THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-In-Equity

Case No. 2010-CP-32-00514

Chase Home Finance, LLC ..... Appellant,

v.

Cassandra S. Risher, individually, as Personal Representative and Legal Heir of the Estate of Sidney Allan Risher, Justin R., a minor, Sydney R., a minor, Ashley R., a minor, Sidney J. Risher, Pierre Risher and Drayton Holmes, as Legal Heirs to the Estate of Sidney Allan Risher and Highland Hills Homeowners Association, Inc. ..... Defendants,

Of whom Cassandra S. Risher is ..... Respondent.

FINAL REPLY BRIEF OF APPELLANT, CHASE HOME FINANCE, LLC

CALLISON TIGHE & ROBINSON, LLC
Louis H. Lang, Esq. (SC Bar #03127)
Jennifer N. Stone, Esq. (SC Bar #72602)
Callison Tighe & Robinson, LLC
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia SC 29202-1390
Telephone: (803) 404-6900
Facsimile: (803) 404-6902

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-In-Equity

Case No. 2010-CP-32-00514

Chase Home Finance, LLC ..... Appellant,

v.

Cassandra S. Risher, individually, as Personal Representative and Legal Heir of the Estate of Sidney Allan Risher, Justin R., a minor, Sydney R., a minor, Ashley R., a minor, Sidney J. Risher, Pierre Risher and Drayton Holmes, as Legal Heirs to the Estate of Sidney Allan Risher and Highland Hills Homeowners Association, Inc. ..... Defendants,

Of whom Cassandra S. Risher is ..... Respondent.

FINAL REPLY BRIEF OF APPELLANT, CHASE HOME FINANCE, LLC

CALLISON TIGHE & ROBINSON, LLC
Louis H. Lang, Esq. (SC Bar #03127)
Jennifer N. Stone, Esq. (SC Bar #72602)
Callison Tighe & Robinson, LLC
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia SC 29202-1390
Telephone: (803) 404-6900
Facsimile: (803) 404-6902

Kevin T. Hardy, Esq.
The Scott Law Firm, P.A.
2712 Middleburg Dr., Ste. 200
PO Box 2065
Columbia SC 29204
Telephone: (803) 252-3340
Facsimile: (803) 252-3346

Attorneys for Appellant

TABLE OF CONTENTS

PAGE

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

A. CASES PAGE

ARGUMENTS IN REPLY

I.

The Master erred in concluding that in order to establish an equitable lien encumbering Respondent's one-half undivided interest in the subject property, Appellant had to prove a specific debt owed by Respondent to Appellant because the proof of such a specific debt has never been an element necessary to establish an equitable lien in South Carolina.

Respondent, Cassandra S. Risher (Risher) argues in order for the Appellant, Chase Home Finance, LLC (Chase), to establish one of the elements of an equitable lien, it must show a specific debt due and owing from Risher to Chase.[1] (Respondent's brief at 1).

South Carolina law requires proof only of a debt, duty or obligation existing in favor of the party seeking the lien. *See Evans v. Pegues*, 102 S.C. 186, 86 S.E. 480 (1915); *Groce v. Ponder*, 63 S.C. 162, 41 S.E. 83 (1902); *Cf. Mortgage Electronic Registration Systems, Inc. v. Wilson*, 2005 WL 1284047 (N.J. Super. Ct. Ch. Div. 2005); *Lipps v. Lipps*, 87 N.E.2d 823 (Oh. Ct. App. 1949).

As Chase pointed out in its opening brief, the Master held that the debt, duty or obligation owed to Chase must originate with Risher in order for an equitable lien to arise against Risher's interest in the subject property (Property). (Order filed July 14, 2011, p. 8, R. p. 11; Order filed Dec. 7, 2011, p. 3, R. p. 18). Chase would respectfully submit this is error.

Nothing in South Carolina's equitable lien jurisprudence suggests the debt must originate with the party against whose property the opposing party seeks to impress an equitable lien. While there certainly must be a connection between the debt and the property, the undersigned has been unable to discover any South Carolina case, out-of-state appellate court cases or secondary sources

---

[1] Midland Mortgage Corporation was the original lender, the loan and mortgage being assigned to Chase following the closing. (Assignment 1, R. p. 150). For the sake of clarity, Chase will be referred to hereafter as the lender.

standing for the proposition Risher argues and upon which the Master based, in part, his ruling. Accordingly, Risher's argument in this regard is without merit.

