UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0383

September Term, 2015

LETICIA CARINO, ET AL.

v.

MONACCO EXCLUSIVE RENOVATION, LLC. ET AL.

Krauser, C.J.,
Woodward,
Wright,

JJ.

Opinion by Wright, J.

Filed: April 5, 2016

Leticia Carino and Ernest Carino, appellants ("Carinos"), filed a complaint in the Circuit Court for Prince George's County, on July 17, 2012, seeking to set aside the sale of real property and to quiet title. The defendants in the complaint were ANZ Title & Settlement, LLC ("ANZ Title"), Champions Realty, Inc., and Monacco Exclusive Renovations, LLC, appellee ("Monacco"). On October 24, 2012, Monacco filed a motion to dismiss the complaint, which was granted on June 19, 2013. Subsequently, the Carinos filed a motion to reinstate plaintiff's complaint and memorandum of *lis pendens* and vacate defendant's order to dismiss the plaintiff's complaint on behalf of defendant Monacco on July 16, 2013. The circuit court granted the Carinos' motion on October 4, 2013, and scheduled a hearing concerning Monacco's motion to dismiss. On December 12, 2013, the court denied Monacco's motion to dismiss. Monacco filed an answer to the Carinos' complaint on January 9, 2014.

On May 9, 2014, the Carinos amended the complaint adding the following counts and causes of action: civil conspiracy, forgery, fraud, vicarious liability, respondeat superior, possession of property, accounting, and a count seeking to vacate the deed. The Carinos also added Richard Crespo, Edward Marin, Jacob Delara, and Alan Aldave as defendants in the case.

On September 3, 2014, default orders were entered against Champions Realty, Inc., ANZ Title, and Edward Marin. On September 5, 2014, Champions Realty, Inc. and Edward Marin filed a motion to vacate the default orders entered against them. Also, on September 5, 2014, Aldave filed a motion to dismiss. The circuit court denied all three motions on October 3, 2014. Finally, on December 8, 2014, the Carinos filed a second

amended complaint. A bench trial was held on January 14 and 15, 2015, and concluded on January 21, 2015. Following the trial, the circuit court found in favor of the defendants and denied all relief, including the Carinos' prayer to set aside the deed.

The Carinos filed a motion to alter or amend judgment on February 6, 2015, arguing that the circuit court's ruling was inconsistent with Maryland law. The motion was opposed by Monacco on February 18, 2015, and denied by the court on April 9, 2015. The Carinos noted the instant appeal on May 1, 2015, asking the following questions:

> 1. Did the trial court err as a matter of law in refusing to void a deed that transferred real property to a grantee when such grantee was added to the deed without the grantor's knowledge or consent?
>
> 2. Did the trial court err as a matter of law in enforcing a deed if such deed was notarized without the notary witnessing its execution or receiving the grantor's acknowledgment of execution?
>
> 3. Did the trial court err as a matter of law in ruling that [the Carinos] were not entitled to damages arising from the loss of their right to dispose of the Property solely upon the basis that their delinquent mortgage was satisfied by the transaction? [1]
>
> We answer the first two questions in the negative and, therefore, affirm the judgment of the circuit court.

FACTS

The Carinos purchased 5306 Varnum Place, Bladensburg, Maryland 20710 ("the Property"), in 2006. The Property's purchase price was $365,000.00, and the Carinos put

[1] In their argument as to this issue, the Carinos allege that Monacco's fraud entitles them to damages. We do not have to reach this issue because we determine that no fraud occurred.

no money down. The Carinos purchased the Property as a second home and allowed relatives to reside in the home. In 2010, the Carinos could no longer afford the Property's mortgage payments and engaged Manfredo Jordan, a real estate agent, to determine their options. Jordan informed the Carinos that their only option at the time was to seek a short sale.[2] The Carinos agreed and placed the Property on the market as a short sale but could not secure a buyer. Subsequently, the Bank of America approved the short sale. In late 2011, the Carinos learned of a government program known as the Home Affordable Refinance Program ("HARP")[3] and asked Jordan if they might qualify. Jordan determined that they may qualify and it was agreed that the Carinos would no longer attempt to sell the Property but instead would seek to reduce their principal under HARP. Jordan notified ANZ Title of this decision at the end of 2011, and ANZ Title agreed to seek a modification.

[2] "After a mortgagor defaults, he or she may negotiate a 'short sale' to avoid a deficiency judgment, *i.e.*, further indebtedness persisting even after the proceeds from a foreclosure sale have been distributed." *C. Phillip Johnson Full Gospel Ministries, Inc. v. Investors Fin. Servs., LLC*, 418 Md. 86, 100 (2011).

