

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL**

CAMBRIDGE WALNUT PARK, LLC,	:	OCTOBER TERM, 2007
	:	
Plaintiff,	:	NO. 01102
	:	
v.	:	COMMERCE PROGRAM
	:	
MUNICIPAL CAPITAL APPRECIATION	:	Control No. 10030805
PARTNERS I, L.P., et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 15th day of November, 2010, upon further consideration of the MCAP defendant's Motion for Summary Judgment, the responses thereto, and all other matters of record, and in accord with the Supplemental Opinion issued simultaneously, it is **ORDERED** that Count IV of the Amended Complaint is **DISMISSED** in addition to the other Counts previously dismissed in the Court's November 10, 2010 Order.

BY THE COURT:

ARNOLD L. NEW, J.

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	:	
Defendants.	:	

SUPPLEMENTAL OPINION

The court issues this Opinion as a supplement to its prior Opinion entered on November 10, 2010.¹ In Count IV of the Amended Complaint, Cambridge requests a Declaratory Judgment:

- (a) declaring that the interests of affiliates MCAP II in the 2000 Mortgage and WHA in the [title to] the Property were merged rendering the Sheriff’s Sale [under the 2000 Mortgage] invalid;
- (b) declaring the 2000 Mortgage is satisfied; [and]
- (c) declaring that [Cambridge] is entitled to a quitclaim deed from WPPLLC conveying the Property or the monetary value equal to [Cambridge’s] equity in the Property on the date of the Sheriff’s Sale[.]

The 2000 Mortgage foreclosure action² was the proper forum in which to challenge the validity of the 2000 Mortgage and the Sheriff’s sale under that Mortgage. In the foreclosure action, the trial court denied Cambridge’s Motions to Intervene, to Stay the Sheriff’s Sale, and to Set Aside the Sale. Cambridge has appealed from those denials, and its appeal is presently pending.

In the 2000 Mortgage foreclosure action, Cambridge either did raise, or should have raised, the issues of 1) the merger of the 2000 Mortgage and the quitclaim deed, and 2) the

¹ The court will use the defined terms from the November 10th Opinion in this Opinion.

² U.S. Bank National Association v. Walnut Park Plaza Associates, June Term, 2003, No. 04202 (Phila Co.), *on appeal*, 1996 EDA 2009 (Pa. Super.).

validity of the Sheriff's sale. Cambridge cannot now collaterally attack the foreclosure action and the resulting Sheriff's sale in this action.³ Count IV of the Amended Complaint must be dismissed under the principles of *res judicata* and collateral estoppel.

BY THE COURT:

ARNOLD L. NEW, J.

³ “[T]he rule of *res judicata* extends to every question in the proceedings that was legally cognizable. It bars the relitigation of issues raised, as well as arguments which might have been raised. . . . The rule of *res judicata* should not be defeated by minor differences of form, parties, or allegations, when these are contrived only to obscure the real purpose, a second trial on the same cause between the same parties. The thing which the court will consider is whether the ultimate and controlling issues have been decided in a prior proceeding in which the present parties actually had an opportunity to appear and assert their rights. If this be the fact, then the matter ought not be litigated again, nor should the parties, by a shuffling of plaintiffs on the record, or by change in the character of the relief sought, be permitted to nullify the rule.” Mintz v. Carlton House Partners, Ltd., 407 Pa. Super. 464, 476-477, 595 A.2d 1240, 1246-1247 (1991).