

DIRT Periodic Development for Friday, September 13, 2013  
*Fishman v. Murphy ex rel. Estate of Urban*

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*Fishman v. Murphy ex rel. Estate of Urban*, Court of Appeals of Maryland, 2013 WL 4106699 (August 15, 2013)

Link to Opinion: <http://www.mdcourts.gov/opinions/coa/2013/93a12.0df>

Link to prior DIRT Summary: <http://dirt.umkc.edu/OCT2012/DDMurphyvFishman.pdf>

**SYNOPSIS:** Maryland's highest court overturns outrageous lower court decision denying equitable subrogation to refinancing lender.

**FACTS:** In December 2004, Dorothy Mae Urban granted a mortgage on land in Pasadena, Maryland to CitiFinancial. On May 30, 2007, Urban purported to deed the property to her son, Robert Street, by a deed that was recorded the next day. A week later, on June 5, 2007, Urban died, and her daughter, Shelia Murphy, was appointed administrator of the Urban estate. On January 3, 2008, Murphy sued Street in circuit court (the "Estate Lawsuit") alleging lack of capacity, undue influence and fraud, and sought to: (1) impose a constructive trust on the property, (2) have the property returned to the estate; and (3) to nullify the deed.

On February 18, 2008, Street obtained a mortgage loan from 1st Chesapeake Home Mortgage in the amount of \$91,350. A portion of the loan proceeds was used to satisfy the outstanding CitiFinancial mortgage. 1st Chesapeake recorded the deed of trust (the "Street Deed of Trust") on April 2, 2008.

Meanwhile, on March 15, 2010, the circuit court issued an order (the "Estate Order") imposing a constructive trust on the property and ordering Street to execute a deed to the Urban estate. Street executed such a deed on May 25, 2010, which was recorded on June 1, 2010.

On December 1, 2010, the substitute trustees under the Street Deed of Trust instituted a foreclosure proceeding on behalf of MidFirst Bank (the assignee of the Street Deed of Trust), alleging that Street had been in monetary default under the Street Deed of Trust since May 2010. On behalf of the Urban estate, Murphy moved to stay or dismiss the foreclosure action, asserting that Street had no interest in the property by virtue of the Estate Order. Murphy argued that the filing of the Estate Lawsuit created a *lis pendens*, and that as a result the lien of the Street Deed of Trust was invalid. MidFirst argued that the Estate Order did not declare the Urban-to-Street deed to be void, but instead imposed only a constructive trust. MidFirst thus argued that Street retained an

ownership interest in the property as of the time he executed the Street Deed of Trust. MidFirst thus claimed that as a bona fide purchaser without knowledge of the constructive trust, MidFirst was entitled to foreclose the Street Deed of Trust. Alternatively, MidFirst claimed that because the loan secured by the Street Deed of Trust refinanced the prior deed of trust granted by Urban, MidFirst was entitled to enforce its mortgage to the extent of the \$59,000 balance of that deed of trust at the time of the refinancing.

On May 19, 2011, the circuit court denied Murphy's motion to stay and dismiss, noting that even when a deed was set aside on the basis of a mortgagor's fraudulent conduct, a foreclosing mortgagee may still be entitled to protection as a bona fide purchaser if it is clear that the mortgagee acted in good faith and without notice of adverse claims on the property. The circuit court held that because there was a genuine issue of fact regarding MidFirst's good faith and whether it had actual notice of the Estate Lawsuit that would need to be resolved at trial. Murphy appealed.

The Maryland Court of Special Appeals reversed and remanded the case to the circuit court with instructions to grant the motion to dismiss. The court held that MidFirst was not entitled to the protection of a bona fide purchaser because it had constructive notice of the Estate Lawsuit and the title issues that it raised at the time it obtained the Street Deed of Trust. The court also rejected MidFirst's equitable subrogation argument, distinguishing the case from prior Maryland precedent protecting refinancing lenders. The court held that while equitable subrogation might be appropriate where a refinancing lender had purchased the property at a foreclosure sale and was seeking to establish its priority over intervening judgment lien creditors that could have bid at the sale and challenged the applicability of subrogation prior to distribution of sale proceeds, it was not appropriate where "a refinance lender invokes the doctrine of equitable subrogation prior to the foreclosure sale, against a party, such as appellant, who claims to have been wrongfully deprived of title."

**HOLDING AND ANALYSIS:** In a prior DIRT summary of that decision, (see <http://dirt.umkc.edu/OCT2012/DDMurphyvFishman.pdf>) Dale Whitman was highly critical of the court's reasoning on equitable subrogation, noting that "the point of subrogation is to prevent unjust enrichment, and Urban's estate (Murphy) is being unjustly enriched in an outrageous manner." On final appeal, the Court of Appeals of Maryland agreed and reversed, stating:

applying equitable subrogation to the particular circumstances of this case prevents the unjust enrichment of the Estate. Accordingly, we reverse the judgment of the Court of Special Appeals. Equitable subrogation has been applied broadly to deeds of trust and mortgages, both before and after foreclosure sales. The purpose of equitable subrogation is to prevent inequitable consequences. The Court of Special Appeals' decision to deny to Petitioners the remedy of equitable

subrogation perpetuated an inequity. The Estate would be enriched unjustly otherwise because of Petitioners' mistake — a mistake which caused no harm to the Estate.

**REPORTER'S COMMENT:** Not much further comment is needed here. Score another for Prof. Whitman and the Restatement's position on equitable subrogation!