Circuit Court for Frederick County
Case No. C-10-CV-19-000066

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1658

September Term, 2019

JP MORGAN CHASE BANK, N.A.

v.

TRUIST BANK, ET AL.

Fader, C.J.,
Nazarian,
Shaw Geter,

JJ.

Opinion by Fader, C.J.

Filed: December 17, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal concerns the respective priority positions of (1) a lender who refinances a home mortgage loan secured by a first-priority deed of trust on the property, and (2) an intervening home equity lender whose line of credit is secured by a deed of trust on the same property.[1] Specifically, we consider whether the refinancing lender is equitably subrogated to the original home mortgage lender's senior priority position when, in a transaction contemporaneous with the refinancing, the intervening home equity lender's line of credit is paid down to zero but, unbeknownst to the refinancing lender, the line is not closed and the deed of trust is never released. We hold that in such circumstances the refinancing lender is equitably subrogated to the position of the original, first-priority lender if the intervening lender maintains its original priority position, is not otherwise prejudiced, and would be unjustly enriched in the absence of subrogation.

JP Morgan Chase Bank, N.A., the appellant and refinancing lender in our scenario, brought this action in the Circuit Court for Frederick County against Branch Banking and Trust Company ("BB&T"),[2] the appellee and intervening home equity lender. JP Morgan sought declarations that (1) it was equitably subrogated to the position of the lender whose loan it refinanced, and (2) BB&T's deed of trust is released. The circuit court entered

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[1] By "intervening," we mean a lender who recorded its deed of trust after that of the original lender and before that of the refinancing lender. *See G.E. Capital Mortg. Servs. v. Levenson*, 338 Md. 227, 238 n.1 (1995) (providing definition of "intervening lienholder" in the context of equitable subrogation).

[2] In December 2019, BB&T merged with SunTrust and took the name Truist Bank. Press Release, Truist Bank, *BB&T and SunTrust complete merger of equals to become Truist* (Dec. 9, 2019), https://media.truist.com/2019-12-09-BB-T-and-SunTrust-complete-merger-of-equals-to-become-Truist (accessed Dec. 10, 2020). For consistency with the record, we refer to the entity throughout this opinion as BB&T.

summary judgment in favor of BB&T on both claims but did not enter a declaratory judgment. We agree with the circuit court's judgment regarding the release claim but must remand for entry of a proper declaratory judgment. We will reverse the entry of judgment regarding the equitable subrogation claim and remand for further proceedings, including reconsideration of JP Morgan's cross-motion for summary judgment in light of this opinion.

BACKGROUND[3]

The First Equity and BB&T Lines of Credit and Deeds of Trust

Denzil and Simone Waldron purchased their home in Adamstown (the "Property") on May 5, 2005 with the aid of a loan from First Equity Mortgage Inc. for $443,450.00 (the "First Equity Loan"), secured by a deed of trust (the "First Equity Deed of Trust"). The First Equity Deed of Trust was properly recorded on May 9, 2005 as the first-priority lien on the Property.

Also on May 5, 2005, the Waldrons obtained a home equity line of credit from BB&T in the amount of $83,000.00 (the "BB&T Line of Credit"), secured by a deed of trust (the "BB&T Deed of Trust"), which was also properly recorded on May 9, 2005, after the First Equity Deed of Trust, as the second-priority lien on the Property.

The terms of the BB&T Line of Credit permitted the Waldrons to borrow up to $83,000.00 for an initial five-year "draw period," subject to renewal for up to two

[3] In this review of the circuit court's grant of summary judgment, we view the factual record "in the light most favorable to the non-moving party." *Steamfitters Local Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704, 746 (2020).

additional five-year periods. BB&T was required to notify the Waldrons if it decided not to renew after either of the first two five-year draw periods. The Waldrons were required to pay only interest during the draw period(s), with the principal to be paid down thereafter. The Waldrons could terminate the agreement at any point by providing BB&T with written notice. BB&T, by contrast, could terminate the agreement in only three circumstances: (1) for fraud or misrepresentation by the Waldrons; (2) if the Waldrons failed to meet their repayment terms; and (3) if the Waldrons acted or failed to act in a way that adversely affected BB&T's security in the Property. BB&T could also freeze or reduce the credit limit of the account if, among other reasons, "the value of the property which secures [the credit] Agreement . . . declines significantly below its appraised value[.]"

The BB&T Deed of Trust states that it secures the line of credit debt up to $83,000.00 and that all "advances, readvances and future advances [made under the line of credit] shall become part of the indebtedness secured by this Deed of Trust with the same priority from the date of recordation of this Deed of Trust[.]" Moreover, in that instrument, BB&T and the Waldrons

> expressly agreed that the outstanding principal balance of the indebtedness secured hereby may, from time to time, be reduced to a zero balance without such repayment operating to extinguish and release the lien and security interest created by this Deed of Trust. This Deed of Trust shall remain in full force and effect as to any subsequent future advances and readvances made after the zero balance without loss of priority until the indebtedness secured hereby is paid in full and satisfied, the Note and other Documents have been cancelled and this Deed of Trust released of record[.]