Further, and tellingly, Risher fails to discuss two cases cited in Chase's opening brief - *Wilson* and *Lipps* - which are factually directly on point.

In *Wilson,* a wife obtained a loan to purchase certain real property. At closing, wife executed a note and mortgage, and the property was deeded to husband and wife. *Id.* at *1. The New Jersey Superior Court of Chancery, in impressing an equitable lien against the husband's one-half undivided interest in the property, stated:

> In *Rutherford Nat'l Bank v. H.R. Bogle & Co.,* 114 N.J.Eq. 571 (Ch. 1933), the court stated:
>
> The whole doctrine of equitable liens or mortgages is founded upon that cardinal maxim of equity which regards as done that which has been agreed to be, and ought to have been, done. To dedicate property, or to agree to do so, to a particular purpose or debt is regarded in equity as creating an equitable lien thereon in favor of him for whom such dedication is made. This wholesome equitable principle is one of wide, if not universal recognition and application.
>
> The form which an agreement shall take in order to create an equitable lien or mortgage is quite immaterial, for equity looks at the final intent and purpose rather than at the form. If an intent to give, charge, or pledge property, real or personal, as security for an obligation, appears, and the property or thing intended to be given, charged, or pledged is sufficiently described or identified, then the equitable lien or mortgage will follow as of course. *Gutermuth v. Ropiecki*, 159 N.J.Super. 139, 146-7 (Ch. 1977); See also *Rutherford Nat'l Bank*, 114 N.J.Eq. at 571.
>
> Therefore, the way in which the parties agreed to create a mortgage does not matter. So long as the parties intended to secure a debt by a certain piece of property, an equitable mortgage will have been created. *James Talcott, Inc. v. Roto Am. Corp.*, 123 N.J.Super. 183 (Ch. 1973).

Wilson, 2005 WL 1284047 *1-2.

Based on the foregoing, the New Jersey court found sufficient intent on the part of both husband and wife to secure the loan with the property by way of a purchase money mortgage and found an equitable lien in favor of the purchase money lender:

> Here the parties' intent was to use the property to secure money lent by Plaintiff. The money was directly used to purchase the property and it is clear that both [husband] and [wife] should be held responsible for this debt as both benefitted. Both the deed and mortgage were recorded on June 8, 2004. This demonstrates that the mortgage and deed are intertwined creating one transaction. The fact that [husband] was left off the mortgage document should not permit him to gain a windfall. There can be no doubt that it was intended that the property would be used to secure the loan made by Plaintiffs. Therefore, an equitable mortgage was created. . .

Id. at *2.

In *Lipps,* a husband intended to purchase real property in his name and in the name of his paramour but, at closing and not without some irony, the property was actually titled in the name of husband and wife. Husband had obtained a purchase money loan from The Central Fairmount Building and Loan Company to finance the purchase and, at closing delivered a purchase money mortgage against the property, purportedly executed by husband and wife. *Id.* at 822. However, wife's signature on the purchase money mortgage was forged by husband's paramour. *Id.* at 826-7. In concluding the wife's interest in the property should be encumbered by an equitable lien, the Ohio Court of Appeals held:

> While it is true that the mortgage unaided by equitable principles does not create a lien as against the plaintiff [wife] who did not sign it, the fact that it was executed at the same time as the deed shows that there was no intent to convey a title free of the incumbrance [sic] to secure the purchase price. There was no intent to convey to the plaintiff [wife] an unincumbered [sic] title. Her donor-Frank A. Lipps-had no such unincumbered [sic] title to convey to her. It is a general principle running through the law that no one can convey a better title than he himself has and that a transferee obtains no better title than his transferor had, and where an attempt is made to transfer a greater title than the transferor has, the real owner can pursue the property until it reaches the hands of an innocent purchaser for value. Every

> principle of equity would limit her title to that of her donor, especially as against an innocent grantee who had advanced money in good faith.
>
> This principle has had frequent application in Ohio to the claim of the widow to dower in premises subject to a purchase money mortgage which she had not signed, or to a vendor's lien. In 14 O.Jur., 657, it is said: 'The right of dower is subject to a purchase-money mortgage given by the consort at the time of receiving the deed. It has been said that a purchase-money mortgage is superior to a claim of dower, even though the mortgage is not signed by the wife, because the debt is a higher claim than the claim of dower. The technical seisin of the consort does not confer upon the other spouse a contingent right of dower in the land, as against those deriving title at judicial sale of the land on the mortgage, although he or she did not join in executing the mortgage.' . . .
>
> And as the law is that the mortgage to a third person who advances the money to finance the purchase has the attributes of a purchase-money mortgage, we can see no logical reason for not holding that such person should not have a vendor's lien to secure the repayment of the purchase money advanced by him under the same circumstances that would give a vendor such a lien.

