

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

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GELT FINANCIAL CORPORATION s/b/m to GELT BUSINESS CREDIT, LLC	:	December Term, 2010
	:	
<i>Plaintiff</i>	:	Case No. <i>1442</i>
	:	
v.	:	
	:	
SHIREEN MALIK <i>et al.</i>	:	
	:	Commerce Program
and	:	
	:	
ARIF MALIK a/k/a/ ARIF H. MALIK,	:	
	:	Control No. 11112027
and	:	
	:	
TD BANK, N.A. s/b/m to COMMERCE BANK, N.A.	:	
	:	
<i>Defendants</i>	:	

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ORDER

AND NOW, this *10<sup>th</sup>* day of April, 2012, upon consideration of the Motion for Summary Judgment of Plaintiff Gelt Financial Corporation, the Response in Opposition of Defendant TD Bank, N.A., the respective memoranda of law, and Plaintiff's Reply to Defendant TD Bank, N.A.'s Response, it is **ORDERED** that the Motion is **Granted as follows**:

- I. The Satisfaction Piece recorded by Plaintiff with the Philadelphia Commissioner of Records as Document No. 51331446 is expunged and set aside;
- II. The mortgage recorded by Plaintiff with the Philadelphia Commissioner of Records as Document No. 50572428 is reinstated and is valid as a lien upon

Gelt Financial Corporat-ORDOP



the property located at 4706 Chestnut Street, Philadelphia, Pa. The mortgage above has priority over the mortgage subsequently recorded by Defendant with the Philadelphia Commissioner of Records as Document No. 51397942;

- III. The Philadelphia Commissioner of Records is **Directed** to record a certified copy of this Order;
- IV. Plaintiff is **Ordered** to satisfy the mortgage recorded with the Philadelphia Commissioner of Records as Document No. 50894068 immediately after a certified copy of this **Order** is recorded by the Philadelphia Commissioner of Records.

**BY THE COURT,**

  
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**ARNOLD L. NEW, J.**

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<b>v.</b>	:	
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<b>SHIREEN MALIK et al.</b>	:	
	:	Commerce Program
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<b>ARIF MALIK a/k/a/ ARIF H. MALIK,</b>	:	
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	:	
<b>TD BANK, N.A. s/b/m to COMMERCE BANK, N.A.</b>	:	
	:	
<i>Defendants</i>	:	

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**OPINION**

Plaintiff’s Motion for Summary Judgment requires the Court to determine whether Defendant, holder of a mortgage upon a certain property, had notice of the existence of two prior mortgages encumbering the same property. For the reasons below, this Court concludes that Defendant mortgagee had notice of the existence of two prior mortgages.

**Background**

Plaintiff, Gelt Financial Corporation, successor by merger to Gelt Business Credit (“Gelt Financial,”) is a lender based in Pennsylvania. Defendants, Shireen Malik (“S. Malik”) and Arif Malik (“A. Malik,”) are individuals who own or owned real property located at 4706 Chestnut Street, Philadelphia, Pennsylvania (the “Property.”)

Defendant TD Bank, successor by merger to Commerce Bank, N.A. (“Commerce Bank,”) is a banking institution engaged in business in Philadelphia, Pennsylvania.

On 26 September 2002, Defendant S. Malik received a deed to the Property (“Deed I.”) On the same day, S. Malik obtained a loan in the amount of \$120,250 from Gelt Financial. As a security for the loan, S. Malik gave Gelt Financial an open-end mortgage in the amount of \$120,250 (the “Gelt 1 Mortgage.”) On 26 September 2002, the Gelt 1 Mortgage was recorded with the Philadelphia Department of Records as Document No. 50572428.<sup>1</sup>

On 1 February 2004, S. Malik conveyed a deed to the Property to A. Malik (“Deed II.”)<sup>2</sup> After conveying the deed to the Property, S. Malik obtained another loan in the amount of \$149,000 from Gelt Financial. As security, S. Malik gave Gelt Financial a second open-end mortgage in the amount of \$149,000 (the “Gelt 2 Mortgage.”) On 29 March 2004, the Gelt 2 Mortgage was recorded with the Philadelphia Commissioner of Records as document No. 50894068.<sup>3</sup>

On 25 October 2005, Commerce Bank, Defendant herein, obtained a title report upon the Property. The report disclosed that the Property was encumbered by the Gelt 1 and 2 Mortgages.<sup>4</sup>

On 6 December 2005, Gelt Financial recorded a “Satisfaction Piece” with the Philadelphia Commissioner of Records. The Satisfaction Piece stated that the debt secured by the Gelt 1 Mortgage had been fully satisfied. Specifically, the Satisfaction Piece stated:

Made this 6<sup>th</sup> day of December, 2005

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<sup>1</sup> Exhibit B to the Complaint of Gelt Financial.