Refinancing

The following month, in June 2005, the Waldrons obtained two new loans from Wells Fargo Bank, N.A. First, Wells Fargo refinanced the First Equity Loan with a new home mortgage loan of $450,000.00, secured by a deed of trust, which was properly recorded on July 7, 2005. Out of the loan, $446,104.35 went to pay off the outstanding balance of the First Equity Loan, which included principal and accrued interest. With its loan extinguished, First Equity released its deed of trust. In August 2017, Wells Fargo assigned the loan and the deed of trust to JP Morgan. For simplicity, we will refer to: (1) the loan used to refinance the First Equity Loan as the "JP Morgan Loan"; (2) the corresponding deed of trust as the "JP Morgan Deed of Trust"; and (3) both JP Morgan and, only in its capacity as JP Morgan's predecessor-in-interest with respect to the JP Morgan Loan and the JP Morgan Deed of Trust, Wells Fargo, as "JP Morgan."

Second, Wells Fargo extended the Waldrons a line of credit with a maximum draw of $83,000.00 ("Wells Fargo Line of Credit"), secured by another new deed of trust in favor of Wells Fargo. The proceeds of the Wells Fargo Line of Credit were used to pay the balance of the BB&T Line of Credit down to zero.

The combined settlement statement for the JP Morgan Loan and the Wells Fargo Line of Credit identifies a "Release Prep/Procurement" fee of $85.00 and a "Release" charge of $60.00. The document does not identify whether these fees were attributable to both loans or just one. Apparently, the Waldrons did not submit the written request required by its agreement with BB&T to terminate that line of credit, BB&T therefore neither terminated the line of credit nor released its deed of trust, and JP Morgan did not

check to verify that either of those actions had occurred. The Waldrons subsequently redrew on the still-open BB&T Line of Credit and ultimately defaulted on their payment obligations.

Procedural History

On October 12, 2018, BB&T docketed a foreclosure action and sent notice to JP Morgan of its intent to sell the Property at foreclosure. According to JP Morgan, it was only upon receipt of that notice that it became aware that BB&T's lien had never been released.

On January 22, 2019, JP Morgan filed a two-count complaint in the Circuit Court for Frederick County. In Count I, JP Morgan alleged that it intended to cause the release of the BB&T Deed of Trust when its funds were used to pay the line of credit down to zero, and it sought a declaration "that the BB&T Deed of Trust is released." In Count II, JP Morgan sought a declaration that it was equitably subrogated to the rights and priority lien position of First Equity when it paid off the First Equity Loan.

BB&T filed a motion to dismiss, which the court considered as a motion for summary judgment. JP Morgan filed a motion for partial summary judgment as to Count II (equitable subrogation) and, pursuant to Rule 2-501(d), sought the opportunity to engage in further discovery before responding to BB&T's motion regarding Count I (release). The circuit court issued an oral ruling granting summary judgment in favor of BB&T and against JP Morgan. The court, relying heavily on this Court's decision in *Egeli v. Wachovia Bank, N.A.*, 184 Md. App. 253 (2009), made three broad points in support of its ruling. First, the court concluded that JP Morgan "was aware of the BB&T loan" and, as a

"sophisticated borrower," had an obligation to investigate whether BB&T had released its deed of trust. Second, the court found that, like the line of credit lender in *Egeli*, BB&T lacked the ability to close the line of credit on its own because it was obligated by its line of credit agreement to make advances "until the borrower closes the account or BB&T, for some reason[] set forth in the agreement . . . terminates their contract."[4] Third, although BB&T made its loan with the expectation that it would occupy a second-priority lien position relative to the First Equity Deed of Trust, the court believed that JP Morgan's delay in raising its equitable subrogation claim prejudiced BB&T in two ways: (1) the Waldrons redrew against the credit limit; and (2) the JP Morgan Loan was "a higher first priority mortgage" than the First Equity Loan.[5]

On September 25, 2019, the court entered an order that, without further explanation, denied JP Morgan's motion for summary judgment, granted BB&T's motion, denied

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[4] It was not quite true that BB&T was required to continue to extend loans up to the credit limit throughout the relevant time period, for two reasons. First, the BB&T credit line agreement was entered for an initial five-year draw period, subject to renewal. Thus, for the draw period to have extended into 2017, BB&T presumably chose to renew it in 2010 and again in 2015. Second, the agreement permitted BB&T to reduce the credit limit based on a "significant decline" in the Property's value. Although the record does not contain specific evidence regarding the value of the Property, BB&T's counsel informed the circuit court that it had decreased, and the existence of this dispute suggests the same.

[5] The court's reference to "a higher first priority mortgage" apparently refers to the difference between the original principal amount of the First Equity Loan—$443,450.00—and the amount of proceeds from the JP Morgan Loan that went to pay off that loan—$446,104.35. As we explain below, the difference was attributable to interest charged by First Equity and, in any event, JP Morgan could be subrogated only to the extent of the loan it paid.

further discovery, and entered judgment in favor of BB&T on both counts of the complaint. The court did not issue a declaratory judgment. JP Morgan timely appealed.

DISCUSSION

A circuit court may grant a motion for summary judgment "in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). An appellate court reviews a grant of summary judgment without deference, "examining the record independently to determine whether any factual disputes exist when viewed in the light most favorable to the non-moving party and in deciding whether the moving party is entitled to judgment as a matter of law." *Steamfitters Local Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704, 746 (2020). "This Court limits its review to the grounds relied upon by the trial court." *Id.* By contrast, we review a denial of summary judgment for abuse of discretion, because "a trial court may exercise its discretionary power to deny a motion for summary judgment . . . even if the moving party has shown that there is no genuine dispute of material fact and that it is entitled to judgment as a matter of law." *Estate of Castruccio v. Castruccio*, 247 Md. App. 1, 60 (2020).