In a short sale, the mortgage lender agrees to release its mortgage or mortgages for a reduced payoff amount. In many cases, the mortgage lender also releases the property owner from any further liability for the debt. In this case, the mortgage debt for the two mortgages totaling over $365,000.00 was released for payments to Bank of America in the amounts of $78,654.00 and $4,300.00.

[3] HARP was created by the Federal Housing Finance Agency specifically to help homeowners refinance their mortgage if they are current on their mortgage payments but have little to no equity in their homes; that is, the homeowners owe as much or more than their homes are currently worth. http://www.harp.gov (last visited March 11, 2016).

Sometime in March 2012, Jordan received a phone call from the Carinos inquiring about whether the Property was sold because they observed work being done on the Property. Jordan went to the Property and learned that Richard Crespo, an investor, had hired the workers. Jordan then learned that Crespo's company, Monacco, purchased the property on or about May 27, 2012, after being contacted by ANZ Title. The deed conveying the Property to Monacco was recorded on April 27, 2012. Monacco's name was handwritten on the deed as the grantee.

Janet Johnson, a settlement agent for ANZ Title, testified that in early March 2012, Jordan and Mrs. Carino came to ANZ Title and met with Aldave. During the meeting, Ms. Johnson stated she overheard Aldave explaining the deed and asking Mrs. Carino to sign. Ms. Johnson testified that she subsequently observed Mrs. Carino's signature on the deed. She stated that, because Mr. Carino was not present, Jordan took the deed and eventually returned a few hours later with the deed bearing Mr. Carino's signature. Upon return of the deed, Ms. Johnson took it to her notary to be notarized and then placed the deed in escrow. The deed was signed in blank until a purchaser was found.

At the time of the purchase of the Property, the Carinos owed at least $365,000.00 on the Property and had not made any mortgage payments since 2010. A few weeks before March 27, 2012, Monacco was contacted by Champions Realty, Inc., told that the Property was available, and asked if it was interested in buying the Property. Upon deciding to purchase the Property, Monacco signed the closing document, wired the

funds to the settlement agent, and proceeded to make renovations to the Property. Monacco never had any contact with the Carinos.

As a result of the sale, Bank of America forgave the balance of the entire mortgage debt. At the time of the sale, the Property had been abandoned and in disrepair. Monacco paid approximately $92,000.00, which was the market value for the Property.

In his ruling, the circuit court found that "everything that Ms. Johnson described, just makes sense. Legally and practically." Therefore, the circuit court upheld the deed.

STANDARD OF REVIEW

Following a bench trial, we "review the case on both the law and the evidence." Md. Rule 8-131(c). We "will not set aside the judgment of the [circuit] court on the evidence unless clearly erroneous," and we defer to the circuit court's judgment on the credibility of witnesses. *Nesbit v. Gov't Emps. Ins. Co.*, 382 Md. 65, 72 (2004). Appellate courts, however, do not defer to the circuit court on questions of law: "'When the trial court's order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are legally correct under a *de novo* standard of review."' *Banks v. Pusey*, 393 Md. 688, 697 (2006) (quoting *Gray v. State*, 388 Md. 366, 375 (2005) (other citations omitted)).

DISCUSSION

I.

In this case, the deed for the Property is not void because it was executed without a grantee when a grantee was added with the permission of the grantor. In its ruling, the circuit court stated:

> We are in the reality of 2015 where short sales and these kids of creative conventions to unload property from defaulting borrowers and to relieve borrowers of the debt they incurred, when they have not paid the mortgage in months and years, is basically the new reality.
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> * * *
>
> The Court believes the evidence is that the Carinos signed a bunch of documents and gave them to Ms. Johnson. Ms. Johnson put them on a shelf until the right purchaser came along. And the right purchaser was Monacco Exclusive Renovations, LLC.

The Carinos argued that, in light of the clear and unequivocal testimony of Ms. Johnson, the settlement agent, the deed was signed without a named grantee, and therefore, the deed cannot be allowed to stand as proof of the Carinos' intent to convey the Property to Monacco.

Contrary to the argument of the Carinos, the circuit court interpreted Ms. Johnson's testimony as indicating that the Carinos had signed the short sale documents and held them in escrow until a short sale buyer was found. In addition, the circuit court found that the Carinos received the short sale that they wanted, relieving them of the substantial debt on a property that was worth much less, which they had abandoned and left in disrepair.

