NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-6054-09T3

HSBC BANK USA, N.A. AS TRUSTEE
FOR FBR SECURITIZATION TRUST
2005-3,

Plaintiff-Respondent,

v.

SONJA JASNIC, a/k/a SONIA
JASNIC; MIODRAG JASNIC, a/k/a
MIKE JASNIC; TITLE RESEARCH,
INC.; NANCY BRUNO; PATRICIA
VITALI,

Defendants,

and

HOME REALTY CORP.;
ROLAND DAVID,

Defendants-Appellants,

v.

STEWART TITLE COMPANY; TITLE
RESEARCH, INC.; SONJA JASNIC
a/k/a SONIA JASNIC; MIODRAG
JASNIC a/k/a MIKE JASNIC,

Third-Party Defendants.

Submitted: May 4, 2011 - Decided: May 20, 2011

Before Judges Axelrad and J. N. Harris.

On appeal from the Superior Court of New Jersey, Chancery Division, Passaic County, Docket No. C-10-09.

Feng Li, attorney for appellants.

Rajan Patel, attorney for respondent.

PER CURIAM

Defendants, Home Realty Corp. and Roland David, appeal from a July 1, 2010 order of the Chancery Division, following a six-day bench trial, entering final judgment in favor of plaintiff, HSBC Bank USA (Bank), granting the Bank's mortgage a lien priority over defendants' mortgages by authority of the doctrine of equitable subrogation. We affirm substantially for the reasons articulated by Judge Margaret Mary McVeigh in her comprehensive written opinion of July 1, 2010.

The following facts and evidence were adduced at trial. The Bank presented the testimony of Nancy Bruno, the seller of 36 Woods Avenue, Little Falls, New Jersey to Sonja Jasnic;[1] Tamara Savery, an employee of Wells Fargo Bank, the servicing agent for the Bank; and Philip Blanch, Esquire, the settlement agent on Bruno's purchase of the subject property and the Jasnic purchase. David, Home Realty Corp.'s sole shareholder, testified on behalf of defendants. According to recorded

[1] She is also referred to in documents as Sonia Jasnic.

documents, Sonja Jasnic purchased the subject property from Bruno on September 30, 2002 for the stated consideration of $300,000, which deed was recorded on November 7, 2002.[2] Sonja Jasnic's purchase was secured by a $240,000 mortgage to FGC Commercial Mortgage Finance d/b/a Fremont Mortgage (FGC).

The Bank is the holder of a mortgage loan in the face amount of $290,000 made by the Jasnics to FGC on July 19, 2005, in connection with their refinance of the subject property.[3] The mortgage was recorded on August 26, 2005. It was assigned to the Bank by document recorded on May 10, 2007.

The only loan Sonja Jasnic listed on her loan application for the July 2005 refinance was the FGC mortgage (serviced by Litton Loan). However, the title insurance policy obtained by the lender in connection with the refinance reflected the following open mortgages:

- Sonja Jasnic to FGC, dated September 30, 2002, to secure the sum of $240,000, recorded November 7, 2002, and assigned to Fremont Investment & Loan, recorded November 7, 2002.

---

[2] Sonja's husband Miodrag Jasnic a/k/a Mike Jasnic executed a quitclaim deed to her on September 30, 2002, recorded on November 7, 2002.

[3] Both Jasnics are listed as borrowers.

- Bruno to David, dated January 22, 2001, to secure the sum of $37,000, recorded July 3, 2002.[4]

- Sonja Jasnic to Bruno, dated September 18, 2002, to secure the sum of $45,000, recorded November 7, 2002, and assigned to Home Realty Corp., recorded May 19, 2003.

- Mike Jasnic and Sonja Jasnic, dated October 1, 2002, to David, to secure the sum of $12,200, recorded January 31, 2003.

It is undisputed that as an express condition of the refinanced loan, FGC was to be given a first mortgage lien against the property. Moreover, FGC's closing instructions, signed both by Sonja Jasnic and the title clerk, provided for a first loan position. Unbeknownst to FGC, however, the only mortgage satisfied at closing and removed of record was the FGC purchase money mortgage. The Jasnics subsequently defaulted on their mortgage to the Bank. The Bank then became aware of the purportedly outstanding mortgages to defendants.

On January 14, 2009, the Bank filed suit against the Jasnics, Title Research, Inc. (Title Research), the settlement agent for the refinance transaction, and Title Research's

[4] The trial record reflects a Discharge of Mortgage executed by David for this mortgage dated September 30, 2002, listing Blanch as the person to whom the discharge should be returned after recording. The record does not reflect, however, that the discharge was ever recorded.

employee Patricia Vitali, Bruno, and defendants. The Bank sought specific performance compelling the Jasnics to satisfy and obtain discharge of the outstanding mortgages to defendants (first count) and declaratory judgment relief against Bruno and defendants adjudicating the true nature and validity of their purported mortgages (second count). The Bank also sought the alternative relief of damages against the Jasnics for negligent misrepresentation (third count), equitable subrogation of its lien in the event defendants were adjudicated to have valid liens superior to the Bank (fourth count), damages against Title Research (fifth count) and Title Research and Vitali (sixth count) for negligently failing to comply with the refinance closing instruction.[5] Defendants filed an answer.