I. THE CIRCUIT COURT ERRED IN NOT DECLARING THE RIGHTS AND OBLIGATIONS OF THE PARTIES.

As an initial matter, the circuit court erred by failing to issue a declaration of the parties' rights and obligations. JP Morgan requested that the court issue a declaration of

the rights and obligations of the parties in Count I (as to release) and in Count II (as to equitable subrogation). As the Court of Appeals has explained:

> [W]hen a declaratory judgment action is brought and the controversy is appropriate for resolution by declaratory judgment, the court must enter a declaratory judgment and that judgment, defining the rights and obligations of the parties or the status of the thing in controversy, *must be in writing*. It is not permissible for the court to issue an oral declaration. . . . *When entering a declaratory judgment, the court must, in a separate document, state in writing its declaration of the rights of the parties, along with any other order that is intended to be part of the judgment. Although the judgment may recite that it is based on the reasons set forth in an accompanying memorandum, the terms of the declaratory judgment itself must be set forth separately*. Incorporating by reference an earlier oral ruling is not sufficient, as no one would be able to discern the actual declaration of rights from the document posing as the judgment. This is not just a matter of complying with a hyper-technical rule. The requirement that the court enter its declaration in writing is for the purpose of giving the parties and the public fair notice of what the court has determined.

Bowen v. City of Annapolis, 402 Md. 587, 608-09 (2007) (quoting *Allstate Ins. v. State Farm Mut. Auto. Ins.*, 363 Md. 106, 117 n.1 (2001)). Here, the court did not declare the rights and obligations of the parties in a separate document. For that reason alone, we would be required to remand to the circuit court for entry of a proper declaration. That error, however, does not preclude us from exercising our discretion to reach the merits of this appeal, *see Bowen*, 402 Md. at 609, which we choose to do.

II. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT TO BB&T AS TO EQUITABLE SUBROGATION.

JP Morgan first argues that the circuit court erred in rejecting its claim of equitable subrogation. It contends that: (1) equitable subrogation is the rule when a lender pays off another debt with the intent of taking the same level of priority, as indisputably occurred

here; (2) BB&T would suffer no prejudice from equitable subrogation because it always intended to be in second-priority position and would remain so; (3) to the contrary, BB&T would be unjustly enriched if equitable subrogation is denied; and (4) if JP Morgan was aware of the existence of the BB&T Line of Credit, that would not preclude equitable subrogation. BB&T responds that the circuit court correctly rejected JP Morgan's claim to equitable subrogation because it would prejudice BB&T. BB&T also argues that JP Morgan is a sophisticated entity that negligently failed to check the property records and so has only its own carelessness to blame for its current position.

Equitable subrogation places lenders in their proper relative priority positions when, because of negligence or mistake, they are not in those positions and one party would be unjustly enriched if no correction were made. *See generally Bachmann v. Glazer & Glazer, Inc.*, 316 Md. 405, 412-13 (1989); Joseph T. Latronica, 20A Md. Law Encyc., *Subrogation* § 18 (2020). Here, although we agree that JP Morgan is a sophisticated actor and that it was negligent, negligence does not defeat equitable subrogation when the alternative would be the unjust enrichment of another sophisticated actor—in this case, BB&T. Viewing the facts in the light most favorable to JP Morgan, it was intended to occupy a first-priority lien position with respect to the Property, and BB&T was intended to occupy a second-priority lien position. Although JP Morgan may have been aware of the existence of the BB&T Line of Credit and Deed of Trust at the time of the refinancing, it expected that the line would be closed and the deed released as part of the same transaction. As a result, it was actually (albeit not constructively) ignorant of the ongoing existence of BB&T's intervening lien. And although laches can be a bar to equitable subrogation when a party's

unreasonable delay in pursuing its claim prejudices another, *see Egeli*, 184 Md. App. at 265, the summary judgment record does not support BB&T's claim of prejudice. Accordingly, we will vacate the judgment and remand for further proceedings, including consideration of JP Morgan's cross-motion for partial summary judgment in light of this opinion.

A. The Doctrine of Equitable Subrogation

"Subrogation substitutes one creditor for another, with the substitute creditor having only the rights of the previous creditor." *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534, 553 (2013). "Legal subrogation applies to cases where a third party, to protect its own interests, pays the debt of another." *Id.* at 552. Equitable subrogation, by contrast, applies when a lender pays off a prior debt neither to protect the lender's own interests nor as a volunteer, but with the expectation of taking the same rights as the lender whose debt is paid off. The Court of Appeals has described the doctrine in this way:

> Where a lender has advanced money for the purpose of discharging a prior encumbrance in reliance upon obtaining security equivalent to the discharged lien, and his money is so used, the majority and preferable rule is that if he did so in ignorance of junior liens or other interests he will be subrogated to the prior lien. Although stressed in some cases as an objection to relief, neither negligence nor constructive notice should be material.

G.E. Capital Mortg. Servs. v. Levenson, 338 Md. 227, 231-32 (1995) (quoting G.E. Osborne, Handbook on the Law of Mortgages § 282, at 570 (2d ed. 1970)).

