NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

TERESA ISABELLA	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	
MAUREEN MCCLAY, SHARON JAEP, HIEN NGUYEN A/K/A HIEN T. TRAN A/K/A HIEN TRUNG TRAN, ELIZABETH DEJESUS, JACK TRUNG NGUYEN, MELVIN VY, REGENCY LAND & TITLE SERVICE, INC., XYZ CORPORATIONS #1-10 (FICTITIOUS NAMES) AND JOHN AND JANE DOES (FICTITIOUS NAMES)	
APPEAL OF: JACK TRUNG NGUYEN	No. 1381 EDA 2012

Appeal from the Judgment Entered March 29, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 01693 April Term, 2008

BEFORE: FORD ELLIOTT, P.J.E., MUNDY, J., and FITZGERALD, J.*

MEMORANDUM BY MUNDY, J.: **FILED MAY 16, 2013**

Appellant, Jack Trung Nguyen, appeals from the March 29, 2012 judgment entered in favor of Appellee, Teresa Isabella, after the trial court denied his post-trial motion seeking a new trial or judgment notwithstanding the verdict (JNOV).[1] After careful review, we affirm.

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* Former Justice specially assigned to the Superior Court.

[1] Although Appellant purports to appeal from the March 29, 2012 order denying his post-trial motion, his appeal properly lies from the entry of judgment. ***Hart v. Arnold***, 884 A.2d 316, 325 n.2 (Pa. Super. 2005)
(Footnote Continued Next Page)

This case was tried as a non-jury trial, after which, the trial court made the following findings of fact.

> 1. The property that is the subject to this [q]uiet [t]itle and [f]raudulent [c]onveyance [a]ction is located at 325 South 18th Street, Philadelphia, PA 19103.
>
> 2. On June 14, 1973, [Appellee], purchased the subject property from Dennis L. Milstein; as duly recorded on June 15, 1973, in the Office of the Recorder of Deeds for Philadelphia County, by the [i]ndenture identified as D-381-398.
>
> 3. The property, also indexed as BRT No. 081170800, is located in the vicinity of 18th and Delancey Streets, a prime real estate location in Center City Philadelphia.
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> 4. At no time from June 14, 1973 to the present did [Appellee] sell, alienate, or convey the subject property to any individual or entity.
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> 5. [Appellee], whose maiden name is Isabella, has also been known as Teresa Kennedy by marriage, to Ralph Kennedy in June, 1989, but [Appellee] subsequently divorced, and is currently known by her maiden name, Teresa Isabella.
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> 6. At the time of purchase in 1973, the four story subject property was functioning as an apartment building with six units, including the owner[']s unit in which [Appellee] resided until 1989, after which she continued to rent out units in the building.

(Footnote Continued) ———————————

(citation omitted), *appeal denied*, 897 A.2d 458 (Pa. 2006). Therefore, we have corrected the caption accordingly.

7. [Appellee] undertook renovations of the subject property, primarily in the time frame of 1986 through 1997.

8. On November 12, 2007, an individual pretending to be [Appellee] signed a deed to the subject property over to Maureen McClay, aka Maureen McGuire, which led to the recording of said fraudulent deed on December 4, 2007, as Instrument No. 51818179.

9. Defendant, Sharon Jaep, was listed on the November 2007 deed as a witness and notary, however, she testified at her deposition that she never met [Appellee], that the notary stamp on the deed was not hers, and that she was not involved in any transactions concerning the November 2007 deed.

10. Suspiciously, the property was seemingly conveyed by Maureen McClay to Hein Nguyen by deed dated December 4, 2007 and recorded on December 4, 2007 as Instrument No. 5181880, which was denied by [Maureen] McClay who never signed the deed.

11. Defendant, Elizabeth DeJesus, who was employed by one Bruce Doan, was the notary public who witnessed and notarized the December 4, 2007 deed.

12. On March 13, 2008, a deed of correction changing the name of the prior deed from Hein Nguyen to Hein T. Tran was entered as Instrument No. 5187008.