Id. at 827-8. The Ohio Court of Appeals ultimately held, "upon equitable principles the plaintiff [wife] holds the legal title to her undivided one-half of this real estate, subject to a charge or lien, or in trust, to secure the payment of the balance due The Central Fairmount Building & Loan Company upon its purchase-money mortgage. . ." *Id.* at 828.

In both *Lipps* and *Wilson*, one spouse, owner of a one-half undivided interest in the property, did not execute the purchase money mortgage. In both cases, neither of the spouses who did not sign the mortgage owed a "direct" debt to the purchase money lender and in *Lipps* the non-purchase-money-mortgage-signing spouse did not even know about the transaction until it had been completed. However, in both cases the courts found specifically that without the advancement of the loan proceeds, the spouse who did not sign the mortgage would not have received the benefit of ownership in the property and, therefore, the ownership interests those spouses received should be, and the courts held were, subject to equitable liens in favor of the lenders.

Chase would respectfully submit the factual scenario in this case is virtually identical to the facts of *Wilson* and *Lipps*. In neither case was there a direct debt owing from the lender to the spouse who did not sign the mortgage in question. Nevertheless, both the New Jersey and Ohio courts concluded the non-mortgage-signing spouse's interest in the property should be impressed with a equitable lien in favor of the purchase money lender.

The same analysis and conclusion should apply in this instance, and the Master erred in opining Chase had to establish a specific debt due an owing from Risher to Chase. More fundamentally, Chase would submit the Master erred in concluding Chase was not entitled to an equitable lien on the Property. Therefore, the Master's Order should be reversed.

II.

> The Master erred in holding Appellant failed to establish that Appellant did not confer a benefit on Respondent because the purchase money loan proceeds supplied by Appellant's predecessor-in-interest were used to purchase the entire subject property, including the one-half undivided interest titled in Respondent's name and pay-off a prior encumbrance which encumbered the one-half undivided interest titled in Respondent's name.

Risher argues the Master was correct in concluding Risher received no benefit from the purchase of the Property and thus Chase failed to establish this necessary element of its unjust enrichment claim. (Respondent's brief at 5). The Master concluded Chase did not convey a *direct* benefit on Risher as Chase did not loan money directly to Risher. (Order filed Dec. 7, 2011, p. 7, R. p. 22). The Master found Risher was merely an "indirect beneficiary of what Mr. Risher chose to do with the loan proceeds." (Order filed Dec. 7, 2011, p. 7, R. p. 22).

Just as it does not require the showing of a specific debt to establish an equitable lien, South Carolina law does not require the showing of a direct relationship between the benefactor and the beneficiary, such as that of lender and borrower, only that the beneficiary received a benefit from

the benefactor. *Dema v. Tenet Physician Servs. Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009).

Even so, Chase would respectfully submit Risher, like the spouse in *Wilson*[2], realized a direct benefit from the loan (the payment of which was secured by the purchase money mortgage) by receiving title to a one-half undivided interest in the Property purchased using the loan proceeds. These loan proceeds were utilized not only to pay the purchase price, but also to pay and satisfy a prior encumbrance (mortgage) on the Property. (Settlement Statement, R. p. 131). Finally, there is no dispute that the Property could not have been purchased without the Chase loan. (Hearing on May 12, 2011, Plaintiff's Ex. 20, p. 14, ll. 6 - 7, R. pp. 173).

A more direct benefit conferred on Risher by Chase is hard to imagine. Accordingly, Risher's argument in this regard is without merit and the Master's conclusion is error.

III.

The Appellant had no adequate remedy at law because all its claims sound only in equity.

