

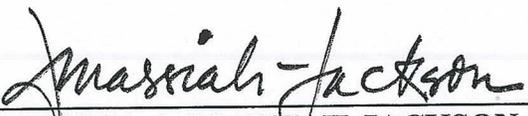
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

| | | | |
|--|---|--------------------|--------------------|
| MICHAEL B. WOLF, ESQUIRE | : | OCTOBER TERM, 2012 | |
| Plaintiff | : | | |
| | : | | |
| vs. | : | NO. 2449 | |
| | : | | |
| ARLEEN L. WOLF, in her individual capacity | : | | DOCKETED |
| and as EXECUTRIX OF THE ESTATE OF | : | | COMPLEX LIT CENTER |
| EDWARD L. WOLF, DECEASED | : | | FEB 20 2014 |
| Defendant | : | | J. STEWART |

ORDER

And Now, this 20th day of February, 2014, after a trial in the above-captioned matter held November 18, 2013, after consideration of Pre-Trial and Trial Memoranda, and, for the reasons set forth in the Findings of Fact and Conclusions of Law filed this date, it is hereby **ORDERED** that, **a.** Michael B. Wolf's Petition for Quiet Title at 210 Wendover Street, Philadelphia, Pa. is **GRANTED**; **b.** All monies paid by Michael B. Wolf to Defendant from January 24, 2011 through October, 2012 are to be returned to Michael B. Wolf; **c.** The Prothonotary is Ordered to release all funds to Michael B. Wolf which have been deposited in an escrow account; and, **d.** Arleen L. Wolf's Counterclaim for Mortgage Foreclosure is **DENIED**.

BY THE COURT:



FREDERICA A. MASSIAH-JACKSON, J.

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| EDWARD L. WOLF, DECEASED | : | |
| Defendant | : | |

FINDINGS OF FACT and CONCLUSIONS
OF LAW IN FAVOR OF PLAINTIFF

MASSIAH-JACKSON, J.

DOCKETED
COMPLEX LIT CENTER
FEB 20 2014
J. STEWART

February 20¹², 2014

In 2012, Michael B. Wolf filed this Action of Quiet Title pursuant to Rule 1061(b) of the Pennsylvania Rules of Civil Procedure seeking clear title for the property at 210 Wendover Street in Philadelphia. The Plaintiff contends that a lien which was filed by Arleen L. Wolf against the property should be removed and payments he made into an escrow account should be released to him. Arleen L. Wolf filed a counterclaim asserting that she is entitled to foreclose on a mortgage on 210 Wendover Street because Michael B. Wolf ceased making payments.

On November 18, 2013, this Court presided over the non-jury trial of this matter. Supplemental Memoranda were submitted to the Court on December 11, 2013. The underlying issue presented is whether a prior litigation filed in 2008, entitles Michael B. Wolf to clear title to 210 Wendover Street. After careful review, this Court concludes that the rights, title and interests in the property belong solely to Michael B. Wolf. Further, the lien on the property filed by his stepmother must be marked satisfied. Next, all monies paid by the Plaintiff to the Defendant since November, 2010 must be returned to him. Finally, the monies paid into the escrow account should be returned to Michael B. Wolf.

The Wendover Street property was purchased in 2002 by a real estate partnership Wolf Equities, Inc. ("Partnership"). The Partnership was a collaboration between Michael B. Wolf and his father, Edward L. Wolf, and used funds contributed by Edward and Arleen. Upon the death of Edward L. Wolf in 2006, his wife initiated litigation to determine Partnership assets and to wind up the Partnership. Arleen L. Wolf sued her stepson and others seeking payments for all outstanding monies due to her and to the Estate of her late

husband. Honorable Albert W. Sheppard issued Opinions, Findings and Orders in favor of Arleen L. Wolf in 2010 and 2011. It is not disputed that Michael B. Wolf made payments in full and consistent with all Court rulings. All judgments and obligations were satisfied when payments were made by Michael B. Wolf to Arleen L. Wolf and to his father's Estate. Arleen has been represented by the same trial counsel from 2008 through 2014. She did not file any objections or appeals to Judge Sheppard's rulings either as an individual or as co-executor of her late husband's Estate.

