IN THE COURT OF SPECIAL APPEALS OF MARYLAND

Appeal No. 00357

September Term, 2011

DOMINION FINANCIAL SERVICES, LLC,

Appellant

v.

BANK OF AMERICA, N.A.

Appellee

Appeal from the Circuit Court for Baltimore City
(The Honorable Evelyn Omega Cannon)

Brief of the Appellees

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Statement of the Case

This case involves competing liens on real property in Baltimore City, Maryland. Milton Tillman borrowed money from the Appellent and pledged the real property as security for the loan. Before the Appellant recorded a lien instrument, Mr. Tillman sold the property to Keisha McFadgion. She took a purchase money loan from the Appellee and pledged her property as security for the loan.

The Appellee, Bank of America, sued the Appellant, Dominion Financial Services, in the Circuit Court for Baltimore City to establish lien priority. Oral arguments on cross-motions for summary judgment were heard on February 25, 2011 by Judge Evelyn O. Cannon. On March 7, 2011, Judge Cannon entered an Order in favor of the Appellee, declaring it's lien to be in the superior position. Dominion noted its appeal on April 6, 2011.

Questions Presented

I. Is there an alternate basis to affirm Judge Cannon's grant of summary judgment in favor of the Appellee?

II. Did Judge Cannon correctly apply the law of equitable subrogation to the undisputed material facts to grant first lien priority to the Appellee?

Statement of Facts

The Appellee does not adopt the Appellant's statement of facts. The Appellant's statement of facts makes repeated reference to facts outside the record, and weaves argument throughout the recitation. The Appellee offers it's own recitation.

Milton Tillman III took title to 112 North Curley Street, Baltimore Maryland 21224 from LLC Management LLC, by undated deed recorded May 4, 2007 in the land records at Liber 9400, page 689. (E. 27).

Also on May 4, 2007, Milton Tillman, III granted a deed of trust in favor of Indymac Bank, recorded in the Land Records at Liber 9400, page 693. (E. 32).

On or about June 8, 2007, Milton Tillman, III and a related business entity granted an indemnity deed of trust to Dominion Financial Services, LLC, the Appellant, in the stated amount of $210,000. (E. 55). It was not immediately recorded. (E. 1 and 75).

The Appellant's Deed of Trust encumbered multiple properties located in Baltimore City. (E. 74). At the time this trust was granted, the Indymac Bank lien remained open and "of record" in the Land Records. (E. 1).

By deed dated June 29, 2007, Milton Tillman, III transferred the Property to Keisha McFadgion (hereinafter "McFadgion Deed"). (E. 77). It was not immediately recorded. (E. 81).

Also on June 29, 2007, Keisha McFadgion took a loan from Bank of America, the Appellee. (E. 101). In return, she granted a purchase money deed of trust to the Appellee for $265,000. (E. 83). Of this sum, $201,384.03 was disbursed at settlement to extinguish Milton Tillman's indebtedness to Indymac. (E. 101). The Bank of America Deed of Trust was not immediately recorded. (E. 99).

The June 29, 2007 HUD-1 Settlement Statement does not account for the Appellant's Deed of Trust because it was not recorded. (E. 101). At line 504, it shows a disbursement to extinguish the Indymac Bank Deed of Trust. (E. 101).

On July 13, 2007, two weeks after title had passed from Mr. Tillman to Keisha McFadgion, the Appellant caused it's lien to be recorded in the Land Records at Liber 9702, page 479. (E. 75). The Indymac Bank Deed of Trust was open and unreleased in the Land Records. (E. 1).

On August 8, 2007, the Indymac Bank Deed of Trust was released, as shown by the instrument recorded at Liber 9806, page 338. (E. 103).

On August 17, 2007, both the deed into Keish McFadgion and the Appellee's Deed of Trust were recorded in the Land Records. (E. 81 and 99). The McFadgion Deed is recorded at Liber 9843, page 164. (E. 77). The Appellee's Deed of Trust is recorded at Liber 9843, page 170. (E. 83).

On December 8, 2008, the Appellant's Chief Financial Officer, Mark Blannard, executed a Certificate of Satisfaction in connection with payment

received from Mr. Tillman after disposition of another property securing his lien with the Appellant, known as 100 N. Decker Street. (E. 105). The Certificate of Satisfaction reads, in pertinent part:

> That Dominon Financial Services, a limited liability company, does hereby acknowledge that the indebtedness secured by a certain Deed of Trust made by Milton Tillman, III, and Furley Capital, LLC dated June 8, 2007 and recorded among the Land Records of Baltimore City, Maryland, in Liber FMC No. 9702, folio 479, in the original amount of $210,000, has been fully paid and discharged, that Dominion Finacial [sic] Services, a limited liability company was, at the time of satisfaction, the holder of the Deed of Trust Note, and that the lien of the Deed of Trust is hereby fully released.