"The primary purpose of [equitable] subrogation is to prevent unjust enrichment at the expense of another." *Egeli*, 184 Md. App. at 266; *see also Fishman*, 433 Md. at 553 ("Equitable subrogation is appropriate in situations where it is necessary to prevent unjust

enrichment[.]"). "It is designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one, who, in justice, equity, and good conscience should pay it." *Fishman*, 433 Md. at 553 (quoting *Hill v. Cross Country Settlements*, 402 Md. 281, 312 (2007)). The result of equitable subrogation is thus to place a lender whose funds were used to extinguish a debt in the position occupied by the original lender, provided that that was the intention of the parties and no other party would be prejudiced by doing so.

Our appellate courts have long recognized the availability of equitable subrogation to provide a lender with the priority position it should have enjoyed vis-à-vis other creditors but does not because of the lender's negligence. In *Milholland v. Tiffany*, for example, a lender paid off an existing mortgage and took a new one of his own in connection with a transfer of the underlying property that was later set aside as fraudulent. 64 Md. 455, 456-57, 2 A. 831, 832 (1886). Although the new mortgage was extinguished when the transaction was set aside, the Court of Appeals held that the new lender was subrogated to the position of the original mortgagee whose loan had been paid off. *Id.* at 462; 2 A. at 835. That result placed the new lender in the position he expected to occupy when he made the loan and did not prejudice the other creditors because "[t]he property still remains subject to the payment of their debts in the same manner and to the same extent as if the voluntary conveyance had not been made, and the purchase mortgage had not been paid." *Id.* But for equitable subrogation, the lender's payment "would enure to the benefit of [the debtor's ex]isting creditors," which would be inequitable "upon the plainest principles of justice." *Id.*

In *Bennett v. Westfall*, the Court of Appeals applied the principles of equitable subrogation to revive an extinguished mortgage when a lender had negligently failed to discover the existence of intervening judgment liens before extinguishing the original mortgage and recording a new one. *See* 186 Md. 148, 150 (1946). The Court held that the lender's negligence would have precluded the remedy he sought only if another party had been prejudiced. *Id.* at 154. The intervening lienholder was not prejudiced in *Bennett*, however, because the only thing he lost was something he had no right to retain: the benefit obtained from the lender's mistake. *See id.* at 154-55. In other words, as the Court characterized the intervening lienholder's argument: "You [the lender] made a mistake, it did me no harm; in fact, [it] resulted in greatly benefiting me. Therefore, you can not have your mistake corrected." *Id.* at 155. The Court concluded that such a "position has no appeal to a court of equity." *Id.* Because the lender, who lacked knowledge of the intervening lien, did not intend to take a second position in taking the new mortgage and extinguishing the old one, refusing to place him back in first-priority position would "punish [him] and benefit [the intervening lienholders] when they have done nothing in law or in morals to deserve or warrant the enrichment to be gained by them." *Id.*

In *G.E. Capital Mortgage Services*, a lender who provided a refinancing loan, part of which was used to pay off an existing mortgage, failed to discover the existence of three intervening judgment liens recorded in favor of a third party. 338 Md. at 234. The lender subsequently foreclosed on the property and purchased it at foreclosure for an amount that was lower than the amount of the original—then-extinguished—mortgage. *Id.* at 235. The Court of Appeals concluded that "[e]quity views [the lender] as subrogated to the released,

first priority claim of [the original lender] in order to prevent unjust enrichment of [the judgment holder]." *Id.* at 242. The Court observed that "a refinancing lender" is able to obtain the original lender's "priority either by assignment or by equitable subrogation." *Id.* at 246. Because the priority was obtained by equitable subrogation and the amount of the sale was less than the amount to which the refinancing lender was subrogated, the lower priority liens were extinguished. *Id.* at 251. Although that left the judgment holder without any recovery, he was not prejudiced because he was "in no worse a position than he was in when his judgments were obtained[.]" *Id.*

This Court's decision in *Egeli*, which is a point of focus of the parties' and the circuit court's legal analyses, came against the backdrop of those earlier decisions. In *Egeli*, three different entities had lent funds to the debtor homeowners, with each loan secured by a deed of trust. 184 Md. App. at 255. Initially, SunTrust Mortgage had issued the primary loan to purchase the property and SunTrust Bank had opened a line of credit in the amount of $140,000.[6] *Id.* at 256. SunTrust Mortgage's deed of trust was recorded first and had priority; SunTrust Bank's deed of trust occupied second-priority status. *Id.* at 257. Nearly two years later, the debtors took out two new lines of credit with Wachovia, totaling $355,000. *Id.* at 258. From one of those lines of credit, Wachovia sent funds to SunTrust Bank that exceeded the amount needed to fully pay down the debtors' SunTrust Bank line of credit, along with a memo indicating that the transfer was in connection with a payoff.

[6] As we explained, "[a]lthough SunTrust Mortgage, Inc., and SunTrust Bank are both affiliates of SunTrust Banks, Inc., they are separate legal entities, and we therefore distinguish them in this opinion." 184 Md. App. at 255 n.1.

Id. However, the debtors never terminated the SunTrust Bank line of credit; to the contrary, they redrew on the line and eventually defaulted on it, along with their other obligations. *Id.* at 258-59.

