District Title would have Moving Defendants suffer a loss on account of District Title's own negligence and its failure to properly wire funds to satisfy Wells Fargo's deed of trust. The doctrine of unclean hands would bar such a result, as District Title's own conduct is the source of its purported equitable claim. See Adams v. Manown, 328 Md. 463, 476 ("[i]t is only when plaintiff's improper conduct is the source, or part of the source, of his equitable claim, that he is to be barred because of this conduct") (citations omitted).

IV. CONCLUSION

For all the foregoing reasons, Michael Lyons, Quicken Loans Inc. and Mortgage Electronic Registration Systems, Inc. respectfully request the entry of an Order: (a) granting their Motion; (b) dismissing Plaintiff's Verified Complaint; and (c) granting such other and further relief in their favor as this Court deems necessary and just.

Respectfully submitted,

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Subject: Activity in Case 1:14-cv-01808-ABJ-DAR DISTRICT TITLE v. WARREN et al Order on Motion for Extension of Time to
From: DCD_ECFNotice@dcd.uscourts.gov
Date: 6/7/2019, 11:19 AM
To: DCD_ECFNotice@dcd.uscourts.gov

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U.S. District Court

District of Columbia

Notice of Electronic Filing

The following transaction was entered on 6/7/2019 at 11:19 AM and filed on 6/7/2019

Case Name: DISTRICT TITLE v. WARREN et al
Case Number: 1:14-cv-01808-ABJ-DAR
Filer:
WARNING: CASE CLOSED on 11/16/2015
Document Number: No document attached

Docket Text:
MINUTE ORDER granting [147] Motion for Extension of Time. The Court finds that there is good cause to grant District Title an extension to allow it to substitute a party for defendant Timothy Day by August 2, 2019. SO ORDERED. Signed by Judge Amy Berman Jackson on 06/07/2019. (lcabj3)

1:14-cv-01808-ABJ-DAR Notice has been electronically mailed to:

Horace L. Bradshaw, Jr hlbrad1@aol.com, horacebradshawesq@gmail.com

David Howard Cox dcox@jackscamp.com, pdyson@jackscamp.com

Matthew August LeFande matt@lefande.com

Brian Wood Thompson bwthompson@jackscamp.com, dpinckney@jackscamp.com,

pdyson@jackscamp.com

1:14-cv-01808-ABJ-DAR Notice will be delivered by other means to::

Subject: 17-22544 Chapter 7 Trustee's Report of No Distribution - CH7 - Anita K. Warren
From: BKECF_LiveDB@mdb.uscourts.gov
Date: 6/4/2019, 12:08 PM
To: courtmail@mdb.uscourts.gov

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U.S. Bankruptcy Court

District of Maryland

Notice of Electronic Filing

The following transaction was received from Cheryl E. Rose entered on 6/4/2019 at 12:08 PM EDT and filed on 6/4/2019

Case Name: Anita K. Warren
Case Number: 17-22544
Document Number: 113

Docket Text:
Chapter 7 Trustee's Report of No Distribution: I, Cheryl E. Rose, having been appointed trustee of the estate of the above-named debtor(s), report that I have neither received any property nor paid any money on account of this estate; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 21 months. Assets Abandoned (without deducting any secured claims): $0.00, Assets Exempt: $2980.00, Claims Scheduled: $314888.44, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): $314888.44. Filed by Cheryl E. Rose. (Rose, Cheryl)

The following document(s) are associated with this transaction:

17-22544 Notice will be electronically mailed to:

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17-22544 Notice will not be electronically mailed to:

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Synchrony Bank
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Management, LLC
PO Box 41021
Norfolk, VA 23541

Anita K. Warren
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Lexington Park, MD 20653

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(GREENBELT DIVISION)

In re ANITA K. WARREN,	**Case No. 17-22544 - WIL** **Chapter 7**
DISTRICT TITLE, **Plaintiff Creditor,** **v.** **SAMUEL C. P. BALDWIN, JR, PERSONAL REPRESENTATIVE OF THE ESTATE OF ANITA K. WARREN,** **Defendant Debtor**	**Case No. 0:17-ap-00508**

STIPULATION FOR ENTRY OF JUDGMENT OF NON-DISCHARGEABILITY AND CONSENT TO JUDGMENT

Plaintiff Creditor District Title, a Corporation ("Plaintiff Creditor" and/or "District Title"), through undersigned counsel, and Defendant Debtor Samuel C. P. Baldwin, Jr., the Personal Representative of the Estate of Anita K. Warren ("Defendant Debtor") hereby stipulate

and consent to a judgment of nondischargeability being entered against Defendant Debtor in this matter as follows:

WHEREAS, Anita K. Warren filed a Petition for Chapter 7 Bankruptcy, currently pending in this Court as Case No. 17-22544 on September 19, 2017; and