(E. 105).

The Appellant's statement of facts contains several assertions that are not supported by the evidentiary record. These assertions include the following statements:

- At page 3 of Appellant's brief, it is asserted that the Bank of America loan to Ms. McFadgion was "apparently a 'no-doc' loan." The statement appears in a parenthetical, and is not based in the record. Appellant's Br. at 3.
- At page 3 of Appellant's brief, it is asserted that "[t]he record is unclear as to whether Tillman…in fact owned the Property at the time he granted the deed of trust…" This is not a fact from the record. Appellant's Br. at 3.

- At page 3 of Appellant's brief, it is asserted that "Dominion was not informed and had no knowledge of the conveyance…" This is not a fact from the record. Appellant's Br. at 3.

Standard of Review

This court's review of Judge Cannon's grant of summary judgment is *de novo*. *Mayor & City Council of Balt. v. Whalen*, 395 Md. 154, 161, 909 A. 2d 683, 687 (2006). This court considers only the record before the trial court. Evidence not in the record on summary judgment proceeding cannot be considered by the appellate court, just as it could not be considered by the trial court. The items outside the record must not make up part of the appeal, and cannot form a basis for decision. *Educ. Testing Serv. v. Hildebrant*, 399 Md. 128, 143, 923 A2d. 37, 42 (2007).

Under Md. Rule 2-501(e), summary judgment may be granted by the trial court 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." A material fact is one that will alter the outcome of the case, depending upon how the fact-finder resolves the dispute. *King v. Bankerd*, 303 Md. 98, 111, 492 A.2d 608, 614 (1985). In opposing the motion, the non-moving party must present more than "mere general allegations which do

not show facts in detail and with precision." *Ragin v. Porter Hayden Company*, 133 Md. App. 116, 133, 754 A.2d 503, 513 (2000)(quoting *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 738, 625 A.2d 1005, 1011 (1993)). When making a summary judgment decision, the trial court must not determine any disputed facts. Rather, considering the undisputed material facts, the court must decide if the moving party is entitled to judgment as a matter of law. *Rockwood Casualty Ins. Co. v. Uninsured Employers' Fund*, 385 Md. 99, 106, 867 A.2d 1026, 1030 (2005).

The appellate court must decide if Judge Cannon's decision was legally correct. This requires independent review of the record to determine if a genuine dispute of material fact exists. *Id.* If there is no genuine dispute of material fact, this court will proceed to the question of law. "In so doing, we construe the facts properly before the court, and any reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party." *Id.* (quoting *Jurgensen v. New Phoenix Atlantic Condominium,* 380 Md. 106, 114, 843 A.2d 865, 869 (2004).

Judge Cannon granted equitable relief to the Appellee. The award of equitable relief is discretionary with the court. A party ordinarily has no legal entitlement to an equitable remedy. The "right" to equity is subject to counter equities that may be relevant. *Noor v. Centreville Bank,* 193 Md. App. 160, 175, 996 A.2d 928, 937 (2010) *cert. granted*, 415 Md. 607 (2010) *and appeal dismissed*, 417 Md.

500 (2011). There are limits on that discretion, however. Judge Cannon had no discretion to misapply equitable doctrines or to refuse to apply one when the facts and circumstances of the case clearly warranted its application. *Id.*

And while Judge Cannon granted summary judgment for the Appellee solely on the theory of equitable subrogation, she could have found in favor of the Appellee on a second theory based on the language of release in the recorded Certificate of Satisfaction. It is within the appellate court's discretion, as part of the *de novo* appeal analysis, to make a finding in favor of the Appellee on this alternate basis. *Ragin* 133 Md. App. at 134, 754 A.2d at 513 (2000)("if the alternative ground is one upon which the circuit court would have had no discretion to deny summary judgment, summary judgment may be granted for a reason not relied on by the trial court."). Further, the interpretation of mortgages, plats, deeds, easements and covenants have been held to be a question of law. *Olde Severna Park Improvement Ass'n, Inc. v. Barry*, 188 Md. App. 582, 612, 982 A.2d 905, 911 (2009)(citing, *White v. Pines Cmty. Improvement Ass'n*, 403 Md. 13, 31, 939 A.2d 165, 175 (2008)).