SunTrust Bank initiated foreclosure proceedings, which was when Wachovia first realized that the SunTrust Bank line of credit had not been released. *Id.* at 259. Wachovia ultimately bought the property in foreclosure. *Id.* After satisfying SunTrust Mortgage's first-priority lien, $260,000 remained for distribution. *Id.* at 259 & n.2. The question for this Court was whether SunTrust Bank or Wachovia had claim to that surplus. We held that laches precluded Wachovia's claim to priority over SunTrust Bank because of prejudice to SunTrust Bank from Wachovia's delay in asserting that claim. *Id.* at 265. We reasoned that SunTrust Bank had bargained for second-priority position behind SunTrust Mortgage when it issued its line of credit. *Id.* at 267. Because of Wachovia's delay in recognizing and asserting its claim, SunTrust Bank had continued to extend credit to the debtors as required by the terms of its never-terminated line of credit agreement. *Id.* at 261, 265. Changing SunTrust Bank's priority position by moving it behind not only SunTrust Mortgage, but also Wachovia, would be prejudicial. *Id.* Moreover, the Court held, Wachovia was not entitled to rely on equitable estoppel because it was a victim of its own carelessness in failing to ensure that the SunTrust Bank line of credit was closed, and its deed of trust released, when the line was paid down. *Id.* at 264-65. As a sophisticated party, Wachovia had an obligation to protect its own interests, which it failed to do, to the prejudice of SunTrust Bank. *Id.* at 262, 265.

Although we decided *Egeli* based on laches and equitable estoppel, we proceeded to discuss equitable subrogation "in the interest of comprehensiveness." *Id.* at 265. We observed a difference of opinion between case law and the Restatement (Third) of Property regarding whether knowledge of an intervening interest precludes application of equitable subrogation. *Id.* at 266-67. We observed that the differing approaches could each give rise to unjust enrichment under certain circumstances. *Id.* at 267. In *Egeli*, applying equitable subrogation would have been inequitable to SunTrust Bank by knocking it down from the second-position priority for which it bargained to third position behind Wachovia. *See id.*

From these cases, we glean the following principles. First, when a lender pays off a debt in circumstances indicating that it expected to be subrogated to the position of the holder of the extinguished debt, equitable subrogation generally will provide that outcome.[7] Second, neither the lender's negligence nor constructive notice of an intervening lien will preclude the operation of equitable subrogation. Third, unreasonable delay combined with prejudice—for example, if the holder of an intervening lien would suffer a diminished priority position from that for which it bargained—will preclude the operation of equitable subrogation through laches. But losing a windfall benefit—for example, by securing a

[7] Notably, subrogation applies only to the extent of the extinguished lien. For example, the refinancing lender in *G.E. Capital Mortgage Services* provided a loan of $131,200, of which $56,283.14 was used to pay off the existing mortgage. 338 Md. at 234. The refinancing lender was thus equitably subrogated to the original lender's priority only to the extent of $56,283.14. *Id.* at 242. To the extent the refinancing lender's new loan exceeded that amount, the refinancing lender fell lower in priority than the properly recorded intervening judgment liens. *Id.*

better priority position—resulting from another party's negligence is not cognizable prejudice.

B. Equitable Subrogation Is Not Precluded by JP Morgan's Knowledge of the BB&T Line of Credit.

For purposes of reviewing the circuit court's grant of summary judgment in favor of BB&T, we view the facts in the light most favorable to JP Morgan, including that: (1) JP Morgan expected to take the first-priority lien position of First Equity when it provided funds that were used to pay off the First Equity Loan in full; (2) JP Morgan expected that the BB&T Deed of Trust would be released as part of the same transaction; and (3) for the ensuing 13 years, JP Morgan remained actually, but not constructively, unaware of the ongoing validity of the BB&T Deed of Trust.

BB&T contends that equitable subrogation is precluded because JP Morgan had knowledge of the BB&T Deed of Trust. BB&T bases its factual contention that JP Morgan had such knowledge on its assertion that JP Morgan must have known of the existence of the BB&T Line of Credit and Deed of Trust because it (through Wells Fargo) provided funds to pay that line of credit down to zero at the same time it made the JP Morgan Loan and recorded the JP Morgan Deed of Trust. BB&T bases its legal argument regarding the effect of that knowledge on statements from the Court of Appeals that the doctrine applies when a lender makes a loan "in ignorance of junior liens or other interests." *See G.E. Capital Mortg. Servs.*, 338 Md. at 231-32 (citation omitted); *see also Bennett*, 186 Md. at 152 (quoting statements from out-of-state cases that equitable subordination applies when the new mortgagee acts "in ignorance of the existence of an intervening lien" or "without

knowledge of an intervening lien" (first quoting *Burlington Bldg. & Loan Ass'n v. Cummings*, 17 A.2d 319, 322 (Vt. 1941); then quoting *Cliffside Park Title Co. v. Progressive Theatres*, 192 A. 520 (N.J. 1937))); *but see Bennett*, 186 Md. at 153 (quoting statement of the Court of Appeals of West Virginia that the doctrine applies "unless the circumstances of the transaction indicate [no subordination] to have been [the new lender's] intention" (quoting *Conservative Life Ins. v. Nat'l Exch. Bank*, 171 S.E. 530, 531 (W. Va. 1933))).

