IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

DERRICK DANIELS,
Plaintiff,
v.
CABRAZ P. REDDICE, *et al.*,
Defendants.

JP MORGAN CHASE BANK, N.A.,
Counter-Plaintiff,
v.
CABRAZ P. REDDICE and DAWN DOBSON,
Counter-Defendants.

No. 08 CH 09829

Judge Mary L. Mikva

Calendar 6

**OPINION AND ORDER**

This cause comes on the parties' Cross-Motions for Summary Judgment pursuant to 735 ILCS 5/2-1005. The Court, having been fully advised on the premises, finds as follows:

**I. Background**

This action arises out of a dispute between Plaintiff, Derrick Daniels ("Daniels"), and Defendants, JP Morgan Chase Bank ("Chase"), Mortgage Electronic Registration Systems ("MERS"), Home Logistics, Inc. ("Home Logistics"), Cabraz Reddice ("Reddice"), Dawn Dobson ("Dobson"), Jonathan Chapman ("Chapman") and Unknown Owners about the validity of a mortgage lien held by Chase on Daniels' home located in Chicago, Illinois. Daniels has owned the home since 2001, the year his grandmother deeded it to him. The home had no mortgage loan at that time and Daniels has continuously occupied the home since then.

In October 2006, Daniels, having fallen on difficult economic times, took out a loan from Home Logistics through Reddice, principal of Home Logistics, to catch up on unpaid real estate taxes. Reddice introduced Daniels to Chapman,

whom Reddice identified as an attorney who would represent Daniels. Chapman guided Daniels throughout this October 2006 meeting with Reddice.

At this meeting, Daniels signed a number of documents. These included a warranty deed that deeded the record title to his home to Home Logistics. Daniels did not understand that he had signed a deed conveying title to Home Logistics. He thought his name would remain on the title for the duration of the loan. Daniels also signed a lease that identified Home Logistics as the lessor and Daniels as the lessee. The lease gave Daniels an option to purchase the property at the end of the lease term for a sum of $6,496.29. Following this October 2006 agreement, Daniels continued to live in the home, paid the water and other utility bills and installed new windows, at his own expense.

In October 2007, Daniels' sister was preparing to move out of the property and was doing online research to aid Daniels in finding a new tenant (potentially under Section 8) to occupy the first floor apartment that she had been living in. Through that research, Daniels first discovered that he had transferred record title to his home to Home Logistics. He also learned that Home Logistics had subsequently transferred title to Reddice's wife, Dobson. Daniels also discovered that, in November of 2006, Dobson obtained a $190,000 loan from Chase secured by a mortgage on Daniels' home.

Before loaning Dobson $190,000 and issuing the mortgage, Chase had no contact with Daniels about his interest in the home. Chase relied on Reddice and Dobson's sworn affidavit that they were the owners of the home and that nobody else had an interest in the property. In the mortgage, Dobson and Reddice also warranted that they had good and marketable title of record to the property. Chase checked the public record and obtained a legal and vesting report and a valuation of the home. Chase never conducted a physical inspection of the property or reviewed the lease Daniels had signed. In August of 2008, Dobson ceased making payments to Chase and defaulted on the loan.

Daniels filed a Complaint against Defendants seeking, among other things, to quiet title. In March of 2009, Judge Daniel Riley, the previous judge on this case, entered a default judgment in favor of Daniels against Defendants Reddice, Dobson and Home Logistics. In that Court Order, Judge Riley voided the transfer of title from Daniels to Home Logistics and from Home Logistics to Dobson. Judge Riley also entered a default in favor of Chase, as Counter-Plaintiff, against Reddice and Dobson. Neither Order addressed Chase's or MERS' security interest in the property.

Daniels subsequently filed a Motion for Summary Judgment on Counts I, II, and VI of his Complaint on the basis that Chase has been unjustly enriched and that Chase's lien is a cloud on Daniels' title to his home. Chase and MERS responded and filed their own Motion for Summary Judgment on the basis that Chase has a secured mortgage lien on Daniels' home and that the lien is not a cloud on Daniels' title. At issue before the Court are the parties' Cross-Motions for Summary Judgment on the three counts of Daniels' Complaint that name Chase and MERS. Chase and MERS are represented by the same counsel, have filed their motion and briefs together and will be referred to hereafter simply as "Chase." The issues were fully briefed and argued by the parties.