The record reflects that extensive testimony and exhibits at trial supported the factual findings of the circuit court. Mrs. Carino testified that the Carinos, after purchasing the Property, made mortgage payments for a few years and then stopped; they never lived in the Property. The Carinos put the Property up for a short sale in 2010. Mr. Carino testified that he basically knew nothing.

The Carinos' witness real estate agent, Jordan, confirmed that the Property was still on the market in 2012 when it was brought to the attention of Monacco. Jordan's relevant testimony was as follows:

> THE WITNESS: No, they [the Carinos] came to me. And heard this loan modification, said Manfredo [Jordan], are we able to qualify for that.
>
> THE COURT: All right. And this was probably about when, if you remember?
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> THE WITNESS: A – I don't remember, Your Honor.
>
> THE COURT: Well, these other applicants have fallen through, you testified in the beginning – in the middle of 2011. Right?
>
> THE WITNESS: Who has been – in the end of eleven, I would say.
>
> THE COURT: Okay. So –
>
> THE WITNESS: Probably at the –
>
> THE COURT: -- toward the end of the year?
>
> THE WITNESS: I think so, yes.
>
> THE COURT: Okay. Very well.
>
> MR. LYONS: Thank you, Your Honor.
>
> THE COURT: So, they came to you and then what was the ensuring discussion? Or strategy?
>
> THE WITNESS: Well, right after immediately when they told me they wanted – when they asked me if they would qualify for a loan modification, which is what they had heard, then I – went to ANZ Title and I informed them that they would like to have their loan modified. And Mr. Aldave, who apparently was running ANZ Title, says yes, they would like to have their loan modified. And Mr. Aldave, who apparently was running ANZ Title, says yes, they will work on it.
>
> MR. LYONS: Thank you, Your Honor, May I proceed?

THE COURT: Yes.

MR. LYONS: Thank you.

BY MR. LYONS:
Q. And now if there is a modification, so you are looking for – you are the buyer's – excuse me the seller's agent, right?

A. Right.

Q. Okay. So, did you continue to look for buyers or what did you do after you discussed with Alan Aldave about a modification?

A. That Alan Aldave would still be involved on the short sale issue and the reason why it was, was because he said, Manfredo, we got to be able to keep the lender from foreclosing the house, until they were able to qualify for the modification. But yes, it was kept on the market.

The defendants' called Ms. Johnson, who described in detail Mrs. Carino's coming to ANZ Title on March 12, 2012, with Jordan to sign the short sale documents, then Jordan leaving with the documents for Mr. Carino to sign, and Jordan returning later that same day with the documents signed by Mr. Carino. Ms. Johnson further explained that the documents, including the deed, were signed in advance of the short sale approval by Bank of America and the procuring of a buyer, and that this was not an uncommon practice for short sales.

Ms. Johnson's relevant testimony is set out as follows:

Q. And how long have you done settlements?

A. Almost thirty years.

Q. And I believe you said you went to work for ANZ Title around 2010.

A. Yes, sir.

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BY MR. FITZGIBBONS:
Q. I take it you speak Spanish?

A. Yes sir. That's my primary language. English is my second.

Q. Did there come a time when you became familiar with a proper[ty] at 5306 Barnum Place?

A. Yes, I did. I was coordinating and seeing that the – on a busy day that the seller's side documents were going to be executed that day. Somewhere on March 12, 2012, somewhere on there. And I was very busy.

So, when both [Mrs.] Carino and Manfredo Jordan walked into the office and asked for Alan [Aldave], I was still tied up. I asked Alan, hey, you know, why don't you go ahead and handle this side since this is only seller's side documents, so I could continue what I had to do.

And I would sit here. This was my desk. And Alan's desk would be perpendicular, where the Judge is, right now, or even a little bit closer.

Q. And so that is when Manfredo Jordan and [Mrs.] Carino came into the office of ANZ Title?

A. Correct.

Q. And they were supposed to see you?

A. They were supposed to see me but I was overwhelmed at that moment. And it was somewhere around afternoon time, after lunchtime, one or two o'clock in the afternoon.

Q. And you knew Manfredo Jordan?

A. He had come into the office before because he brought this case to ANZ.

Q. And did you see [Mrs.] Carino here this morning?

A. She's behind the gentleman with the white hair.

THE COURT: The record will reflect in-court identification of the plaintiff, [Mrs.] Carino.

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Q. This conversation that you had, was this in English or in Spanish?