This Court submits the following Findings of Fact and Conclusions of Law in Support of the Judgment in Favor of Plaintiff Michael B. Wolf. By agreement of all parties and counsel only the first names of the parties will be used in this submission, i.e., Edward, Michael, and Arleen.

A. FINDINGS OF FACT

1. In 2008, Judge Albert W. Sheppard presided over consolidated cases at March Term, 2008, No. 0881 and April Term, 2008, No. 3880.
2. Arleen, as an individual and as co-executor of the Estate of Edward filed suit against Michael. Arleen identified 32 properties, including 210 Wendover Street, which she claimed belonged to the Partnership. Arleen asserted Wendover Street was an asset of the Partnership. See Court Exhibit 1, Second Amended Complaint, Paragraphs 205, 654-667.

3. Arleen, as an individual and as co-executor of the Estate of Edward, sought to be “reimbursed the full amount of their respective notes and post-note contributions of 210 Wendover Street” See Court Exhibit 1, Second Amended Complaint, Paragraph 666.

4. Paragraph 666 undermines and belies Arleen’s current argument that the Wendover Street loan was not previously litigated.

5. Judge Sheppard issued detailed Findings and Opinion on August 16, 2010, in support of rulings to wind down the Partnership and divide the Partnership assets. See, Court Exhibit 2.

6. Judge Sheppard issued a Judgment Order and Opinion, dated January 24, 2011, in support of his rulings that post-note loans, that is, loans made to the Partnership after November, 2001, were considered by Edward as contributions to capital. Judge Sheppard valued the capital account as \$136,223.00 at the time of Edward’s death. See, Court Exhibit 3.

7. Michael paid the Estate of Edward all monies due as per Judge Sheppard’s Orders. See, Court Exhibit 4.

8. Michael paid Arleen all monies due as per Judge Sheppard’s Orders. See, Court Exhibit 5.

9. Arleen's claim for repayment of loans and contributions has already been adjudicated by Judge Sheppard in the earlier litigation. In her Pretrial Memorandum, dated January 20, 2009, at page 8, she stated:

“Following the execution of the Note on November 13, 2001, Edward and Arleen continued to contribute money to the Partnership thereby increasing the capital account of Edward Wolf. These funds were from bank accounts, lines of credit and investments jointly held by Edward Wolf and Arleen Wolf. The Estate and Arleen Wolf are entitled to the repayment of these funds.”

10. “The court finds that insufficient evidence exists to prove the post note contributions. Accordingly, Arleen and the Estate are not entitled to post note contributions.” Opinion, dated August 16, 2010.

11. 210 Wendover Street was one of the Partnership properties as set forth by Arleen in her Second Amended Complaint and accepted by Judge Sheppard. He identified the seven properties which were not Partnership properties. See, Court Exhibit 2.

12. When Michael was ordered to pay the Estate of Edward the value due on the capital account, Michael's obligations for the Partnership properties were met.

B. CONCLUSIONS OF LAW

Plaintiff-Michael filed this Action to Quiet Title requesting this Court to declare that the mortgage debt is discharged and the mortgage marked satisfied at 210 Wendover Street. This Court agrees.

Rule 1061(b) of the Pennsylvania Rules of Civil Procedure states that an action may be brought:

“(1) to compel an adverse party to commence an action of ejectment; (2) where an action of ejectment will not lie, to determine any right, lien, title, or interest in the land or determine the validity of discharge of any document, obligation or deed affecting any right lien, title or interest in the land; (3) to compel an adverse party to file, record, cancel, surrender or satisfy of record, or admit the validity, invalidity or discharge of, any document, obligation or deed affecting any right, lien, title or interest in land; or (4) to obtain possession of land sold at a judicial or tax sale.”

Thus, Defendant-Arleen may be compelled to execute the necessary documents to satisfy of record the recorded mortgage on 210 Wendover Street, as per Rule 1061(b)(3).