13. Also on March 13, 2008, the subject property was purportedly conveyed by said Hein T. Tran to [Appellant] by deed recorded on April 2, 2008 as Instrument No. 51880231.

14. Defendant Melvin Vy was the notary public who witnessed and notarized the deed dated April 2, 2008, requested a title search and

conducted the settlement purportedly conveying the subject property from Anna Nguyen and Hein Tran to [Appellant] ….

15. [Appellee] testified at trial that she never sold the property; that she never received any consideration for the property; that the signature on the November 2007 deed was forged; and that she had received an offer on the property of $1,000,000.00 in 2005 by way of illustrating the lack of credibility of Defendants[’] assertions that the Center City Philadelphia prime real estate had been sold to them for much less.

16. [Appellee] offered credible testimony that she paid the taxes in full on the property from 1973 to 2007.

17. [Appellee] offered credible testimony that she first became aware the property was no longer recorded as hers on April 15, 2008, at which time she took immediate legal action and provided notice of the same to Defendants.

18. Defendant Sharon Jaep testified credibly that she had not notarized the November 2007 deed allegedly conveying [] the subject property, thus confirming the testimony of [Appellee], thereby proving that the November, 2007 deed and its progeny were all null and void, since they rested on a fraudulent signature and circumstances smacking of a conspiracy to commit fraud and unjustly deprive [Appellee], the rightful owner, of the subject property.

19. Said findings are bolstered by the testimony of Defendant, Maureen McClay who was the victim of a home invasion, shot in the face, and had her social security card and non-driver identification stolen.

20. Defendant McClay never signed any documents before Elizabeth DeJesus, and never owned or sold the property to Hein Nguyen, or anyone else. In fact, her signature on the deed notarized on December 3, 2007 was a forgery.

21. Defendant Melvin Vy was the notary on the deed transfer between Hein Tran and [Appellant]; that he relied on a title search by First American[,] a parent company of United General Title; was at settlement for said transaction and served as the escrow agent.

22. Witness, Tony Lam, became aware of the property when Bruce Doan, who is currently incarcerated, informed him that it was for sale.

23. Tony Lam, introduced [Appellant] to Mr. Doan.

24. Witness Lam testified that he represented [Appellant], in the purported purchase of the property as his realtor at settlement; that he advised [Appellant] to obtain title insurance, and if he could not do so, to walk away from the deal.

25. [Appellant] was made aware that two title insurance companies questioned the validity of the title and refused to insure the property.

26. [Appellant] did not make a proper inquiry into the title, despite being alerted to its possible invalidity, and despite the well below market asking price which, in itself, was a red flag that the deal was literally too good to be true.

27. Despite evidence of questionable title, [Appellant] continued to take steps to attempt to purchase the property.

28. [Appellant] contracted to make improvements on the property despite having been informed that the conveyance may have been invalid to begin with.

> 29. Further, [Appellant] knew or should have known that there were not only questions about the title, but that the quoted sale price was so far beneath market value that the conveyance was fraudulent.
>
> 30. Therefore, any improvements, liens, or taxes against the property paid by [Appellant] were at best satisfied by him as a volunteer; or worse, quite possibly paid to create a smokescreen to obscure the fraudulent transfer of [Appellee]'s property.

Trial Court Opinion and Order, 3/29/12, at 3-7.

On April 16, 2008, Appellee began this action by writ of summons. On the same day, Appellee filed a praecipe to issue a *lis pendens*. On May 6, 2008, Appellee filed a complaint to quiet title based upon fraudulent conveyance. Appellee filed a motion to consolidate both actions on December 2, 2008, which was granted on January 12, 2009. On March 31, 2011, Appellant filed new matter, asserting various counterclaims and cross claims. In his counterclaims, Appellant sought relief based on quiet title, declaratory relief, unjust enrichment, equitable lien, and equitable subrogation. Appellant's crossclaim asserted claims for indemnification and contribution from all of his co-defendants. Appellant also asserted additional crossclaims against Hien Tran for fraud, negligent misrepresentation, unjust enrichment, and breach of warranty of title.