JP Morgan disagrees on both the facts and the law. Regarding the facts, JP Morgan contends that it had only constructive knowledge of the BB&T Line of Credit, which Maryland courts have regularly found does not bar equitable subrogation. Moreover, even if it had actual knowledge, JP Morgan argues that that would not bar equitable subrogation because notice is relevant only to determine whether "the subrogation claimant intended for its lien to be subordinate to the intervening lien," and JP Morgan indisputably did not so intend. Regarding the law, JP Morgan points out that the statements from case law on which BB&T relies are dicta. The Court's holding in *Bennett* was that the lender's ignorance of an intervening lien demonstrated that the lender did not intend to accept a lower priority in that case. *See* 186 Md. at 155. The Court did not hold that actual knowledge, had it existed, would have precluded equitable subrogation. Similarly, JP Morgan asserts, the Court's articulation of the doctrine in *G.E. Capital Mortgage Services* states that equitable subrogation will apply if the new lender is "ignoran[t] of junior liens," but does not state expressly that the doctrine applies only in that circumstance. *See* 338 Md. at 232. JP Morgan acknowledges that subsequent decisions have sometimes recited

ignorance of an intervening lien as an element of equitable subrogation but argues that none of those cases have been decided on that ground.

JP Morgan appears to be correct that no reported Maryland decision has ever denied equitable subrogation on the ground of the lender's actual knowledge of an intervening lien. To that extent, it is worth noting—as we did in *Egeli*—that although other courts have held or suggested that actual knowledge of an intervening lien precludes equitable subrogation, the Restatement (Third) of Property has suggested abandoning that test. The Restatement's articulation of the doctrine of equitable subrogation omits any reference to knowledge of an intervening lien: "One who fully performs an obligation of another, secured by a mortgage, becomes by subrogation the owner of the obligation and the mortgage to the extent necessary to prevent unjust enrichment." Restatement (Third) of Property § 7.6(a) (Am. Law Inst. 1997). Explaining its deviation from the then-majority rule, the drafters explicated in a comment:

> Under this Restatement, however, subrogation can be granted even if the payor had actual knowledge of the intervening interest; the payor's notice, actual or constructive, is not necessarily relevant. The question in such cases is whether the payor reasonably expected to get security with a priority equal to the mortgage being paid. Ordinarily lenders who provide refinancing desire and expect precisely that, even if they are aware of an intervening lien. A refinancing mortgagee should be found to lack such an expectation only where there is affirmative proof that the mortgagee intended to subordinate its mortgage to the intervening interest.

Restatement § 7.6 cmt. e (internal references omitted).

We need not determine here whether a refinancing lender's actual knowledge of an intervening lien precludes equitable subrogation because JP Morgan was actually ignorant

of the ongoing validity of the BB&T Deed of Trust. The purpose of examining whether a subsequent lender had actual knowledge of an intervening lien in connection with equitable subrogation is to determine the apparent intent of the parties. If a lender provides funds to discharge a superior-priority lien with knowledge of an intervening lien and takes no action to adjust priorities, the traditional rule has been to view the new lender as a volunteer—one who did not intend to take the priority position of the discharged debt.[8] *See Hill*, 402 Md. at 301-02 (a party "yoked with the label of 'mere volunteer' or 'officious payor' . . . is prohibited from recovering under theories of unjust enrichment or subrogation"). On the other hand, where the lender lacks actual knowledge of the intervening lien, courts have not presumed that the lender intended to abandon the priority to which the lender ordinarily would be entitled. *See, e.g.*, *Bennett*, 186 Md. at 155 (concluding that because a lender "did not have actual knowledge of the intervening" junior lien, "it cannot be said that" the lender "intended to substitute [the] junior lien for [his] senior lien"); *Milholland*, 64 Md. at 461, 2 A. at 834 (stating that a lender without knowledge of the fraudulent nature of an underlying deed on which it secured a deed of trust is not "to be considered as a mere volunteer").

[8] The Restatement calls into question the premise that a lender with actual knowledge of an intervening lien, but who does not take formal steps to adjust priority, expects to fall behind the intervening lien in priority. We agree that that is a questionable assumption absent some indication that the new lender was acting as a volunteer. More importantly for present purposes, the Restatement reinforces that the essential question "is whether the payor reasonably expected to get security with a priority equal to the mortgage being paid." Restatement § 7.6 cmt. e; *see also Bennett*, 186 Md. at 153 (identifying the relevant issue as whether "the circumstances of the transaction indicate [no subordination] to have been [the new lender's] intention" (quoting *Conservative Life Ins.*, 171 S.E. at 531)).

When it comes to what actual knowledge—or lack thereof—indicates regarding the priority JP Morgan expected to receive, the relevant question is thus not whether it had actual knowledge that the BB&T Deed of Trust ever existed, but whether it had actual knowledge that the BB&T Deed of Trust would survive the transaction. Only that knowledge would possibly reflect on JP Morgan's expectation concerning its own priority. On this record, JP Morgan lacked such actual knowledge. We therefore conclude that the circuit court erred in ruling that JP Morgan's knowledge of the existence of the BB&T Deed of Trust precluded its claim for equitable subrogation as a matter of law.