Risher argues Chase has an adequate remedy at law and, therefore, should be denied any equitable remedy. (Respondent's brief at 3). Chase sought to foreclose its mortgage and impress an equitable lien on the one-half undivided interest in the Property titled in Risher's name. Foreclosure is an equitable remedy. *Allendale County Bank v. Cadle,* 348 S.C. 368, 559 S.E.2d 342 (Ct. App. 2001), *Hayne Fed. Credit Union v. Bailey,* 327 S.C. 252, 258, 489 S.E.2d 472, 475 (1997). An action to impress an equitable lien on property is, as its name implies, an action sounding in equity. *Fibkins v. Fibkins,* 303 S.C. 112, 115, 399 S.E.2d 158, 160 (Ct. App. 1990). An unjust

---

[2] "The money was directly used to purchase the property and it is clear that both [husband] and [wife] should be held responsible for this debt as both benefitted." *Wilson* at *2.

enrichment claim also sounds in equity. *Dema*. In other words, all of Chase's claims sound in equity. There are no legal claims. Accordingly, Chase has no adequate remedy at law as it has no law claim against Risher.

CONCLUSION

Risher signed the contract to purchase the Property. (Contract, R. p. 114). She was present at the closing of the contract. (Hearing on May 12, 2011, Plaintiff's Ex. 3, 4, 5, 6, and 7, R. p. 119, 120, 121, 122 and 123, respectively). At the closing Risher signed numerous documents related to the purchase of the Property and the financing of that purchase. (*Id.*). The loan Chase provided was a purchase money loan, the proceeds of which were used, in part, to pay the purchase price for the Property and pay and fully satisfy a prior mortgage which encumbered the entire Property. (Settlement Statement, R. p. 131). Risher received title to a one-half undivided interest in the Property. (Deed, R. p. 129). The mortgage Chase seeks to foreclose describes the entire Property. (Purchase Money Mortgage, R. p. 133). Risher stated in her deposition, "I just wanted the house." (Hearing on May 12, 2011, Plaintiff's Ex. 20, p. 20, l. 24, R. p. 176). Risher knew that the loan to be secured by the mortgage was to provide funds to purchase the Property. (Hearing on May 12, 2011, Plaintiff's Ex. 20, p. 14, ll. 6 – 7, R. p. 173). Risher admitted that she and Sidney Risher could not have purchased the Property without the loan. (Hearing on May 12, 2011, Plaintiff's Ex. 20, p. 19, l. 6 - 10, R. p. 175). Further, Sidney Risher, Risher and their other family members moved into and furnished the Property, and made payments to the mortgagor beginning at closing on July 7, 2008 until September 1, 2009, in acknowledgment of the debt owed to Chase. (Settlement Statement, R. p. 131; Complaint, R. p. 32).

Chase established in the court below all the elements necessary to impress an equitable lien upon Risher's one-half undivided interest in the Property and all the elements necessary to prove

its unjust enrichment claim against Risher. The Master erred in denying Chase its requested relief and Chase would respectfully submit the Master's order should be reversed.

CALLISON TIGHE & ROBINSON, LLC

Louis H. Lang, Esq., SC Bar#003127
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia SC 29202-1390
Telephone: (803) 404-6900
Facsimile: (803) 404-6902

Kevin T. Hardy, Esq.
The Scott Law Firm, P.A.
2712 Middleburg Dr., Ste. 200
PO Box 2065
Columbia SC 29204
Telephone: (803) 252-3340
Facsimile: (803) 252-3346

Counsel for the Appellant

July 9, 2012
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-In-Equity

Case No. 2010-CP-32-00514

Chase Home Finance, LLC ..... Appellant,

v.

Cassandra S. Risher, individually, as Personal Representative and Legal Heir of the Estate of Sidney Allan Risher, Justin R., a minor, Sydney R., a minor, Ashley R., a minor, Sidney J. Risher, Pierre Risher and Drayton Holmes, as Legal Heirs to the Estate of Sidney Allan Risher and Highland Hills Homeowners Association, Inc. ..... Defendants,

Of whom Cassandra S. Risher is ..... Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the **Final Reply Brief of Appellant, Chase Home Finance, LLC,** by depositing a copy of it in the United States Mail, postage prepaid, on July 9, 2012, addressed to his attorney of record, at the following address:

H. Ronald Stanley, Esq.
1418 Park St., PO Box 7722
Columbia SC 29202

Tiffany D. Burgess

July 9, 2012
Columbia, South Carolina