<sup>2</sup> Indenture between Shireen Malik and Arif Malik, Exhibit E to the Complaint of Gelt Financial.

<sup>3</sup> Exhibit D to the Complaint of Gelt Financial.

<sup>4</sup> Title Report, Exhibit 16 to the Motion for Summary Judgment of Plaintiff Gelt Financial.

Name of Mortgagor: Shireen Malik  
Name of Mortgagee: Gelt [Financial] ...  
Date of Mortgage: September 26<sup>th</sup>, 2002  
Original Mortgage Debt: \$120,250.00....  
Brief Description or Statement of Location of Mortgaged  
Premises: 4706 Chestnut St. Philadelphia, Pa. 19143.  
The undersigned hereby certifies that the debt secured by the  
above-mentioned mortgage has been fully paid or otherwise  
discharged and that upon the recording hereof said Mortgage  
shall be ... forever satisfied and discharged....  
[Signed by] Gelt [Financial.]<sup>5</sup>

On 9 January 2006, Commerce Bank loaned funds in the amount of \$250,000 to an entity named Hazel Corporation. On the same day, A. Malik, as owner of the Property, personally guaranteed the loan and delivered a mortgage upon the Property to Commerce Bank (the “Commerce Bank Mortgage.”) On 13 May 2006, the Commerce Bank Mortgage was recorded with the Philadelphia Commissioner of Records as document No. 51397942.<sup>6</sup>

On 15 December 2010, Gelt Financial filed a complaint in equity against Defendants S. Malik, A. Malik, and Commerce Bank. The Complaint asserts that the Satisfaction Piece dated 6 December 2006 “was inadvertently and erroneously filed by clerical error and mistake because Gelt [Financial] intended to record a Satisfaction Piece with respect to Mortgage II, not Mortgage I.”<sup>7</sup> The complaint seeks to expunge and set aside the Satisfaction Piece recorded on 6 December 2002, and obtain a Court Order declaring that the Gelt 1 Mortgage has seniority over the inferior Commerce Bank Mortgage of 6 December 2006.<sup>8</sup> The Complaint also asserts that once the Satisfaction Piece is set aside and the Gelt 1 Mortgage is reinstated to senior status, Gelt Financial

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<sup>5</sup> Exhibit A to the Complaint of Gelt Financial.

<sup>6</sup> Exhibit F to the Complaint of Gelt Financial.

<sup>7</sup> Complaint, ¶ 19.

<sup>8</sup> Complaint, ¶ 3, Wherefore Clause.

will mark as satisfied the Gelt 2 Mortgage.<sup>9</sup>

On 2 March 2011, this Court entered an Order granting Gelt Financial's Motion for Alternative Service upon Defendants S. and A. Malik. This Court granted the Motion and instructed Gelt Financial to serve notice via regular and certified mail. On 15 March 2011, Gelt Financial filed affidavits of service as to S. Malik and A. Malik. Defendants S. and A. Malik filed no answer to Gelt Financial's Complaint, or to any other pleading, and Gelt Financial sent to both individual Defendants a Notice of Intention to Take Default Judgment dated 1 April 2011.

On 24 May 2011, Defendant Commerce Bank filed an Amended Answer with New Matter to the Complaint of Gelt Financial. In the Amended Answer, Commerce Bank denied that the Satisfaction Piece should be set aside and the Gelt 1 Mortgage should be reinstated. In addition, Commerce Bank's New Matter made the following assertion:

In extending credit to the subject property owner [A. Malik,] **answering defendant [Commerce Bank] relied to its detriment upon the recorded satisfaction piece with respect to plaintiff's Mortgage I** [the Gelt 1 Mortgage,] and said satisfaction piece can not be set aside in a manner that would place it in a position superior to that of answering defendant's mortgage lien.<sup>10</sup>

During litigation, Gelt Financial served Commerce Bank with a set of interrogatories. The interrogatories asked *inter alia* whether any director, officer or agent of Commerce Bank had any knowledge of the existence of the Gelt 1 and 2 Mortgages at the time Commerce Bank received its mortgage from A. Malik. Commerce Bank issued the following response:

Report prepared by American Property Reports on or about 10/25/2005 indicated the existence of Gelt Mortgage I....