Argument

I. Summary of the Appellees' argument.

Two independent grounds exist to affirm Judge Cannon's grant of lien priority to the Appellee by summary judgment. The Appellee will first argue that Judge Cannon could have based her decision on the Appellant's own recorded declaration that the underlying debt had been satisfied, and the lien released. Judge Cannon declined to base her decision on this theory, but it remains available to this court, as part of it's *de novo* review of the undisputed material facts.

The Appellee will argue that Judge Cannon correctly applied the principles of equitable subrogation to grant the Appellee lien priority over the Appellant, to the extent funds were disbursed from the loan to discharge a prior lien on the real property. The Appellee will argue further that the equitable doctrine of laches has no application in this case.

The Appellee urges that the questions presented in this brief be answered "yes," while the question presented by the Appellant should be answered "no."

II. Dominion is bound by it's declaration that the underlying debt is fully paid and discharged.

The Appellant has placed in the land records a Certificate of Satisfaction, stating plainly that the underlying debt has been "fully paid and discharged," and that "the lien of the Deed of Trust is hereby fully released." (E. 105). This public declaration should end the Appellant's claim to a lien. The Appellant should be bound by the plain meaning of it's unambiguous public declaration.

Judge Cannon did not find in favor of the Appellee on this theory. However, it is within the appellate court's discretion, as part of the *de novo* review, to make a finding in favor of the Appellee on this issue. *Ragin* 133 Md. App. at 137, 754 A.2d at 515 (2000).

Maryland's case law states that where a recorded land instrument is plain and unambiguous in it's meaning, there is no room for construction. The instrument must be presumed to mean what it says, and that meaning cannot be changed by parol evidence. *Olde Severna Park Improvement Ass'n, Inc.*, 188 Md. App. at 612, 982 A.2d at 922("[W]e [the court] construe a deed without resort to extrinsic evidence, if the deed is not ambiguous."); *McLain v. Pernell*, 255 Md. 569, 572, 258 A.2d 416, 418 (1969) ("The release being complete and unambiguous, parol evidence is inadmissible as a matter of substantive law to vary, alter or contradict it in the absence of fraud, accident or mutual mistake.").

Dominion had sole control over the scope of the Certificate of Satisfaction. It did not restrict the scope of the discharge, in any way. It did not reserve any portion of the underlying debt, and it did not reserve a lien on any other property. It is this public declaration, only, that binds third-parties, such as the Plaintiff. This theory, alone, properly grounds a finding of judgment in favor of the Appellee.

III. Judge Cannon's grant of summary judgment in favor of the Appellee was correct, as a matter of law.

A) Equitable subrogation exists to prevent unjust enrichment to the Appellant.

The parties are in agreement that the sale by Mr. Tillman to Ms. McFadgion, and the Appellee's purchase money loan to Ms. McFadgion, occurred in the gap of time between Appellant's loan to Mr. Tillman, and Appellant's recording of a lien instrument. It is true that the Appellant won the race to record. The parties differ on the application of equitable subrogation to reorder the lien priorities.

The Supreme Court of the United States has observed that subrogation is one of the oldest of the equitable doctrines evolved by the courts. Under the doctrine of subrogation "one who has been compelled to pay a debt which ought to have been paid by another is entitled to exercise all the remedies which the creditor possessed against that other." *Am. Sur. Co. of New York v. Bethlehem Nat.*

Bank of Bethlehem, Pa., 314 U.S. 314, 317(1941) (citing H. Sheldon, The Law of Subrogation § 11 (2nd ed. 1893)). "The doctrine is a legal fiction whereby an obligation extinguished by a payment made by a third person is treated as still subsisting for the benefit of this third person." *Bachmann v. Glazer & Glazer, Inc.*, 316 Md. 405, 412, 559 A.2d 365, 368(1989). The rationale underlying the doctrine of subrogation is to prevent the party primarily liable on the debt from being unjustly enriched when someone pays his debt. *Id.*

The party requesting relief based on equitable subrogation must show: (1) the existence of a debt or obligation for which a party, other than the subrogee, is primarily liable, which (2) the subrogee, who is neither a volunteer nor an intermeddler, pays or discharges in order to protect his own rights or interests. *Id.* at 411, 559 A.2d at 368. A party entitled to equitable subrogation stands in the shoes of the creditor and he is ordinarily entitled to all the remedies of the creditor. *Id.* at 413, 559 A.2d at 369. He may use all the means which the creditor could employ to enforce payment. *Id.* This means that a subrogee can enforce the obligation of a guarantor of the debtor. *Id.*