WHEREAS, Anita K. Warren died on or about March 29, 2018; and

WHEREAS, Samuel C. P. Baldwin, Jr. was appointed as Personal Representative of the Estate of Anita K. Warren in the St. Mary's County, Maryland proceeding known as Estate No. 19062 on November 27, 2018, and was substituted as Defendant Debtor in this adversary proceeding on January 25, 2019; and

WHEREAS, Plaintiff Creditor is a judgment creditor of Defendant Debtor by reason of a judgment entered in on November 13, 2015 in Case No. 1:14-cv-01808-ABJ in the United States District Court for the District of Columbia against Defendant Debtor in the amount of $293,514.44, plus interest pursuant to said Judgment, and attorneys' fees and costs in the amount of $18,694.00 as awarded in the Memorandum Opinion and Order docketed May 2, 2016; and

WHEREAS, Plaintiff Creditor's filed its Claim on March 27, 2018 in Bankruptcy Case No. 17-22544; and

WHEREAS, Plaintiff Creditor filed a Complaint to Establish Nondischargeability of Debt and Objection to Discharge on December 22, 2017 against Defendant Debtor seeking, *inter alia*, an Order declaring that Plaintiff Creditor's judgment award against Defendant Debtor entered in Case No. 1:14-cv-01808-ABJ in the United States District Court for the District of Columbia is nondischargeable in bankruptcy pursuant to 11 U.S.C. §523(a)(2)(A) and/or 11 U.S.C. §523(a)(6); and

WHEREAS, Plaintiff Creditor filed an Amended Complaint on May 9, 2018 seeking, *inter alia*, an Order declaring that Plaintiff Creditor's judgment against Defendant Debtor entered in Case No. 1:14-cv-01808-ABJ in the United States District Court for the District of Columbia is nondischargeable in bankruptcy pursuant to 11 U.S.C. §523(a)(6); and

WHEREAS, the Personal Representative of Defendant Debtor's Estate has thoroughly reviewed and examined the merits and claims set forth in the Amended Complaint filed by Plaintiff Creditor; and

WHEREAS, the Personal Representative of Defendant Debtor's Estate believes that the claims set forth in the Amended Complaint filed by Plaintiff Creditor are meritorious and that further litigation of those claims will not result in any benefit to the Defendant Debtor's Estate; and

WHEREAS, the Parties agree that the actions taken by Defendant Debtor as described in the Amended Complaint support the finding that the Plaintiff Creditor's Judgment against Defendant Debtor is nondischargeable pursuant to 11 U.S.C. §523(a)(6); and

WHEREAS, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §157 and 1334, and 11 U.S.C. §523; and

WHEREAS, venue before this Court is proper; and

WHEREAS, this Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I), and

WHEREAS, the Personal Representative of the Estate of Defendant Debtor hereby consents to an entry of judgment in favor of Plaintiff Creditor,

NOW THEREFORE, the Court finds that:

1. Defendant Debtor did willfully and maliciously injure Plaintiff Creditor by breaching

her contract with Plaintiff Creditor accompanied by tortious conduct. Defendant Debtor acted in concert with her son, Timothy Day, to transfer funds that she knew had been received from Plaintiff Creditor in error. Defendant Debtor did convert funds in which she had no right, interest, or ownership to her own use. In undertaking those actions, Defendant Debtor did willfully and maliciously injure Plaintiff Creditor.

2. Defendant Debtor's actions resulted in, and were, willful and malicious injury to Plaintiff Creditor as would be subject to 11 U.S.C. §523(a)(6). Therefore, Plaintiff Creditor's judgment is nondischargeable pursuant to 11 U.S.C. §523(a)(6).

3. Judgment be and is hereby entered in favor of Plaintiff Creditor and against the Defendant Debtor, determining that the Plaintiff Creditor's judgment entered in on November 13, 2015 in Case No. 1:14-cv-01808-ABJ in the United States District Court for the District of Columbia against Defendant Debtor in the amount of $293,514.44, plus interest pursuant to said Judgment, and attorneys' fees and costs in the amount of $18,694.00, as awarded in the Memorandum Opinion and Order docketed May 2, 2016, the amount of both being subject to adjustment as may be necessary, are nondischargeable in bankruptcy pursuant to 11 U.S.C. §523(a)(6); and

4. The claim filed by Plaintiff Creditor shall be nondischargeable by Defendant Debtor in this case and in any case hereafter filed by Defendant Debtor.

5. Said judgment shall be entered forthwith and as a final disposition of this Adversary Proceeding.

APPROVED AS TO FORM AND CONTENT:

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PR Estate of Anita K. Warren

CERTIFICATE OF SERVICE

I hereby certify that, on June 3, 2019, a true and correct copy of the foregoing was served on all parties listed below by EFC and first-class U.S. Mail.

Samuel C. P. Baldwin, Jr.
PR Estate of Anita K. Warren
22335 Exploration Drive, #2030
Lexington Park, MD 20653

Cheryl E. Rose, Chapter 7 Trustee
9812 Falls Road, #114-334
Potomac, MD 20854

/s/ David H. Cox
David H. Cox