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<sup>9</sup> Complaint, ¶ 24.

<sup>10</sup> New Matter, ¶ 5 (emphasis supplied).

[and] .... Gelt Mortgage II.<sup>11</sup>

In the same set of interrogatories, Gelt Financial asked Commerce Bank to fully describe any facts showing that reinstatement of the Gelt 1 Mortgage would harm or prejudice Commerce Bank. Commerce Bank issued the following response:

It is believed that there will be insufficient funds realized at Sheriff's Sale of the subject property to cover the outstanding balance on the Hazel Corporation loan if the [Gelt 1 Mortgage] is reinstated and placed in a priority position superior to defendant's Mortgage.<sup>12</sup>

On 15 November 2011 Gelt Financial filed the instant Motion for Summary Judgment. Defendant Commerce Bank filed a timely Response in Opposition, and the motion is ripe for a decision.

### **Discussion**

In Pennsylvania,

the ... Rules of Civil Procedure provide ... that the court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery.... Under the rules, a motion for summary judgment is based on an evidentiary record that entitles the moving party to judgment as a matter of law.... In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party..... Finally, court may grant summary judgment only where the right to such judgment is clear and free from doubt.<sup>13</sup>

**I. A satisfaction piece erroneously recorded may be set aside except as the rights of third persons may prevent.**

In its Motion for Summary Judgment, Gelt Financial asserts that the Satisfaction

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<sup>11</sup> Defendant Commerce Bank's Responses to First Set of Interrogatories of Gelt Financial, ¶¶ 22, 24.

<sup>12</sup> Defendant Commerce Bank's Responses to First Set of Interrogatories of Gelt Financial, ¶ 37.

<sup>13</sup> Ario v. Ingram Micro, Inc., 600 Pa. 305, 315; 965 A.2d 1194, 1200 (Pa. 2009).

Piece recorded on 6 December 2005 should be set aside and the Gelt 1 Mortgage should be reinstated *ab initio*. Gelt Financial further asserts that setting aside the Satisfaction Piece and reinstating the Gelt 1 Mortgage would not be prejudicial to Commerce Bank.<sup>14</sup> Opposing the motion, Commerce Bank asserts the Satisfaction Piece may not be set aside, and the Gelt 1 Mortgage may not be reinstated, “without placing responding Defendant [Commerce Bank] in a position that is worse off than it was as of the date the Commerce Mortgage was obtained....”<sup>15</sup>

The law is clear: “a satisfaction entered by accident or inadvertence may be set aside and the mortgage reintegrated, except as the rights of thirds persons may prevent.” Alliance Funding Company v. Arlene G. Stahl et AL, 203 Pa. Super. 277, P. 13; 829 A.2d 1179, 1183 (Pa. Super. 2003).

In Alliance Funding, Plaintiff loaned funds to the Stahl Defendants and received a mortgage as security. Plaintiff promptly recorded the mortgage. On the same day of the loan, 6 November 1998, the Stahl Defendants gave another mortgage to a third party. On 10 June 1999, Plaintiff filed a mortgage satisfaction piece on the Stahl’s mortgage, only to subsequently discover that the satisfaction piece had been filed erroneously. Plaintiff filed a complaint seeking to strike the erroneously filed satisfaction piece and declare valid the mortgage thereof. The trial court denied Plaintiff’s motion to strike the satisfaction piece, and Plaintiff appealed. Reversing, the Pennsylvania Superior Court held: “this evidence demonstrates that Appellant [Plaintiff] entered the ... mortgage satisfaction piece in error and that Appellant [Plaintiff] is entitled to strike the mortgage satisfaction piece. Except as the rights of third parties may predominate, the trial court abused its discretion in failing to grant Appellant’s Motion to Strike Mortgage

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<sup>14</sup> Motion for Summary Judgment of Gelt Financial, ¶ 36.

<sup>15</sup> Response in Opposition to the Motion for Summary Judgment of Gelt Financial, ¶ 36.