On July 20, 2011, Appellee filed a response to Appellant's new matter and counterclaims; however, none of the other defendants filed any

responses. The case went to a two-day, non-jury trial, on August 1, 2011. On October 11, 2011, the trial court entered an order striking the four deeds recorded between November 2007 and March 2008, which restored title back to Appellee and rendered Appellant's purchase of the property null and void. On October 19, 2011, Appellant filed a timely post-trial motion. On November 3, 2011, Appellant filed an amended post-trial motion. The trial court denied Appellant's post-trial motions on March 29, 2012. That same day, the trial court entered judgment in favor of Appellee. On April 30, 2012, Appellant filed a timely notice of appeal.[2]

On appeal, Appellant raises six issues for our review.

> 1. Whether the [trial c]ourt erred as a matter of law and/or abused its discretion when it concluded that Appellant … was not entitled to an equitable lien against the real property located at 325 South 18th St., Philadelphia, PA … in the amount of the liens and expenses that he paid or satisfied, and/or was not entitled to be equitably subrogated to the position of the

[2] We note that the 30th day for Appellant to file his notice of appeal fell on Saturday, April 28, 2012. When computing the 30-day filing period "[if] the last day of any such period shall fall on Saturday or Sunday … such day shall be omitted from the computation." 1 Pa.C.S.A. § 1908. Therefore, the 30th day actually fell on Monday, April 30, 2012, and Appellant's notice of appeal was timely. We also note that the trial court did not order Appellant to file a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), nor did the trial court file a Rule 1925(a) opinion. However, because we can adequately discern the trial court's reasoning from its March 29, 2012 opinion disposing of Appellant's post-trial motions, we decline to remand this case for the authoring of a Rule 1925(a) opinion.

lienholders whose liens were repaid, from [Appellant's] purchase of the [p]roperty?

2. Whether the [trial c]ourt committed reversible error when it permitted [Appellee] to introduce evidence, over [Appellant]'s objections, of [Appellant]'s insurance?

3. Whether the [trial c]ourt committed reversible error when it permitted [Appellee] to introduce evidence, over [Appellant]'s objections, of settlement discussions between the parties to establish liability?

4. Whether the [trial c]ourt abused its discretion when it refused to permit [Appellant] to introduce evidence regarding his real estate business to establish that [Appellant] was a legitimate investor and to rebut [Appellee]'s circumstantial evidence that [Appellant] was involved in a conspiracy to steal [Appellee]'s [p]roperty?

5. Whether the [trial c]ourt abused its discretion when it refused to consider [Appellee]'s representations in her bankruptcy petition as a judicial admission, or otherwise permit [Appellant] to question [Appellee] about the contents thereof or about the loss of her other properties for non-payment of taxes and assessments?

6. Whether the [trial c]ourt abused its discretion when it concluded that [Appellant] was not entitled to damages from [c]o-[d]efendant Hien Nguyen, a/k/a Hien Tran?

Appellant's Brief at 7-8.

In all of his issues, Appellant challenges the trial court's refusal to grant his post-trial motions. Our standard and scope of review for these questions are well established.

> Our review in a non-jury case such as this is limited to a determination of whether the findings of the trial court are supported by competent evidence and whether the trial court committed error in the application of law. Findings of the trial judge in a non-jury case must be given the same weight and effect on appeal as a verdict of a jury and will not be disturbed on appeal absent error of law or abuse of discretion. When this Court reviews the findings of the trial judge, the evidence is viewed in the light most favorable to the victorious party below and all evidence and proper inferences favorable to that party must be taken as true and all unfavorable inferences rejected.
>
> The [trial] court's findings are especially binding on appeal, where they are based upon the credibility of the witnesses, unless it appears that the court abused its discretion or that the court's findings lack evidentiary support or that the court capriciously disbelieved the evidence. Conclusions of law, however, are not binding on an appellate court, whose duty it is to determine whether there was a proper application of law to fact by the lower court. With regard to such matters, our scope of review is plenary as it is with any review of questions of law.

Shaffer v. O'Toole, 964 A.2d 420, 422-423 (Pa. Super. 2009) (internal quotation marks and citations omitted), *appeal denied*, 981 A.2d 220 (Pa. 2009).

> There are two bases upon which a [JNOV] can be entered: one, the movant is entitled to judgment as a matter of law, and/or two, the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant. With the first a court reviews the record and concludes that even with all factual inferences decided adverse to the movant [,] the law nonetheless requires a verdict in his favor, whereas with the second the court reviews the evidentiary record and concludes that the evidence was such

> that a verdict for the movant was beyond peradventure.
>
> Similarly, when reviewing the denial of a motion for new trial, we must determine if the trial court committed an abuse of discretion or error of law that controlled the outcome of the case.

Estate of Hicks v. Dana Companies, LLC, 984 A.2d 943, 950-951 (Pa. Super. 2009) (internal quotations and citations omitted), *appeal denied*, 19 A.3d 1051 (Pa. 2011).

In his first issue, Appellant avers that the trial court erred in determining that he was not entitled to an equitable lien or equitable subrogation. The doctrine of equitable subrogation is recognized in Pennsylvania and it works to permit "a person who pays off an encumbrance to assume the same priority position as the holder of the previous encumbrance." ***First Commw. Bank v. Heller***, 863 A.2d 1153, 1156 (Pa. Super. 2004) (citation omitted), *appeal denied*, 887 A.2d 231 (Pa. 2005). Likewise, "[w]here property of one person can by a proceeding in equity be reached by another as security for a claim on the ground that otherwise the former would be unjustly enriched, an equitable lien arises." ***Gladowski v. Felczak***, 31 A.2d 718, 720 (Pa. 1943). In order for the doctrine to apply, four elements must be satisfied: "(1) the claimant paid the creditor to protect his own interests; (2) the claimant did not act as a volunteer; (3) the claimant was not primarily liable for the debt; and (4) allowing subrogation will not cause injustice to the rights of others." ***1313466 Ontario, Inc. v.***

Carr, 954 A.2d 1, 4 (Pa. Super. 2008) (citation omitted). Here, the trial court determined that Appellant acted as a volunteer, did not satisfy the second element, and was therefore not entitled to the doctrine of equitable subrogation. ***See*** Trial Court Opinion and Order, 3/29/12, at 9.

This Court has previously noted, "[o]ne who is under no legal obligation or liability to pay a debt and who has no interest in, or relation to, the property is a stranger or volunteer with reference to the subject of subrogation." ***Heller***, ***supra*** at 1159, *citing* ***Home Owners' Loan Corp. v. Crouse***, 30 A.2d 330, 331 (Pa. Super. 1943). Furthermore, this Court has been clear that a party is not entitled to equitable relief if that party makes a mistake that "can be attributed only to its own negligence in failing to search or discover what clearly appeared on the public records." ***Crouse***, ***supra*** at 332; ***see also First Fed. Sav. and Loan Ass'n of Lancaster v. Swift***, 321 A.2d 895, 898 (Pa. 1974) (stating, "[c]ourts of equity will not relieve a party from the consequences of an error due to his own ignorance or carelessness when there were available means which would have enabled him to avoid the mistake if reasonable care had been exercised[]") (citation omitted).

In the case *sub judice*, the trial court concluded that several factors put Appellant, at a minimum, on constructive notice that the chain of title for the property had been compromised. The trial court pointed out that Lam testified that he advised Appellant "to obtain title insurance, and if he could not do so, to walk away from the deal." Trial Court Opinion and Order,

3/29/12, at 7. "[Appellant] was aware that two title companies questioned the validity of the title and refused to insure the property." ***Id.*** The trial court also noted that Appellant purchased the property at "well below [the] market asking price which, in itself, was a red flag that the deal was literally too good to be true." ***Id.***

Appellant argues that our Supreme Court's decision in ***Stanko v. Males***, 135 A.2d 392 (Pa. 1957) supports his position. In ***Stanko***, a deed was delivered to the Males by Mrs. Stanko, and the deed was purportedly signed by both she and her husband since they owned the subject property as tenants by the entirety. ***Id.*** at 393. The Males assumed the mortgage on the property, made improvements, and collected rental income from it. ***Id.*** However, it turned out that Mr. Stanko did not sign the deed and he filed an equity action to have the deed set aside. After receiving handwriting evidence, the trial court agreed and entered a decree voiding the deed delivered to the Males. The Males appealed, arguing in part that the trial court's decree "failed to provide for recovery of the expenses incurred by the [Males] in acquisition, maintanence, and improvement of the property." ***Id.*** On this point, our Supreme Court agreed and concluded the following.

> [T]here is no evidence to indicate that either of the defendants were guilty of bad faith or fraud. It is a well settled doctrine of equity that when a bona fide possessor of property makes improvements upon it, in good faith and under an honest belief of ownership, and the real owner for any reason seeks equitable relief, the court, applying the familiar principle that he who seeks equity must do equity,

> will compel him to pay for the improvements to the extent that they have enhanced the value of the land. So also, the owner is required to make compensation for payments made to discharge claims against the property.

Id. at 395.

We find ***Stanko*** to be distinguishable from this case. The trial court found that Appellant had actual or constructive notice that fraud was afoot to deprive Appellee of her property. ***See*** Trial Court Opinion and Order, 3/29/12, at 7. As a result, the trial court concluded that "any improvements, liens, or taxes against the property paid by [Appellant] were at best satisfied by him as a volunteer; or worse, quite possibly paid to create a smokescreen to obscure the fraudulent transfer of [Appellee]'s property." ***Id.*** These were findings of fact and credibility determinations which the trial court was allowed to make. ***See Fletcher-Harlee Corp. v. Szymanski***, 936 A.2d 87, 93-94 (Pa. Super. 2007) (stating, "[i]t is not the role of an appellate court to pass on the credibility of witnesses; hence we will not substitute our judgment for that of the factfinder[]"), *appeal denied*, 956 A.2d 435 (Pa. 2008), *cert. denied*, ***Szymanski v. Fletcher-Harlee Corp.***, 129 S. Ct. 1581 (2009). Hence, Appellant was not "innocent in the transaction …." ***See Stanko***, ***supra***. As a result, ***Stanko*** does not entitle

Appellant to relief.[3] As a result, we conclude the trial court properly concluded that Appellant was a volunteer and not entitled to equitable relief in this case.

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[3] Appellant cites our Supreme Court's decision in ***Gladowski v. Felczak***, 31 A.2d 718 (Pa. 1943). In ***Gladowski***, an organization conveyed a deed to a husband and wife without the consent of the parent organization. ***Id.*** at 719. The parent organization later brought a successful action to cancel the deed. ***Id.*** The husband and wife successfully sought equitable relief for the money they paid for the mortgage and repairs that they made based "upon their innocence in making the mortgage loan, [because] there is nothing in the record which militates against the presumption that they acted without knowledge of the invalidity of the [] title." ***Id.*** at 720. However, as noted above, the trial court made findings that Appellant had, at a minimum, constructive notice that fraud may be afoot. We therefore find ***Gladowski*** distinguishable for the same reason as ***Stanko***.

Appellant also cites to this Court's decision in ***Smith v. Smith***, 101 Pa. Super. 545 (1930) in which a son pretending to be his deceased father, fraudulently conveyed and mortgaged a piece of property. ***Id.*** at 1. The remaining heirs filed an action in equity to have the conveyances and mortgages cancelled. ***Id.*** at 2. The trial court agreed on the condition that the plaintiffs satisfy one of the mortgages. ***Id.*** This Court agreed, finding that the mortgagee was innocent and "knew nothing about [the fraud] …." ***Id.*** at 3. The ***Smith*** court also noted that "[the mortgagee] was contributing to the payment of an incumbrance upon a property to which it assumed it had a good title as mortgagee, when it had none." We find ***Smith*** distinguishable on the same grounds as ***Gladowski*** and ***Stanko*** given the trial court's factual findings in this case.

We also find Appellant's analogy to our Supreme Court's opinion in ***Gen. Casmir Pulaski Bldg. & Loan Ass'n v. Provident Trust Co. of Phila.***, 12 A.2d 336 (Pa. 1940) to be unavailing. In that case, our Supreme Court held that a husband and wife were still liable for payments on a mortgage executed in 1928 even though the mortgagee had constructive notice of a 1923 recorded decree declaring the husband to be "weak-minded." ***Id.*** at 337. Our Supreme Court concluded that the husband's "weak-mindedness" was not a defense to unjust enrichment or restitution.
(Footnote Continued Next Page)

In his next three issues, Appellant avers that the trial court also abused its discretion in admitting evidence regarding Appellee's insurance, settlement discussions between the parties, and in refusing to allow Appellant to introduce evidence regarding his real estate business. Appellant's Brief at 36, 38, 41. "Pennsylvania law makes clear to preserve an issue for appellate review, litigants must make timely and specific objections during trial and raise the issue in post-trial motions." ***MacNutt v. Temple Univ. Hosp., Inc.***, 932 A.2d 980, 992 (Pa. Super. 2007) (citation omitted), *appeal denied*, 940 A.2d 365 (Pa. 2007). "Additionally, '[i]f an issue has not been raised in a post-trial motion, it is waived for appeal purposes.'" ***Sovereign Bank v. Valentino***, 915 A.2d 415, 426 (Pa. Super. 2006) (citation omitted). In Appellant's first post-trial motion filed on October 19, 2011, Appellant did not raise any of these issues. However, in said motion, Appellant also requested leave to file an amended post-trial motion after he had the opportunity to review the trial transcripts. Appellant's Post-Trial Motion, 10/19/11, at ¶ 24. The trial court did not respond to Appellant's request. Nevertheless on November 3, 2011, without permission from the trial court, Appellant filed his amended post-trial motion, which was the first time Appellant raised the three above-mentioned issues.

(Footnote Continued) ———————————

Id. at 338. As there is no mental capacity issue in this case, we find ***Pulaski*** does not entitle Appellant to relief.

Generally, Pennsylvania Rule of Civil Procedure 227.1 requires that any post-trial motion must be filed within ten days of the filing of the trial court's decision after a bench trial. Pa.R.C.P. 227.1(c)(2). Rule 227.1 also states that "[g]rounds not specified are deemed waived **unless leave is granted upon cause shown** to specify additional grounds." ***Id.*** at 227.1(b)(2) (emphasis added). Furthermore, this Court has previously held that trial courts have the authority to disregard procedural defects pursuant to Rule 126.

> [W]henever original and/or supplemental post-trial motions are filed at a time where the trial court has jurisdiction over the matter but outside the ten day requirement of [Rule] 227.1, the trial court's decision to consider these motions should not be subject to review by this court unless the opposing party has set forth an objection setting forth specific facts to demonstrate prejudice. If no objection is raised by the opposing party and the trial court rules on the merits of the issues contained in untimely filed motions, the trial court's action will be considered an implicit grant of leave to the filing of the motions. This decision should not be subject to review by this court, and we should go on to consider the issues contained in these motions on their merits, as did the trial court.

Millard v. Nagle, 587 A.2d 10, 12 (Pa. Super. 1991) (*en banc*), *affirmed*, 625 A.2d 641 (Pa. 1993).

As previously noted, in this case, Appellant requested leave from the trial court to file a supplemental post-trial motion pending his review of the trial transcripts. However, the trial court never granted Appellant the leave he requested that would allow him to file an amended post-trial motion

under Rule 227.1(b)(2). Although it is also true that Appellee did not object to Appellant's amended post-trial motion, unlike in ***Millard***, the trial court did not address the merits of the issues contained within the amended post-trial motion. In fact, the trial court's March 29, 2012 opinion does not even acknowledge that Appellant's amended post-trial motion was filed or considered by the trial court. ***See*** Trial Court Opinion and Order, 3/29/12, at 3 (only referencing Appellant's first post-trial motion timely filed on October 19, 2011). Based on these considerations, we conclude that ***Millard*** does not apply in the case *sub judice*. Because Appellant filed his amended post-trial motion 23 days after the trial court rendered its decision, his amended post-trial motion is deemed untimely, and Appellant has waived the above-mentioned three issues for failure to raise them in a timely post-trial motion.

We next address Appellant's argument that he should have been allowed to ask Appellee about her previous representations regarding the value of the property in her bankruptcy petition submitted to the United States District Court for the Eastern District of Pennsylvania. Appellant's Brief at 43. Specifically, Appellant argues that the doctrine of judicial estoppel prevented Appellee from testifying at trial that the property in question was worth $1,000,000.00 when Appellant asserts she told the federal bankruptcy court that the property in question was only worth $100,000.00. ***Id.*** at 44.

Our Supreme Court has previously explained the doctrine of judicial estoppel as follows.

> Judicial estoppel is an equitable, judicially-created doctrine designed to protect the integrity of the courts by preventing litigants from "playing fast and loose" with the judicial system by adopting whatever position suits the moment. Unlike collateral estoppel or *res judicata*, it does not depend on relationships between parties, but rather on the relationship of one party to one or more tribunals. In essence, the doctrine prohibits parties from switching legal positions to suit their own ends.

Sunbeam Corp. v. Liberty Mut. Ins. Co., 781 A.2d 1189, 1192 (Pa. 2001) (internal citation omitted; italics added). As a result, "judicial estoppel is properly applied only if the court concludes the following: (1) that the appellant assumed an inconsistent position in an earlier action; *and* (2) that the appellant's contention was 'successfully maintained' in that action." ***Black v. Labor Ready, Inc.***, 995 A.2d 875, 878 (Pa. Super. 2010) (emphasis in original; citation omitted).

Appellant is correct that Appellee, in a 2004 bankruptcy petition asserted that the property as of December 2000 was worth $100,000.00. However, the bankruptcy petition was subsequently withdrawn and not considered by the bankruptcy court. Appellee's Brief at 23, 24, *citing* N.T., 8/1/11, at 75-76. As a result, the bankruptcy court never adjudicated the bankruptcy petition; nor did it make any judicial finding concerning the value of the property. Thus, we cannot say that Appellee's contention was "successfully maintained" in the bankruptcy proceeding within the meaning

of the judicial estoppel doctrine for it to apply. ***See Black***, ***supra***. Therefore, we conclude Appellant is not entitled to relief on this issue.

In his final issue, Appellant avers that the trial court erred in not granting relief on his crossclaims filed against defendant Hein. Appellant's Brief at 46. Appellant specifically sought recovery for "claims for unjust enrichment and breach of warranty of title." We note that Appellant's brief devotes approximately one page to this entire argument. Moreover, despite claiming that he is entitled to damages for unjust enrichment and breach of warranty of title, Appellant has not cited any legal authority for this issue. Appellant has instead only provided one citation to the reproduced record. Additionally, Appellant has not provided any citations to legal authority or to the record in his reply brief vis-à-vis this issue.

> The argument portion of an appellate brief must include a pertinent discussion of the particular point raised along with discussion and citation of pertinent authorities. This Court will not consider the merits of an argument which fails to cite relevant case or statutory authority. Failure to cite relevant legal authority constitutes waiver of the claim on appeal.

In re Estate of Whitley, 50 A.3d 203, 209 (Pa. Super. 2012) (internal quotation marks and citations omitted). In this case, Appellant claims that he was entitled to damages for unjust enrichment and breach of warranty of title but fails to cite any legal authority to explain why the trial court erred in concluding Appellant was not entitled to relief. As a result, Appellant has waived this claim on appeal. ***Id.***

Based on the foregoing, we conclude that all of Appellant's issues are either waived or devoid of merit. Therefore, the trial court properly denied Appellant's post-trial motion for a new trial or JNOV. Accordingly, the March 29, 2012 judgment entered in favor of Appellee is affirmed.

Judgment affirmed.

Justice Fitzgerald files a concurring and dissenting statement.

Judgment Entered.

Prothonotary

Date: 5/16/2013