In the 2008 Action, Judge Sheppard concluded that Michael was the sole owner of 210 Wendover Street. The Court also held that Arleen and the Estate were entitled to the balance of her late husband’s capital account. Michael, Plaintiff herein, paid the full amounts awarded to Arleen and to the Estate in the 2008 Action. Arleen and the Estate acknowledged that the judgments were satisfied. Now, Arleen denies that the 210 Wendover Street mortgage was included in the earlier litigation. She argues that Michael’s failure to pay the monthly payments entitles her to foreclose on the mortgage.

This Court declines to re-open or re-consider or overrule the claims and issues carefully decided by Judge Sheppard. Arleen is barred from disputing the debt on the Wendover Street mortgage based on the doctrines of *res judicata* and collateral estoppel.

The Superior Court has held that the doctrine of *res judicata* bars re-litigation of the same claims by the same parties when a final judgment has been entered by a court. In

Yamulla Trucking & Excavating Co., Inc. v. Justofin, 771 A.2d 782 (Pa. Superior Ct. 2001),

the Appellate Court noted at 784:

“Pursuant to the doctrine of *res judicata*, a final judgment on the merits by a court of competent jurisdiction will bar any future suit between the parties or their privies in connection with the same cause of action. *Matternas v. Stehman*, 434 Pa.Super. 255, 642 A.2d 1120 (1994) (citing *Mintz v. Carlton House Partners, Ltd.*, 407 Pa.Super. 464, 595 A.2d 1240 (1991)). The purposes behind the doctrine, which bars the re-litigation of issues that either were raised or could have been raised in the prior proceeding, *Dyer v. Travelers*, 392 Pa.Super. 202, 572 A.2d 762 (1990), are to conserve limited judicial resources, establish certainty and respect for court judgments, and protect the party relying upon the judgment from vexatious litigation. See *Mintz, supra*. In keeping with these purposes, the doctrine must be liberally construed and applied without technical restriction. *Id.* Furthermore, we note that the application of *res judicata* requires the concurrence of four conditions between the present and prior actions: 1) identity of issues; 2) identity of causes of action; 3) identity of parties or their privies; and 4) identity of the quality or capacity of the parties suing or being sued. *Id.*”

All four conditions are clearly present in this case. We have the same litigants disputing whether the loan note on the Wendover Street property is due. Arleen’s claims for repayment of loans and contributions that she made to the Partnership, including 210 Wendover Street, were adjudicated in the 2008 litigation. There was a final judgment by a court of competent jurisdiction. To support *res judicata* the Appellate Courts comment that the essential inquiry is whether the ultimate and controlling issues have been decided in an earlier proceeding in which the present parties (stepmother and stepson) had an opportunity to appear and assert their rights. See, Callery v. Municipal Authority of the Township of

Blythe, 243 A.2d 385 (Pa. 1968); Hopewell Estates, Inc. v. Kent, 646 A.2d 1192 (Pa. Superior Ct. 1994), where the Superior Court stated that we must look whether both actions seek compensation for the same damages.

Arleen's Second Amended Complaint in the 2008 Action identifies 210 Wendover Street and the mortgage note on the property. She claimed then that she was entitled to reimbursement on the note and post-note contributions on Wendover Street before profits from that property could be distributed. Her accountant, Thomas M. Cooney, CPA, testified in 2009. He reviewed and identified documents and calculations which included an outstanding balance on the 210 Wendover Street note, as of December, 2003. Judge Sheppard ruled in Arleen's favor individually and as co-executor and entered judgment. Michael paid the fund as ordered, and extinguished his debt on that mortgage note and others.

In the case at bar, the similarity of the demands by Arleen for recovery, the identity of witnesses, documents and factual allegations compel this Trial Court to conclude that the principles of *res judicata* and collateral estoppel bar Arleen's defenses to this Action to Quiet Title. Hopewell Estates, Inc., *supra*, 646 A.2d at 1194-1195.

In the Post-Trial Brief of the 2008 Action, dated March 16, 2009, filed by the Estate of Edward L. Wolf and by Arleen L. Wolf, In Her Individual Capacity, Arleen argued at pages 11-13:

"In settling the accounts of the dissolved Partnership, the Partnership property must be applied to the satisfaction of the Partnership liabilities. Furthermore, all loans made to the Partnership by Arleen or Edward must receive first repayment

priority, followed by Edward's capital contribution, and finally the distribution of Edward's share of the Partnership profits and surplus.