A. It was all done in Spanish.

Q. So – go ahead.

A. So, [Mrs.] Carino and Mr. Jordan approached me as they walked in. And they said they were there. And I said, okay, let me see – I'm a little tied up. And I asked Alan Aldave, since he was right there, and Mr. Jordan had come in and was seen always – Mr. Aldave. I said Alan, would you please take care of [Mrs.] Carino and Mr. Jordan and I will pay attention to what you are saying here, as I'm doing the other documents.

And I could briefly over here [sic], Mr. Aldave explaining to [Mrs.] Carino –

MR. POWERS: Objection.

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THE WITNESS: Mr. Aldave explaining to [Mrs.] Carino what each document was that he was putting in play in front of her, for her to sign.

THE COURT: Overruled.

BY MR. FITZGIBBONS:
Q. All right. And did she sign any documents?

A. When they finished, Alan Aldave came to me and said we have a problem, Mr. Carino, the husband, was not there to execute the other side of the documents, the rest of the documents because he wasn't there. And I said well, I'm not too happy. When is he going to come here, Mr. Carino.

And then at that point Mr. Jordan volunteered to take the document to Mr. Carino to have him sign and – normally we don't like to allow that, you know, in a settlement – in a process. But because he had the – was the one who brought the Carinos in, as his clients, and we were just going to hold these documents in escrow, I allowed it.

So, they left –

THE COURT: Excuse me. But you did not answer Mr. Fitzgibbons' question exactly. What he said is, and did [Mrs.] Carino sign the documents. Did you see her sign anything?

THE WITNESS: I did not see her sign the documents, the Deed. When they expressed the situation to me, I saw the document, reviewed it and it was her signature on the document.

THE COURT: So, there was a signature on the document?

THE WITNESS: Yes, sir.

THE COURT: In your office?

THE WITNESS: In my office.

THE COURT: At the same time?

THE WITNESS: At the same time.

THE COURT: Okay, Mr. Fitzgibbons.

MR. FITZGIBBONS: Thank you, Your Honor.

BY MR. FITZGIBBONS:
Q. All right, So, I think you just said Mr. Jordan volunteered to take documents to Mr. Carino.

A. Yes. Somewhere I would say around two o'clock or close to three o'clock. Somewhere around that time.

Q. Did you package anything up for Mr. Jordan?

A. No, I did not. I said, Alan Aldave to ahead and – what you have in your office, provide it to Mr. Jordan to take to Mr. Carino and then we will wait until he comes back.

And therefore, Mr. Jordan did come back about two to three hours later that day. Gave the documents to Mr. Aldave. Which Mr. Aldave put in my pile. Which I reviewed then around ten o'clock that night.

Q. Okay, We are talking about the same day now, around ten o'clock at night of the same day.

A. Yes, sir.

Q. You got around to the point where you were able to review those documents?

A. Correct.

Q. All right.

A. and –

Q. Do you remember what documents there were?

A. They were basically the Deed of Conveyance, the transfer of Maryland that they were residents of the State of Maryland, and the A[NZ] documents, like affidavits, the Continuous Marriage Affidavit. The a – if there was a (inaudible), he would have signed it then. All to be held in escrow.

Q. Okay. Why do you say to be held in escrow?

A. Because this was a short sale and we were pending – everything was pending to the loan approval for whoever the buyer was.

Q. Okay. So, you did not even necessarily have a buyer ready at the point in time?

A. No, sir. We did not.

Q. Okay. And this was, I believe you said, beginning of March of 2012?

A. Correct.

Q. Okay. Had you heard the name Monaco Exclusive Renovations at that time?

A. No, not at all.

Q. How about the name Maria Mendez?

A. I'm not even sure of that name at all.

Q. Okay. All right. So you say around ten o'clock you got to the point where you were able to review the documents?

A. Exactly. And I met – I saw the Deed. With Mr. Carino and [Mrs.] Carinos' signature on it. And the driver's licenses which I identified in there, in the exhibits, that they were attached. And they matched the signature. And that is when I said to Mister –

Q. Hold on. Hold on one second. I am sorry. I did not mean to interrupt you. I just want to grab this document. Go ahead, you may finish.

A. Okay. I saw the drivers' licenses, which were the exhibits, like I said. Matched the documents that the way they were executed. And then I proceeded and told Mr. Edward Marin to go ahead and notarize the documents, that they were good to go.

Q. Mr. Marin was a co-owner of the company with Mr. Aldave?

A. Correct.

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Q. Okay. Let me ask you another one. I am sorry. A different one here. Okay. Ok, I am going to – this is four. I am sorry. You recognize Plaintiff's No. 4?