## II. Analysis

As a preliminary matter, Daniels argues that Chase waived the argument that Chase was a bona fide purchaser for value. Daniels claims that Chase was required to plead this as an affirmative defense, and because it did not, the argument is waived. The Court disagrees. Daniels alleged, as part of his claim to quiet title, that Chase had constructive notice of his interest in the property by virtue of his continued occupancy. Indeed, if Chase had no notice of Daniels' ownership interest, constructive or otherwise, Daniels could not possibly succeed on his claim. Thus, notice is an essential element of Daniels' claim and it was sufficient for Chase to deny that it had notice of Daniels' interest in the property in its Answer. It is the absence of notice that would render Chase a bona fide purchaser for value. There was no need to re-assert the same facts as an affirmative defense.

Turning to the merits of the case, Daniels' suit to quiet title rests on his allegation that he retained an ownership interest in his home. He contends that he never intended to convey absolute title to his home and that the Court should construe his transaction with Reddice and Home Logistics as an equitable mortgage.

"[A] deed which on its face appears to be an absolute conveyance is to be considered [an equitable] mortgage if it appears that the parties intended it to serve only as a security. Whether a deed is to be taken as a mortgage depends on the intention of the parties at the time of the execution of the deed." *Beelman v. Beelman*, 460 N.E.2d 55, 58-59 (5th Dist. 1984) (citing *Warner v. Gosnell*, 132 N.E.2d 526, 529 (Ill. 1956)).

Factors courts should consider when deciding whether a deed transfer should be construed as an equitable mortgage are:

> the close relationship of the parties, the circumstances surrounding the transaction, the disparity of the situations of the parties, the lack of legal assistance, the unusual type of sale, the inadequacy of consideration, the belief that the debt remains unpaid, an agreement to repurchase, and the continued exercise of ownership privileges and responsibilities by the seller.

*McGill v. Biggs*, 434 N.E.2d 772, 774 (3rd Dist. 1982) (citations omitted).

Based on the factors above, the Court agrees with Daniels and finds it appropriate to construe the transaction between Daniels and Home Logistics as an equitable mortgage. It is undisputed that Daniels had no intention to sell his home and that his sole purpose in approaching Home Logistics was to obtain a loan to help him pay the real estate taxes. Daniels continued to exercise ownership privileges and also continued to pay the water and other utility bills and also installed new windows. Third and most significant, the consideration was woefully inadequate. The warranty deed purported to convey title to a home worth approximately $200,000 when all that Daniels received in exchange was a loan for $3,428.74. Fourth, the circumstances of the transaction reveal a rather unusual sale. Daniels continued to occupy the home, signed a lease that required him to make monthly payments to Home Logistics and also gave him the option to repurchase the home for $6,496.29. This amount is very odd given the value of the home. And finally, there was a disparity in the situation of the parties. While Reddice was apparently in the business of providing loans, Daniels knew very little about the process. Daniels lacked independent and adequate legal representation to guide him through the transaction and instead was given "legal advice" by Chapman, an attorney provided to him by Reddice. All of these factors allow the Court to construe the transaction as an equitable mortgage.

However, finding that Daniels retained an ownership interest does not, alone, resolve this case. If Chase was a bona fide purchaser for value ("BFP"), the mortgage is valid and Daniels' suit to quiet title fails. A BFP is one who acquires an interest in property for valuable consideration without actual or constructive notice of another's adverse interest in the property. *Ehrlich v. Ehrlich*, 59 B.R. 646, 650 (Bankr. N.D. Ill. 1986). Thus, whether Chase was a BFP turns on whether it had notice of Daniels' interest before it provided Dobson a loan. The long standing common law concept of a BFP is also reflected in the Illinois Conveyances Act which provides:

> All deeds, mortgages and other instruments of writing which are authorized to be recorded, shall take effect and be in full force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers, *without notice*; and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers, without notice, until the same shall be filed for record.

765 ILCS 5/30 (2010) (emphasis added).

It is undisputed that Chase had no actual notice of Daniels' interest. However, the parties are in dispute as to whether Chase had constructive notice. Daniels argues that Chase was not a BFP because it had constructive notice of Daniels' ownership interest by virtue of his continued possession of the home, after he signed the warranty deed and up through the time Chase gave Dobson the mortgage. Daniels contends that Chase had a duty to inquire of Daniels, as the person in possession, what interest he had, and that a diligent inquiry would have brought Daniels' interest to light. Chase, on the other hand, argues that Daniels' continued occupancy, at most, put Chase on constructive notice of Daniels' interest as a tenant but not on notice that he had an ownership interest in the property. Chase maintains that it engaged in adequate due diligence and properly relied on Dobson's warranty that she had good title, the legal and vesting report and the public record, all of which showed Dobson had title.

Current case law holds that a diligent inquiry includes a physical inspection of the property and that observation of a person in possession other than the seller suggests facts that may be inconsistent with the seller's claim of ownership. While the notion of property ownership reflected in those cases may seem old fashioned, they are still good law and the Court agrees with Daniels that in these circumstances, under current case law, Chase was required to make some inquiry as to whether Daniels, as the person who had long been in physical possession of the property, had an ownership interest.