C. BB&T Has Not Identified Any Prejudice from Equitable Subrogation.

Relying on *Egeli*, BB&T argues that the circuit court correctly concluded that laches precludes equitable subrogation because JP Morgan's unreasonable delay has prejudiced BB&T. *See Egeli*, 184 Md. App. at 265 (stating that the doctrine of laches "applies when there is an unreasonable delay in the assertion of one's rights and that delay results in prejudice to the opposing party" (quoting *Liddy v. Lamone*, 398 Md. 233, 244 (2007))). The essence of BB&T's claim is that with the discharge of the First Equity Loan and release of the First Equity Deed of Trust, BB&T moved into first-priority position as a matter of law (regardless of whether BB&T knew that at the time), and it would suffer prejudice if it were now dislodged from that position. JP Morgan responds that equitable subrogation would not prejudice BB&T because BB&T opened the line of credit with the expectation that it would sit behind the First Equity Loan, equitable subrogation would merely subrogate JP Morgan to First Equity's position, and therefore BB&T would remain in the

same position for which it bargained. JP Morgan argues that the denial of equitable subrogation would unjustly enrich BB&T.

The circuit court concluded that BB&T would suffer prejudice from JP Morgan's delay in asserting equitable subrogation in two respects: (1) the Waldrons redrew against the credit limit after the line was not released; and (2) the JP Morgan Loan was "a higher first priority mortgage" than the First Equity Loan. As discussed above, however, prejudice for purposes of equitable subrogation occurs if the holder of an intervening lien would be placed in a worse position than it would have been in if the subsequent lender had never paid off the original debt. There is no prejudice in being precluded from enjoying a windfall because of another party's mistake. *See, e.g.*, *G.E. Capital Mortg. Servs.*, 338 Md. at 244-45 (holder of intervening judgment lien was not prejudiced by equitable subrogation, even though his lien was extinguished without recovery from the foreclosure sale, because his position relative to the equitably subrogated mortgagee was the same as his originally bargained-for position); *Bennett*, 186 Md. at 154-55 (holder of intervening judgment lien was not prejudiced because he occupied the same position relative to the mortgage); *Milholland*, 64 Md. at 462, 2 A. at 835 ("[n]o injustice is done to the appellant creditors" even though their debts now fell lower in priority than the equitably subrogated mortgage).

Here, based on the summary judgment record, it does not appear that BB&T suffered any prejudice from the Waldrons having redrawn against the credit limit because BB&T had agreed to extend that credit line to the Waldrons with the expectation that it would occupy a second-priority lien position relative to the underlying home mortgage

loan. That the Waldrons drew and redrew on the line of credit is precisely what their agreement with BB&T contemplated and did not put BB&T in any worse position than it would have occupied had JP Morgan never discharged the First Equity Loan.[9]

The statement that the JP Morgan lien was "a higher first priority mortgage" than the First Equity lien is also incorrect, for two reasons. First, although the amount JP Morgan paid to discharge that loan ($446,104.35) was higher than the initial principal amount of the First Equity Loan ($443,450.00), it appears to be undisputed that the increase resulted from the accrual of interest imposed by First Equity that was properly subject to its first-priority position. Second, although the amount of the JP Morgan Loan ($450,000) was higher than the amount paid to discharge the First Equity Loan, JP Morgan would be equitably subrogated only to First Equity's position. *See Fishman*, 433 Md. at 553 ("Subrogation substitutes one creditor for another, with the substitute creditor having only the rights of the previous creditor."); *G.E. Capital Mortg. Servs.*, 338 Md. at 235, 242 (holding that a lender who refinanced a loan of $56,283.14 as part of a new loan of $131,200 was equitably subrogated only up to the amount of the loan it had paid off). It is only that amount that JP Morgan has sought to subrogate. Applying equitable subrogation thus would not and could not place BB&T's lien behind a higher first-priority mortgage.

As support for its laches argument, BB&T contends that this case is essentially identical to *Egeli*. It is not. In *Egeli*, the first priority lien was at all relevant times held by

[9] BB&T does not allege that it relied on its purported first-priority lien position in deciding to renew the BB&T Line of Credit for additional draw periods or in deciding not to freeze or reduce the Waldrons' credit limit.

SunTrust Mortgage. 184 Md. App. at 259. SunTrust Bank initially occupied second-priority status when it extended its line of credit to the mortgagors, sitting directly behind SunTrust Mortgage. *Id.* at 256-57. Wachovia provided funds to pay down the SunTrust Bank line of credit and argued that by operation of equitable subrogation, it should have dislodged SunTrust Bank and taken over second-priority position, thus relegating SunTrust Bank to priority behind the new Wachovia loans. *See id.* at 257, 261. The prejudice to SunTrust Bank would have resulted from that demotion in priority. Here, by contrast, the application of equitable subrogation would not demote BB&T's priority position in any way from that for which it bargained. BB&T initially occupied a second-priority position and, upon application of equitable subrogation, it would continue to occupy the same position. Only the identity of the first-priority lienholder would have changed, not the amount of the lien or BB&T's position relative to it.[10]

Absent some prejudice that is not apparent from the record before us, BB&T would be unjustly enriched at the expense of JP Morgan if equitable subrogation does not apply. Unjust enrichment arises, for example, when a "subrogee's failure to consult the land records benefitted a third party." *Fishman*, 433 Md. at 557. Here, BB&T contends that JP Morgan's failure to check the land records and realize that the BB&T Deed of Trust had not been released inured to BB&T's benefit by permitting it to move into first-priority