A. This was the proposed Deed that was signed and executed by the Carinos.

Q. All right. You recognize the signatures –

MR. LYONS: Objection.

THE COURT: Basis?

MR. LYONS: Ms. Johnson did not see the document signed so she has no basis to testify that that is the document they signed.

THE COURT: Well, that is cross-examination. I am not going to strike her testimony. You know, small variations or imperfections are allowed, so I am going to overrule your objection. I understand why.

But you said that is the Deed?

THE WITNESS: That was the Deed. The signature page of the Deed.

THE COURT: All right.

THE WITNESS: That was signed.

THE COURT: Okay. So, as far as you were concerned it was signed by the Carinos?

THE WITNESS: Correct.

THE COURT: And you did not have any professional doubt that it was signed – that is why you allowed the Notary to go ahead and notarize it?

THE WITNESS: Correct, Sir.

THE COURT: Okay. So, that is one reason why your objection is overruled, Mr. Lyons.

MR. LYONS: Yes, Sir.

THE COURT: That was her opinion of what had happened. Okay.

THE WITNESS: Um-hum.

BY MR FITZGIBBONS:
Q. All right. Let me direct your attention to the front page. And – who is the Grantee of this Deed?

A. The Grantee is Monaco Exclusive Renovations, LLC.

Q. And that appears to be handwritten in, is that right?

A. Yes, sir.

Q. It is a blank line and that has been written in, is that right?

A. Correct, sir.

Q. And why would that be that there was a blank line and it was handwritten in?

A. Since this was a short sale transaction, and the Deed was going to be held in escrow, and not knowing if the loan was going to be approved by whoever it was in the contract, it is customary to leave that blank, the Grantee's line blank until it gets finalized.

Q. Until you know who the buyer is?

A. Exactly. Whoever becomes the end buyer.

Q. So, it is not unusual at all to sign the Deed with the buyer's name being blank in a short sale situation?

A. Correct, sir.

Q. Now, it also dated, I believe, in August, is that right?

A. Yes, it is.

Q. Is that unusual?

A. It's very usual because when the transaction gets started on a short sale and all the paperwork, they could have picked up the wrong piece of paper to fill it in, anything like that could have happened.

Q. Well, that is not unusual?

A. Oh, no, not at all.

Q. Okay.
(Pause)

THE COURT: What did you say was not unusual, that it was dated August 2011.

THE WITNESS: Yes sir.

THE COURT: Instead of 2012?

THE WITNESS: Right.

THE COURT: But it is your testimony that this actually happened in 2012?

THE WITNESS: Right.

THE COURT: But it is your testimony that this actually happened in 2012?

THE WITNESS: Correct, Sir. Proceed.

BY MR. FITZGIBBONS:
Q. I am going to (Inaudible) by one thing while the Judge is looking at the Deed. Do you remember whether – the Grantee's name was written in at the time the documents were brought back to you?

A. No.

THE COURT: No what?

THE WITNESS: It was not there, the Grantee's name was not there –

THE COURT: So, you do remember and it was not?

THE WITNESS: It was not there.

THE COURT: Okay.

***

BY MR. FITZGIBBONS:
Q. Okay. That is entitled Addendum to HUD-1 Settlement Statement?

A. Yes, sir.

Q. And that would have been one of the documents that would have been, in your opinion, signed by the Carinos?

A. Exactly, sir. Same thing with the privacy policy, which is the next page and authorization to sign settlement documents.

Q. Okay. So, those documents, those three pages would have been signed prior to the preparation of the actual HUD statement?

A. Correct, sir.

Q. And that is because again, you did not have a buyer yet?

A. Exactly. Was pending.

Q. Okay. And so, those were among the documents that you reviewed when Mr. Jordan brought the documents back and they you looked at them several hours later?

A. Correct, sir.

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BY MR. FITZGIBBONS:
Q. Now, why was it that you were having them sign documents, if you know, that you were having them sign documents before you had a buyer?

A. The reason being we – being so busy at that time, we wanted to prepare all the seller's side documents on time to any transactions so that they would be in escrow. So, when it actually happens, if the – the sellers were not available or whatever, we will always communicate it with them, any seller. But the reason is to have them ready before the transaction happened. Because it could happen at a moment's notice.

Q. Did you have any further involvement in this transaction?

A. No, sir.

***

THE COURT: Were you ever advised by Mr. Jordan or anyone else that the Carinos no longer wanted to short sale their property?