Equitable subrogation applies to loans secured by mortgages and deeds of trust. *G.E. Capital Mortg. Services, Inc. v. Levenson*, 338 Md. 227, 231, 657A.2d 1170, 1171 (1995) (quoting G.E. Osborne, Handbook on the Law of Mortgages §

277 at 561 (2nd ed. 1970)). In the context of refinancing a mortgage, equitable subrogation operates as follows:

> 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

Id. at 231-232, 657 A.2d 1172 (quoting G.E. Osborne, Handbook on the Law of Mortgages § 282 at 570.

Equitable subrogation is liberally applied, to avoid unfairness. "The doctrine is an aspect of the broader equitable principle of avoiding unjust enrichment." *Noor*, 193 Md. App. at 175, 996 A.2d at 937. Maryland has acknowledged this proposition in several cases, reciting that:

> The object of subrogation is the prevention of injustice. 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. It is an appropriate means of preventing unjust enrichment.

Id. (citing 10 S. Williston, A Treatise on the Law of Contracts § 1285 at 845 (W. Jaeger 3rd ed. 1967).[1]

[1] This language has been carried forward to the most recent treatise, 23 S. Williston, Williston on Contracts § 61:51 (4th ed.) at 191.

B) Judge Cannon's application of equitable subrogation grants first lien priority to only a portion of Appellee's lien.

Judge Cannon applied equitable subrogation to grant first lien priority to a portion of the Appellee's loan. Priority was granted only to that portion of the loan disbursed to extinguish Mr. Tillman's Indymac lien. (E. 101). As a result of Judge Cannon's ruling, a portion of the Appellee's lien remains subordinate to the Appellant's lien. Judge Cannon's Order created three liens, as follows:

- First lien- $201,384.03, representing the equitably subrogated sum paid by the Appellee to discharge the Indymac lien.
- Second lien- $210,000.00, representing the Appellant's loan to Mr. Tillman secured by the first recorded deed of trust.
- Third lien- $63,615.97, representing the remainder of the Appellee's loan, which was "new money" that did not discharge any prior encumbrance.

The Appellant argues that Judge Cannon's application of equitable subrogation is defeated in this case by the countervailing equitable doctrine of laches. The Appellant is wrong on the facts, and application of the law.

C) **Laches has no application to the facts of this case.**

The Appellant complains that the failure of the Appellee to perform a second title search immediately before recording defeats equitable subrogation. The Appellant also complains that the lawsuit was filed too late. Appellant's Br. at 6.

Maryland cases that define the scope of laches are collected in *Liddy v. Lamone,* 398 Md. 233, 242-245, 919 A.2d 1276, 1282-1284 (2007). In summary, the doctrine is not an inflexible rule. It operates to defeat stale claims, as determined by the facts and circumstances of each case. *Id.* It requires a showing of unreasonable delay in the assertion of the claimed right, and that the delay results in prejudice to the opposing party. *Id.*

Within the context of lien disputes between first and second position lenders, the doctrine is discussed and applied in *Egeli v. Wachovia Bank, N.A.*, 184 Md. App. 253, 965 A.2d 87 (2009). A close analysis of the case will demonstrate the invalidity of the Appellant's position. The Appellant is not at all similarly situated to the second position lender in the *Egeli* case, and it has suffered no prejudice.

i) <u>The Appellant's lien instrument was not recorded at the time of the Appellee's loan disbursement.</u>

In *Egeli*, the lien dispute was between Wachovia, a refinance lender, and Suntrust, the holder of an open ended line of credit. Wachovia made a substantial payment to Suntrust, with the expectation that Suntrust would release it's deed of trust securing an open ended line of credit with a future advances clause. Wachovia sued to compel release of the Suntrust lien, arguing that Wachovia's disbursement of funds in compliance with the terms of a form payoff statement bound Suntrust to release the lien.

In defense of the claim, Suntrust argued that the terms of it's credit agreement with the borrower prohibited closing the account and releasing the lien. Suntrust pointed out that Wachovia had constructive notice of this particular term through the express language of Suntrust's recorded lien instrument. The appellate court adopted this argument, as follows:

> We have already concluded that SunTrust Bank's deed of trust was sufficiently clear to put Wachovia on notice that the underlying debt which the deed of trust secured was not a typical loan, but rather a revolving line of credit. Thus, it may have required action beyond mere payment of the balance to obligate SunTrust Bank to release its lien. Wachovia's argument regarding SunTrust Bank's payoff statement is therefore unpersuasive, and any argument regarding Wachovia's subjective intent when making the payment is irrelevant.