[10] As discussed above, in addition to refinancing the First Equity Loan in 2005, Wells Fargo also extended a line of credit that was used to pay down to zero the BB&T Line of Credit. If the current holder of the Wells Fargo Line of Credit, if it continues to exist, were now to appear and claim priority over BB&T, *that claim* would be equivalent to the claim at issue in *Egeli*, and it would presumably be precluded by laches. No such claim is at issue here, however.

position with respect to the Property. BB&T argues that Maryland's "First in Time, First in Right" priority rule makes BB&T the rightful possessor of the first-priority lien position and that it is therefore entitled to keep the windfall resulting from JP Morgan's negligence. That is a paradigmatic example of the type of unjust enrichment against which equitable subrogation is intended to protect. *See G.E. Capital Mortg. Servs.*, 338 Md. at 246 (rejecting an intervening lienholder's position that "the first priority that [its] judgments appeared to have on the face of public record" resulting from the refinancing lender's negligence "was a property right that could not be lost by operation of an equitable doctrine" absent prompt assertion of equitable subrogation). Moreover, in arguing that it would be wrongfully deprived of the priority position it currently enjoys, BB&T misapprehends that equitable subrogation, if it did occur, occurred already: at the time JP Morgan's funds were used to discharge the First Equity Loan. *See Rinn v. First Union Nat'l Bank of Maryland*, 176 B.R. 401, 409-10 (D. Md. 1995) ("[E]quity, regarding that as done which ought to have been done, treats the assignment as being made as soon as the right to subrogation arises, which is ordinarily the time at which the subrogee pays the debt.").

For all these reasons, we conclude that the circuit court erred in granting summary judgment in favor of BB&T on Count II of the complaint (equitable subrogation) and will reverse that aspect of the court's judgment. In light of the deference afforded to a circuit court's discretion "to deny a motion for summary judgment even if the moving party has shown that there is no genuine dispute of material fact and that it is entitled to judgment as a matter of law," *Estate of Castruccio v. Castruccio*, 247 Md. App. 1, 60 (2020); *see also*

Fischbach v. Fischbach, 187 Md. App. 61, 75 (2009) ("[A] trial court has discretionary authority to *deny* a motion for summary judgment in favor of a full hearing on the merits, even when the moving party 'has met the technical requirements of summary judgment.'" (quoting *Dashiell v. Meeks*, 396 Md. 149, 164-65 (2006))), we will vacate the circuit court's judgment denying JP Morgan's motion for summary judgment on Count II and remand for further proceedings. Those proceedings should include a ruling on JP Morgan's motion for summary judgment on that count in light of this opinion and, ultimately, issuance of an appropriate declaratory judgment.

III. THE CIRCUIT COURT CORRECTLY DETERMINED THAT JP MORGAN WAS NOT ENTITLED TO RELEASE OF THE BB&T LIEN OR TO FURTHER DISCOVERY.

JP Morgan also argues that the circuit court erred in denying its request to delay a ruling on Count I of its complaint, in which JP Morgan sought a declaration that "the BB&T Deed of Trust is released." JP Morgan contends that the court should have permitted it to conduct more discovery regarding whether BB&T intended to release its deed of trust in 2005. The circuit court concluded that additional discovery would be futile and granted summary judgment in favor of BB&T.

We discern no abuse of discretion in the circuit court's decision to deny JP Morgan additional time for discovery and no error in the court's legal conclusion that JP Morgan was not entitled to release of the BB&T Deed of Trust. In contrast to its equitable subrogation claim, JP Morgan's release claim is barred by laches.

As we have observed, the doctrine of laches "applies when there is an unreasonable delay in the assertion of one's rights and that delay results in prejudice to the opposing

party." *Egeli*, 184 Md. App. at 265 (quoting *Liddy*, 398 Md. at 244). We discern no error in the circuit court's conclusion that JP Morgan's 13-year delay in raising equitable subrogation was unreasonable and therefore satisfied that element of laches. As a sophisticated actor, JP Morgan was negligent in failing to ensure that the BB&T Deed of Trust was released or expressly subordinated to its own lien, and its 13-year delay in seeking to remedy its carelessness was unreasonable.

The circuit court also determined correctly that JP Morgan's delay in pursuing its release claim, in contrast to its equitable subrogation claim, was prejudicial to BB&T. As discussed, BB&T did not release its deed of trust, nor did the Waldrons terminate the BB&T Line of Credit. Instead, the line of credit remained open, the Waldrons continued to draw on it, and they subsequently defaulted. If the BB&T Deed of Trust were released now, BB&T would lose both (1) its priority position vis-à-vis any subsequent lienholders, including whoever, if anyone, currently holds the Wells Fargo Line of Credit and associated deed of trust, and (2) its security interest in the Property vis-à-vis the Waldrons and any other creditors. Although it is possible that that security interest may not net it any surplus in a foreclosure sale, the loss of its expected priority position and its security interest would be prejudicial. As a result, JP Morgan's release claim is barred by laches. On remand, the circuit court should enter an appropriate declaratory judgment to that effect.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY REVERSED IN PART AND VACATED IN PART. CASE REMANDED FOR ENTRY OF A

DECLARATORY JUDGMENT ON COUNT I (RELEASE) AND FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION ON COUNT II (EQUITABLE SUBROGATION). COSTS TO BE SPLIT EQUALLY.