THE WITNESS: No, sir.

THE COURT: Were you ever told by the Carinos or Mr. Jordan that they, that is the Carinos, were attempting to get a modification, a HAMP, or a – I don't know, HAMP, HARP, whatever –

THE WITNESS: The HARP.

THE COURT: A HARP modification instead of a short sale?

THE WITNESS: No, Sir.

> THE COURT: Were you ever told to bring those title documents, the sale documents out of escrow and either destroy them or give them back to the Carinos because they no longer – they no longer wanted a short sale?
>
> THE WITNESS: No, Sir. I never had personally at all any communication with Mr. Manfredo Jordan.
>
> THE COURT: Okay. Well, did you hear that from anybody in any of these companies, A[NZ] Title, or Champions Realty [,Inc.] or anybody else that, or from the Carinos themselves, that they were no longer interested in a short sale and they wanted to pull back and they try to – modify their loan?
>
> THE WITNESS: No, Sir.

The next witness for the defense was Wilson Crespo, who testified that he worked for Monacco, and received a call from Champions Realty, Inc. about the Property for a potential sale because the Property is going into foreclosure. He looked at the Property and then talked to his brother, Richard Crespo, who was an owner of Monacco.

Richard Crespo testified about the business of Monacco, which is to buy, renovate, and resell properties. He testified that he agreed to buy the Property for cash, wired the required funds to ANZ Title, and after closing, paid over $92,000.00. Richard Crespo testified that the property was vacant when they bought it, and that "it had plywood on the windows, on the back windows. The back door was open. Windows were broken. It had drywall damage. There was mold in a room in the basement. And there was trash in the house." He testified that he did not know the Carinos and after spending nearly $45,000.00 to renovate the Property, that he did not know the Carinos, and that after the Property was renovated, Richard Crespo placed the Property on the market but could not sell it because the Carinos had filed this suit.

At the conclusion of the testimony, the circuit court ruled in favor of the defendants. The court stated that it discredited the testimony of the Carinos, who did not know what they signed. Instead it accepted the testimony of Ms. Johnson, who it believed was a very credible witness. In addition, the court found that the Carinos executed the short sale documents, including the deed. Finally, the circuit court accepted the testimony of Wilson Crespo and Richard Crespo as to the condition of the Property, the amount of money they put into it, ruling as follows:

> All right. Well the Court finds that the Plaintiffs have been unable to carry their burden of proving fraud in this case by clear and convincing evidence.
>
> The Court tends to adopt far more of the testimony and argument of the Defense in this matter, particularly based on the testimony of Janet Johnson. And the Court finds that the Deed in question, the Deed which has the – improper date of August 8th, 2011, it should have been 2012, is a valid Deed. It was a Deed signed in escrow.
>
> A Deed – and the Court distinguished the case that you have, the *Kirchner* case and other cases, we are in the reality of 2015 where short sales and these kinds of creative conventions to unload property from defaulting borrowers and to relieve borrowers of the debt that they incurred, when they have not paid the mortgage in months and years, is basically the new reality. So, that everything that Ms. Johnson describes, just makes sense. Legally and practically.
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> The Court believes that the evidence is that the Carinos signed a bunch of documents and gave them to Ms. Johnson. Ms. Johnson put them on a shelf until the right purchaser came along. And the right purchaser was Monaco Exclusive Renovations, LLC.
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> ***
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> The Court, in no way could rely upon the kind of macro testimony of the Carinos. Who really did not know what was going on. All they knew is

somebody was in their house. But the house had been abandoned. The front door was – the back door was open. The place was a wreck. Windows knocked out. Mold in the basement.

There was no value in recovering that house absent, pouring a lot of money into it, to the tune of $25,000.00, $40,000.00, as Mr. Crespo and his brother testified.

***

The clearest path to – I mean – yes, the clearest path to, I guess, clarity and – surety is provided by Ms. Johnson. What her testimony said in the context of this case made sense, it reverberated in – truth. I observed her demeanor on the stand.

***

And I contrast that with the testimony, of course, of the Plaintiffs . . . who do not know what they signed.

***

I think the Plaintiffs have done well. And I do not see any damages. Because they got out from under three hundred and some thousand dollars worth of debt. They are – they do not own the property any more. But neither do they have any kind of deficiency judgment against them. And they basically – got what they wanted. A short sale.

So judgment for all the other Defendants because there are no damages. That is the verdict in this case.