Egeli v. Wachovia Bank, N.A., 184 Md. App. at 263-264, 965 A.2d at 93.

In this case, there was no recorded instrument securing the Appellant to the real property at the time of Appellee's loan to Ms. McFadgion on June 29, 2007. The Appellant did not record until July 13, 2007. And while constructive notice would not bar application of equitable subrogation, there was simply nothing in the land records to review.

The Appellant argues that a "bring to date" title search, if done after the loan was made but before the Appellee recorded on August 17, 2007 would have disclosed the Appellant's late recorded instrument. This is nonsense. The reasonableness of the Appellee's actions must be measured at the time of the loan to Ms. McFadgion. As of June 29, 2007, there was nothing in the land records to identify the Appellant as a secured lien holder. A "bring to date" even minutes before settlement would have disclosed nothing more than the original title search. No "carelessness" for purposes of applying the doctrine of laches can be rationally attributed to the Appellee.

ii) <u>The Appellant does not hold a revolving line of credit, and it made no future advances.</u>

In *Egeli*, the payment by Wachovia cleared the balance on an open Suntrust line of credit. Before Wachovia recorded it's lien instrument, however, the borrower ran his credit balance back to the limit. Suntrust thus argued it would not have extended the additional credit to the borrower if Wachovia had made a

timely demand for equitable subrogation. It argued that Wachovia slept on it's claim while Suntrust made the further advances to the borrower. Application of equitable subrogation in favor of Wachovia was thus very prejudicial to Suntrust. The facts in this case cannot support a similar conclusion.

The Appellant made one loan disbursement to Mr. Tillman on June 8, 2007. It was not an open ended line of credit, with future advances clause, but a lump sum disbursement. The entirety of the Appellant's loan was disbursed twenty-one days before the Appellee's loan to Ms. McFadgion, and one month and five days before the Appellant recorded it's lien. It cannot be credibly argued that an act of the Appellee increased the Appellant's risk for application of equitable subrogation. Whether the Appellee had asserted it's right to equitable subrogation the day after settlement, or any time thereafter, would not have changed the Appellant's financial exposure to a claim for equitable subrogation. This Court should conclude that no prejudice was visited on the Appellee from this fact.

iii) <u>The Appellant expected a second lien position.</u>

In exchange for a $200,000.00 loan, Mr. Tillman granted a deed of trust in favor of Indymac Bank on the Property on February 13, 2007. That deed of trust

was recorded among the land record for Baltimore City on May 4, 2007.[2] When the Appellant loaned money to Mr. Tillman on or about June 8, 2007, the Indymac deed of trust was still in the public record. The Indymac lien remained open when the Appellant recorded it's own lien instrument. These facts support one credible inference-- the Appellant anticipated holding the second lien when it made the loan to Mr. Tillman. Judge Cannon's Order leaves that expectation intact.

The Appellant complains that upon discharge of the Indymac lien, it expected to move to a first lien position. The Appellant's position has been summarized and rejected in several appellate cases, as follows:

> [That] position is: You made a mistake, it did me no harm; in fact, resulted in greatly benefiting me. Therefore, you cannot have your mistake corrected. This position has no appeal to a court of equity.

Noor, 193 Md.App. at 177, 996 A.2d at 938(citing *Bennett v. Westfall,* 186 Md. 148,155, 46 A.2d 358, 361 (1946)).

D) <u>The Appellee's claim for equitable subrogation was timely</u>.

The Appellant's argument that the lawsuit to establish the Appellee's lien priority was late ignores the law. The general rule is stated in *G.E. Capital Mortg. Services, Inc.*:

[2] Liber 9400, folio 693

> The latest time by which a claimant may assert priority over the intervening lienor based upon equitable subrogation ordinarily would be on exceptions to an auditor's report that did not apply the doctrine. Absent unusual circumstances, those exceptions may be filed up to the time when the court ratifies the audit.

G.E. Capital Mortg. Services, Inc. v. Levenson, 338 Md. 227, 244, 657A.2d 1170, 1178 (1995).

The Court of Appeals rejected the arguments made in that case which artificially "accelerates this deadline for a subrogation claimant." *Id.* Likewise, the Appellant's argument should be rejected, in this case, where no foreclosure has been docketed, and the doctrine of laches has no application.