Satisfaction Piece.”<sup>16</sup> The Superior Court remanded the case with instructions to set aside the satisfaction piece, unless the right of any third party mortgagee was superior to the right of Plaintiff.<sup>17</sup>

**II. At the time Commerce Bank loaned funds in return for a mortgage, it had notice of the Gelt Mortgages encumbering the Property, and no Satisfaction Piece was yet in the record.**

In the Response in Opposition to the Motion for Summary Judgment, Commerce Bank admits that the “Gelt Mortgages were of record for a period of time before the Commerce [Bank] loan was made and the Commerce [Bank] Mortgage obtained.”<sup>18</sup> Nevertheless, Commerce Bank also asserts that by the date the Commerce Bank Mortgage was obtained, the Satisfaction Piece had been recorded and the Gelt 1 Mortgage was no longer on record. Commerce Bank concludes that the Satisfaction Piece may not be set aside, and the Gelt 1 Mortgage may not be returned to its original position of priority, without placing the Commerce Bank Mortgage in a position that is worse off than it was at the time the Commerce Bank Mortgage was obtained.<sup>19</sup>

Examination of the record shows the following:

1. On 25 October 2005, Commerce Bank obtained a title report on the Property.<sup>20</sup> This title report unambiguously disclosed that the Property was encumbered by the Gelt 1 and 2 Mortgages. Also, the title report above was silent as to the existence of any satisfaction piece.
2. Gelt Financial’s Satisfaction Piece was recorded on 6 December 2005, after Commerce Bank obtained the title report dated 25 October 2005.<sup>21</sup>
3. On 9 January 2006, Commerce Bank loaned \$250,000 to Hazel Corporation. A. Malik personally guaranteed this loan and gave to

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<sup>16</sup> Alliance Funding Company v. Arlene G. Stahl et al., 203 Pa. Super. 277, P. 12, 829 A.2d 1179, 1183

<sup>17</sup> Alliance Funding Company v. Arlene G. Stahl et al., 203 Pa. Super. at P. 15; 829 A.2d at 1184

<sup>18</sup> Response in Opposition to the Motion for Summary Judgment of Gelt Financial, ¶ 36.

<sup>19</sup> Response in Opposition to the Motion for Summary Judgment of Gelt Financial, ¶ 36.

<sup>20</sup> American Property Report No. 817858163111, dated 25 October 2005, Exhibit 16 to the Motion for Summary Judgment of Gelt Financial.

<sup>21</sup> Satisfaction Piece, Exhibit A to the Complaint.

Commerce Bank a mortgage upon the Property as security for the loan.

4. The \$250,000 loan was made seventy-six (76) days after Commerce Bank had obtained a title report which disclosed that the Gelt 1 and 2 Mortgages were encumbering the Property.
5. Commerce Bank has pointed to no evidence in the record showing that it relied on the Satisfaction Piece when it loaned funds in return for a mortgage. To the contrary, the evidence shows that the only title report in the possession of Commerce Bank at the time it loaned its funds was the tile report dated 25 October 2005. That title report disclosed the Gelt Mortgages encumbering the Property, and was silent as to the existence of any satisfaction piece.
6. Commerce Bank did eventually obtain a second title report showing the existence of the Satisfaction Piece; however, this report was issued after Commerce Bank had already loaned funds in return for a mortgage.

This evidence shows that there is no genuine issue of material fact: at the time Commerce Bank loaned funds to Hazel Corporation and received a mortgage from A. Malik, Commerce Bank had notice that the Gelt 1 and 2 Mortgages encumbered the Property. Nothing in the record shows that Commerce Bank had notice of the existence of the Satisfaction Piece at the time Commerce Bank loaned its funds in return for a mortgage. The record only shows that Commerce Bank obtained a title report on 25 October 2005, allowed seventy-six days to elapse from that date, and then loaned funds to Hazel Corporation without obtaining a title report coincidental with the loan. Since Commerce Bank has offered no proof that it obtained another title report coincidental with its loan, this Court concludes that Commerce Bank relied exclusively upon the title report dated 25 October 2005. Commerce Bank's failure to conduct a title search coincidental with its loan negates Commerce Bank's assertion that it "relied to its detriment upon the recorded satisfaction piece."<sup>22</sup> In conclusion, when Commerce Bank loaned its funds in return for a mortgage, Commerce Bank knew that the Gelt Mortgages

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<sup>22</sup> New Matter, ¶ 5.

encumbered the Property, and knew that its mortgage would have junior status thereunder. Since Commerce Bank knew that its mortgage would have junior status, Commerce Bank may not contend that setting aside the Satisfaction Piece and reinstating the Gelt 1 Mortgage would place its mortgage in a position worse-off than it ever was. Commerce Bank will not be prejudiced because its rights in the Property have always been subordinate to the rights of Gelt Financial.

The Motion for Summary Judgment of Plaintiff Gelt Financial is granted.

An Order consistent with this Opinion will be filed simultaneously.

**By The Court,**



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**Arnold L. New, J.**