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The Court finds that the testimony of Miss – credits the testimony of Ms. Johnson and finds that Mr. Carino and [Mrs.] Carino signed the deed either then or – just a little bit after. So, that is a part of the judgment.

II.

Since the presidency of James Monroe, the courts have upheld the validity of deeds executed in blank by their grantors, with the name of the grantee to be filled in by

the party to whom the deed is delivered. In an authoritative decision of the Supreme Court of Oregon in *Cribben v. Deal*, 27 P. 1046, 1046-47 (Or. 189l), the Court stated:

> It is said in Shepherd's Touchstone (page 54) that "every deed well made must be written-*i.e.*, the agreement must all be written-before the sealing and delivery of it; for, if a man seal and deliver an empty piece of paper or parchment, albeit he do therewithal give commandment that an obligation or other matter shall be written in it, and this be done accordingly, yet this is no good deed." This is founded upon that ancient and technical rule of the common law that the authority to make a deed; or to alter or fill a blank in some substantial part of it, cannot be verbally conferred, but must be created by an instrument of equal dignity. As the deed was under seal, to alter or complete it by the insertion of the name of the grantee required the authority to be under seal. So firmly rooted was this principle that, it mattered not with what solemnities a deed may have been signed and sealed, unless the grantee's name was inserted, and delivery was made to him, or someone legally authorized under seal, it was a nullity. It imposed no liability on the party making it, or conferred any rights upon the party receiving it; it was, in fact, no deed. Hence it was held that parol authority to fill a blank with the name of a grantee could not be conferred without violating established principles of law and rendering the deed void. This doctrine still prevails in England.
>
> It is true that in the case of *Texira v. Evans*, cited in *Master v. Miller*, 1 Anstr. 225, Lord Mansfield held otherwise, but this was in effect overruled in *Hibblewhite v. McMorine*, 6 Mees. & W. 200, on the ground that an authority to execute a sealed instrument could not be given by parol, but must be given by deed, although this later case seems more or less trenched upon by the decision in *Eagleton v. Gutteridge*, 11 Mees. & W. 465, and by *Davidson v. Cooper, Id.* 778, and in *West v. Steward*, 14 Mees. & W. 47. But the rule has never been universally accepted in this country, and, however the holding of some courts may be, still the better opinion and the prevailing current of authority is that when a deed is regularly executed in other respect, with a blank left therein for the name of the grantee, parol authority is sufficient to authorize the insertion of the name of such grantee, and that, when so filled out and delivered, it is a valid deed. It is true that Chief Justice Marshall, in *U.S. v. Nelson*, 2 Brock. 74, [(1822),] felt bound to follow the ancient rule, but his opinion clearly indicates that he felt that the authority to fill a blank in an instrument under seal should be held to be valid. He says: "The case of *Speake v. U.S.*, 9 Cranch, 28, in determining that parol evidence of such assent may be received, undoubtedly goes far towards deciding it, and it is probable that

> the same court may completely abolish the distinction in this particular between sealed and unsealed instruments." Again: "if this question depended on those moral rules of action which in the ordinary course of things are applied by courts to human transactions, there would not be much difficulty in saving that this paper ought to have the effect which the parties at the time of its execution intended it should have." And he concludes with this statement: "I say with much doubt, and with a strong belief that this judgment will be reversed, that the law on the verdict is, in my opinion, with the defendants." The rule was purely technical, and the outgrowth of a state of affairs and condition of the law which does not now exist. The reason of the law is the life of it, and when the reason fails the law itself should fail.

The law has remained the same in the United States these past 150 years. *See Phelps v. Sullivan*, 2 N.E. 121, 122 (Mass. 1885) ("When a grantor signs and seals a deed, leaving unfilled blanks, and gives it to an agent, with authority to fill the blanks and deliver it . . . grantor is estopped to deny that the deed as delivered was his deed."); *accord Halliwill v. Weible*, 171 P. 372 (Colo. 1918); *Wright v. Sconyers*, 300 P. 672 (Okla. 1931); *Mehus v. Thompson*, 266 N.W.2d 920, 925 (N.D. 1978). In deed conveyances:

> the name of the grantee, if left blank, may be inserted under an oral authority, or an authority merely inferred from the circumstances of the case, if the blank is filled in during the grantor's lifetime . . . . And the delivery of such a deed, it is sometimes decided, passes the equitable title and acceptance of it imposes upon the acceptor every obligation which he would have assumed if his name had appeared in the deed as grantee.