E) <u>The existence of title insurance benefitting any party is irrelevant.</u>

The Appellant makes several references to title insurance, perhaps as an non-judicial alternate remedy for the Appellee. Appellant's Br. at 3 and 9. Direct or oblique reference to the existence of title insurance has no bearing on whether Judge Cannon correctly found the Appellee is entitled to lien priority based on equitable subrogation. Cf., *Noor*, 193 Md.App. at 166, 996 A.2d 932 ("Although there were some brief, and mostly oblique, references to the prospect of some recovery by appellant from her title insurance carrier, there is no indication that such a prospect in any way influenced the court's ruling on the issue of equitable conversion."). The Appellant's references to title insurance should be similarly ignored as irrelevant.

Conclusion

For the foregoing reasons, the Appellees request a mandate which affirms the rulings of the trial court, or which affirms the trial court's grant of summary judgment, but on alternate grounds.

Statutes and Rules

Rule 2-501. Motion for summary judgment

(a) Motion. Any party may make a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. The motion shall be supported by affidavit if it is (1) filed before the day on which the adverse party's initial pleading or motion is filed or (2) based on facts not contained in the record.

Committee note. -- For an example of a summary judgment granted at trial, see Beyer v. Morgan State, 369 Md. 335 (2002).

(b) Response. A response to a written motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

(c) Form of affidavit. An affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(d) Affidavit of defense not available. If the court is satisfied from the affidavit of a party opposing a motion for summary judgment that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit, the court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be conducted or may enter any other order that justice requires.

(e) Contradictory Affidavit or Statement.

(1) A party may file a motion to strike an affidavit or other statement under oath to the extent that it contradicts any prior sworn statement of the person making the affidavit or statement. Prior sworn statements include (A) testimony at a

prior hearing, (B) an answer to an interrogatory, and (C) deposition testimony that has not been corrected by changes made within the time allowed by Rule 2-415.

(2) If the court finds that the affidavit or other statement under oath materially contradicts the prior sworn statement, the court shall strike the contradictory part unless the court determines that (A) the person reasonably believed the prior statement to be true based on facts known to the person at the time the prior statement was made, and (B) the statement in the affidavit or other statement under oath is based on facts that were not known to the person and could not reasonably have been known to the person at the time the prior statement was made or, if the prior statement was made in a deposition, within the time allowed by Rule 2-415 (d) for correcting the deposition.

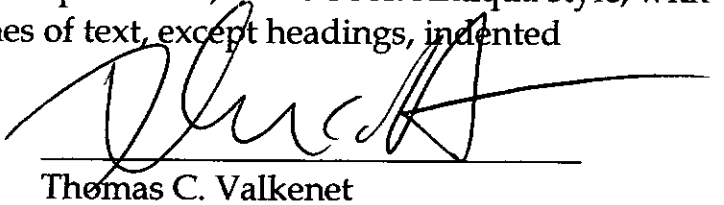
(f) Entry of judgment. The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law. By order pursuant to Rule 2-602 (b), the court may direct entry of judgment (1) for or against one or more but less than all of the parties to the action, (2) upon one or more but less than all of the claims presented by a party to the action, or (3) for some but less than all of the amount requested when the claim for relief is for money only and the court reserves disposition of the balance of the amount requested. If the judgment is entered against a party in default for failure to appear in the action, the clerk promptly shall send a copy of the judgment to that party at the party's last known address appearing in the court file.

(g) Order specifying issues or facts not in dispute. When a ruling on a motion for summary judgment does not dispose of the entire action and a trial is necessary, the court may enter an order specifying the issues or facts that are not in genuine dispute. The order controls the subsequent course of the action but may be modified by the court to prevent manifest injustice.

HISTORY: (Amended Apr. 8, 1985; Apr. 7, 1986, effective July 1, 1986; Mar. 22, 1991, effective July 1, 1991; Dec. 8, 2003, effective July 1, 2004; June 16, 2009, effective June 17, 2009.)

Certificate of Compliance

I hereby certify, pursuant to Rules 8-112 and 8-504, that this brief was printed with proportionally spaced 13 point font, in the Book Antiqua style, with at least 1.5 line spacing between lines of text, except headings, indented quotations and footnotes.



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Certificate of Service

I hereby certify that on June 25, 2012, two copies of this brief were served, by first-class mail, or overnight delivery, to the following persons.

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