.....
Arleen and Edward made loans to the Partnership and they are entitled to first repayment priority of those amounts as either an ordinary creditor or as a liability owing to a partner other than for capital and profits of the Partnership. **In addition Edward and Arleen made capital contributions to the Partnership, which are now due to Arleen and Edward's estate as delineated in Section 8362(2)(ii). Arleen and Edward both made these capital contributions between 2001 and 2006 as joint contributions to the Partnership's capital aside from their loans.**" (emphasis added)

Mr. Cooney explained at his deposition that because loans require repayment, loans are not normally designated as a capital asset on a balance sheet. Edward Wolf specifically requested that his accountant represent loans to Michael for the purchase of property as capital contributions. 210 Wendover Street was purchased in 2002.

In the 2008 litigation, Mr. Cooney provided testimony about multiple post-November 2001 Note loans and contributions made by Edward and Arleen. Mr. Cooney included a review of a document he prepared after Edward died in 2006, wherein he compiled an estimate of the funds advanced by Edward and Arleen to the Partnership. Mr. Cooney's valuations included the outstanding balance of \$67,388.15 on the mortgage loan at 210 Wendover Street.

In Kelly v. Kelly, 887 A.2d 788 (Pa. Superior Ct. 2005), the Superior Court relied on Dempsey v. Cessna Aircraft Co., 653 A.2d 679 (Pa. 1995) to conclude that when a party is seeking to enforce the same rights, complaining about the same acts, making the same demands for recovery and seeking the same damages and compensation, the application of

res judicata prevails. In Dempsey, the Supreme Court held that preclusion does not depend on the form of action or by adopting a different method to present her case. The operation of *res judicata* means that the same cause of action “shall not be twice litigated.” Kelly v. Kelly, supra, 887 A.2d at 792. Accordingly, where as here, Arleen is asking to be compensated again for the 210 Wendover Street note, which was the subject of the 2008 Action, her quest to bar Michael’s cause of action to Quiet Title must be denied.

When Arleen sought compensation for the value of the capital account and the post-November, 2001 Note capital contributions, she put the Wendover Street debt at issue. Judge Sheppard relied on Mr. Cooney’s valuation of the capital account. (The Court specifically noted that Mr. Cooney’s calculations were made prior to litigation.) Judge Sheppard determined that the capital account included loans made by Edward and Arleen for the purchase of the Partnership properties. Indeed, Arleen had the opportunity to assert that the balance due on the Wendover Street loan was not to be considered as a post-November, 2001 Note contribution. She chose not to do so. *Res judicata* operates to bar matters which could have been raised as part of the original action, but were not. Hopewell Estates, Inc. v. Kent, supra, 646 A.2d 1194.

This Court concludes that Arleen is seeking the same compensation here as she requested in the earlier litigation. Arleen did not appeal Judge Sheppard’s Findings and Order in the 2008 case and she is barred from disputing his rulings now in a separate action.

Michael is due all monies which he paid into the escrow account. Michael is also due \$17,153.64, representing the monthly payments made to Arleen from January 24, 2011 through October, 2012. Michael is entitled to clear title on 210 Wendover Street.

In order to demand foreclosure on a mortgage, Arleen must establish default. See generally, Rule 1147(a) of the Pennsylvania Rules of Civil Procedure. As indicated, the balance of the mortgage loan at 210 Wendover Street was satisfied when Judge Sheppard's Orders were paid in full by Michael. Michael is not in default. The counterclaim for foreclosure is DENIED.

C. CONCLUSION

The principles of *res judicata*, collateral estoppel and judicial estoppel fully support the decision that the debt secured by the mortgage has been discharged. That debt was paid by Michael at the conclusion of the 2008 litigation after claims were made by Arleen, individually and as co-executor of Edward's Estate, for repayment of loans, investments and contributions. These issues were adjudicated by Judge Sheppard.

Michael's Action to Quiet Title is **GRANTED**. Arleen's Counterclaims are **DENIED**.

BY THE COURT:

Date: Feb. 20, 2014


FREDERICA A. MASSIAH-JACKSON, J.