4 Tiffany Real Prop. § 969 (3d ed.) (citations and footnotes omitted).

In contradiction of the long settled law, the Carinos rely on *Donovan v. Kirchner*, 100 Md. App. 409 (1994), however, their reliance on that case is misplaced. In *Donovan* the grantee signature line was not left blank and placed in escrow; rather the deed was

modified as to the grantee.[4] Although a deed executed in blank is not discussed in *Donovan*, the Court went on the state that a deed in escrow could be altered if all parties consent. The Court stated:

> Neither party has directed us to, nor have we found, a case in Maryland, or in any other jurisdiction, specifically addressing this issue. After examining the general principles of the conveyance of real property and of escrow closings, however, it is clear to us that the grantor's intent is determined at the time the deed is placed in escrow. American Law of Property § 12.67 at p.320 (A.J. Casner, ed. 1952). We thus conclude that the holding in *Downs [v. Downs*, 154 Md. 430 (1928)] applies also to escrow closings; therefore, unless all parties consent, material modifications made after a deed is placed in escrow are of no effect. On the other hand, if all parties have consented, a material alteration made while a deed is in escrow will be valid. 3 American Law of Property, *supra*, § 12.85 at p.336 ("While a deed is in escrow there has not as yet been such a completed delivery but that by consent of all parties there may be a material alteration, such as a change in the name of the grantee.")

Id. at 428 (internal footnotes committed). Thus, if an alteration could be made by all parties' consent, filling in a blank with the purchaser's name is permissible as authorization is only required from the grantor.[5]

[4] In *Donovan*, a dispute arose over title to a condominium resulting from the interlineation of the name of a second grantee in a deed, after the grantor had executed the deed and placed it in escrow. The name of the second grantee was achieved by interlineation at the request of the original grantee, but without the grantor's consent. Consequently, the second grantee died and her interest in the condominium was claimed by her heirs. The original grantee argued that the original transfer was void and without effect because the second grantee's interest was made without the grantor's knowledge and consent.

[5] The Carinos also rely upon *Fike v. Harshbarger*, 20 Md. App. 661 (1974), which offers them little support. In *Fike* this Court recognized that delivery of a deed by a grantor may be made to a third party as agent for the grantee, with restrictions that may be qualified so as to take effect upon a future event.

(continued…)

The circuit court in the instant case found that the Carinos executed the deed and other closing documents in advance, to be held in escrow until the short sale was approved and an appropriate purchaser came along. In furtherance of the short sale process, it was the intent, at the time of executing the documents, that the name of the purchaser would be filled in on the blank space in the deed when the purchaser signed its side of the documents and provided the purchase money. The deed, after the addition of the grantee, was valid and pursuant to settled law is beyond challenge.

As to the second issue raised, the deed also could not be challenged because it was not properly acknowledged. This contention was never raised at trial but was first raised in the Carinos' motion to alter or amend judgment. A ruling on a motion to alter or amend the judgment is "directed to the sound discretion of the court, and in the absence

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Frank Thomas, a resident of Garrett County, was a widower when on June 4, 1963, he executed and acknowledged a deed conveying eight acres of land, improved by the house in which he resided, to his daughter. Mr. Thomas retained possession of the deed until it came into the possession of Helen Harshbayer, another daughter, about two years before his death on May 23, 1972. He died intestate leaving as his only heir-at-law, two sons, two daughters, two sons of a deceased daughter, and two sons of a deceased son. The deed was held to be invalid as there was evidence that he did not place it beyond his control.

Judge Powers wrote for the Court:

> Delivery may be accomplished by leaving the deed in the hands of another as agent for the grantee with instructions that it be recorded or delivered to the grantee. The instructions may be unconditional or they may be qualified so as to take effect upon the happening or the failure to happen of some later event, or after the passage of a specified time.

Id. at 662.

of abuse thereof, no appeal will lie." *Central Truck Ctr., Inc. v. Central GMC, Inc.*, 194 Md. App. 375, 397-98 (2010) (citation omitted). We do not reach the issue as to whether there was an abuse of discretion because there is a curative statute that bars this claim. Md. Code (1974, 2010 Repl. Vol.), Real Property Article ("RP") § 4-109 cures any defective acknowledgement in a recorded instrument. RP § 4-109(b) states that "any failure to comply with the formal requisites listed in this section has no effect unless it is challenged in a judicial proceeding commenced within six months after it is recorded." *See also Poole v. Hyatt*, 344 Md. 619, 625 (1997). While this action was filed within that time period, the complaint did not challenge the acknowledgement to the deed, so any defect in the acknowledgement has been cured.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.