In her July 1, 2010 opinion, Judge McVeigh made express credibility assessments, finding Savery to be "[t]he only witness in this case . . . to have any credibility" and finding David not to be a credible witness. The judge also noted Blanch's and David's twenty-year relationship during which David referred matters to Blanch for closing and, after reciting the evidence, concluded their conduct "at the very minimum skirted the line of ethical behavior and at the worst provides this

[5] Bruno and Vitali were dismissed and default was entered against the Jasnics and Title Research. The only answering parties were defendants.

Court with strong inferences of fraud." The judge disregarded Bruno's testimony as she ceased testifying after having asserted her Fifth Amendment privilege during cross-examination.

At trial, the Bank argued the record supported the conclusion there was no consideration given for the mortgages to defendants and sought their invalidation. The judge noted she had "serious question as to whether those loans [from Bruno and David] have any basis in fact" and the "proofs may cry out for the Court to invalidate the alleged mortgages between Mr. David and Ms. Bruno and the Jasnics." Nevertheless, Judge McVeigh opted for the remedy of equitable subrogation, which "protect[ed] the interests of [the] Bank without the harsh remedy of invalidating the mortgages" and left to defendants "the potential of the satisfaction of those loans if sale of [the subject] property is able to produce remedies sufficient to satisfy first the [Bank's] obligation and then [defendants'] so called mortgages . . . ." An order was entered to that effect and defendants appealed.

On appeal, defendants argue: (1) equitable subrogation was not applicable as the Bank had actual knowledge of the existing mortgage; (2) even if the Bank lacked knowledge of the prior mortgages due to negligence, the court erred in applying the doctrine of equitable subrogation without determining whether

defendants were either or both unjustly enriched and acted fraudulently; and (3) the court's ruling was not factually supported because the Bank failed to establish it lacked actual knowledge of the existing mortgages or defendants acted fraudulently.

Our scope of review of a judgment in a non-jury case is extremely limited. The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial and credible evidence in the record. Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974). We accord due deference to the credibility findings and the "feel of the case" by the trial judge who has heard and observed the witnesses. Fritsche v. Westinghouse Electric Corp., 55 N.J. 322, 330 (1970). We do not second-guess the trial judge's factual findings and legal conclusions unless "they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence so as to offend the interests of justice." Rova Farms Resort, Inc., supra, 65 N.J. at 484.

From our review of the record, we are satisfied Judge McVeigh carefully assessed the testimony and evidence in making her factual findings and legal conclusions, and such findings and conclusions are amply supported by the record and conform

with the applicable law. Considering this standard, defendants have failed to provide any factual or legal basis to justify reversal of the challenged order.

Equitable subrogation can arise by agreement, statute, or by judicial means. Feigenbaum v. Guaracini, 402 N.J. Super. 7, 20 (App. Div. 2008); U.S. Bank Nat'l Assoc. v. Hylton, 403 N.J. Super. 630, 638 (Ch. Div. 2008). "Equitable subrogation may only be imposed 'if the cause is just and enforcement is consonant with right and justice.'" Feigenbaum, supra, 402 N.J. Super. at 20 (quoting Standard Accident Ins. v. Pellecchia, 15 N.J. 162, 173 (1954)).

David acknowledged that prior to the refinance he held a second and third mortgage behind the $240,000 pre-existing mortgage paid off by the Bank's predecessor. The record is also replete with testimonial and documentary evidence that although the Bank's predecessor was informed of defendants' recorded mortgages in a title commitment prior to closing on the refinance, the lender required as a condition of refinance and expected its $290,000 mortgage to be a first lien against the subject property. Accordingly, in invoking the remedy of equitable subrogation and according priority to the Bank's mortgage, the Chancery judge effectuated the parties' expectations. See UPS Capital Bus. Credit v. Abbey, 408 N.J.

Super. 524, 529 (Ch. Div. 2009) (applying the doctrine of equitable subrogation to "give effect to the new lender's expectation and to prevent unjust enrichment of the junior encumbrances"). Additionally, as the judge properly noted, even if the lender's reliance on the settlement agent in funding the loan were deemed negligent, the Bank is not barred from relief. See Kaplan v. Walker, 164 N.J. Super. 130, 138-39 (App. Div. 1978) (holding that in the absence of supervening equities, negligence by the party asserting the right of subrogation will not bar such relief); see also First Union Nat. Bank v. Nelkin, 354 N.J. Super. 557, 565 (App. Div. 2002).

Furthermore, the record clearly supports the judge's finding that defendants "behaved inappropriately" and should not be rewarded with "unjust compensation." See Nelkin, supra, 354 N.J. Super. at 566 (holding the doctrine of equitable subrogation requires the court to find either unjust enrichment or fraudulent conduct by the old mortgagee). Judge McVeigh expressly found the "inferences of misfeasance[,] if not malfeasance" regarding the conduct of David and Blanch in the multiple closings to be "overwhelming." Simply because she stopped short of finding there was no consideration for defendants' purported loans and David acted fraudulently in the transactions, and chose, within her broad discretion, a less

"harsh remedy" than invalidating defendants' mortgages, does not mean the prerequisites for equitable subrogation were not present here.

There is no question the Bank and its predecessor, not defendants, were the innocent parties. The Chancery judge, who clearly had a "feel" for the case, weighed the equities. She properly concluded that defendants, who never contracted for or paid for first and second lien positions against the subject property, were not entitled to a windfall at the Bank's expense.

Affirmed.