In *Ambrosius v. Katz*, the Illinois Supreme Court squarely held that:

> A purchaser is bound to inquire of the person in possession by what tenure he holds and what interest he claims in the premises. It is well settled that whatever is sufficient to put a party on inquiry is notice of all facts which pursuit of such inquiry would

> disclose, and without such inquiry no one can claim to be an innocent purchaser as against him whose possession raises the inquiry...Open possession is sufficient to charge such purchaser with notice of all legal and equitable claims of the occupant.

117 N.E.2d 69, 74 (Ill. 1954) (internal citations omitted). *Accord, Ehrlich,* 59 B.R. at 650; *Stein v. Green,* 128 N.E.2d 743, 748 (Ill. 1955); *LaSalle Bank v. Ferone,* 892 N.E.2d 585, 590-91 (2nd Dist. 2008); *Life Savings v. Bryant,* 467 N.E.2d 277, 283 (1st Dist. 1984); *Beals v. Cryer*, 426 N.E.2d 253, 255 (5th Dist. 1981); *Burnex Oil v. Floyd,* 245 N.E.2d 539, 543 (1st Dist. 1969). Although *Ambrosius* involved a purchaser, the cases that follow it have drawn no distinction between a purchaser and a mortgagor. *See, e.g., Ehrlich*, 59 B.R. 646; *LaSalle Bank*, 892 N.E.2d 585; *Life Savings*, 467 N.E.2d 277.

In an attempt to distinguish *Ambrosius*, and the cases that follow it, Chase argues that the only constructive notice it had was of Daniels' interest as a tenant, because that is the interest that he had. However, under the cases cited above, Chase was on constructive notice as to the terms of that tenancy, as well as the fact that Daniels was a tenant. In *Beals v. Cryer*, the court noted, "Illinois courts have uniformly held that the actual occupation of land is equivalent to the recording of the deed or other instrument under which the occupant claims interest in the property." 426 N.E.2d at 255. In this case that meant Chase would have been on constructive notice of the terms of the "Lease" that Daniels signed. A review of the lease would have given rise, at the very least, to a further inquiry because that lease allowed Daniels to regain the property for $6,496.29, a strikingly low price, given that Chase's valuation of the property was $305,000.00. Such an unusual provision would be sufficient to alert Chase as to the questionable nature of the lease. As the Court recognized in *Lasalle Bank,* conduct "sufficiently out of the norm to raise suspicion" places "on the mortgagee a duty to further inquire." 892 N.E.2d at 590. That further inquiry in this case would have made clear to Chase that Dobson had no right to mortgage this house.

Chase makes a practical argument that it is burdensome for a mortgagor to physically inspect and inquire "by what tenure he holds" of all persons observed to be in possession. Daniels' counsel's response, with which the Court agrees, is that a mortgagor makes a calculated risk, if it chooses not to make a physical inspection. In those few cases where the calculation may be wrong, the cases cited above clearly place the burden on the mortgagor. Moreover, where it may not be practical to expect a bank to go out and discuss "what interest is

claimed" with all residents of a 300-unit building before providing a loan, that is not the situation here. Daniels' home is a two-flat and it certainly would not have been unduly burdensome for Chase to inspect the home and inquire of Daniels what his interest was.

Because Chase was on inquiry notice of Daniels' interest, it cannot show that it was a BFP. Thus, the Court finds it appropriate to void Chase's interest in the home and grant Daniels' Motion for Summary Judgment as to Counts I and II of the Complaint.

The parties have also moved for summary judgment on Count VI of the Complaint, which alleges that Chase was unjustly enriched when it obtained a mortgage lien on Daniels' home. At oral argument, Daniels' counsel conceded that this count merges into Daniels' claim to quiet title. In other words, because the Court finds in favor of Daniels with respect to Counts I and II, the issue of unjust enrichment is moot. Chase no longer retains a significant benefit to Daniels' detriment.

As a result of the foregoing, IT IS HEREBY ORDERED:

I. Defendants' Motion for Summary Judgment is DENIED.

II. Plaintiff's Motion for Summary Judgment is GRANTED.

The Court had indicated at oral argument that its ruling on these motions should end the case. However, in reviewing the file, it appears that there may be remaining parties who have not been defaulted. Therefore, this Court sets the case for status on January 10, 2011, at 9:45.

Entered:

Mary L Mikva 1890

Judge Mary L. Mikva
Circuit Court of Cook County, Illinois
County Department, Chancery Division

ENTERED
JUDGE MARY LANE MIKVA - 1890
JAN 04 2011
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK