IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

PACIFIC FINANCIAL CORPORATION,
Petitioner,

v.

RONALD D. SABLAN and MARIA ANA T. SABLAN
Respondents.

SUPREME COURT NO. 2008-SCC-0008-CIV
SUPERIOR COURT NOS. 02-0031

Cite as: 2011 MP 19

Decided December 30, 2011

F. Matthew Smith, Saipan, Commonwealth of the Northern Mariana Islands, for Appellants
Victorino DLG Torres, Saipan, Commonwealth of the Northern Mariana Islands, for Appellee

BEFORE: MIGUEL S. DEMAPAN,[1] Chief Justice (Ret.); EDWARD MANIBUSAN, Justice Pro Tem; HERBERT D. SOLL, Justice Pro Tem.

SOLL, H.:

¶ 1 This appeal arises from a foreclosure of real property (the "Lot") belonging to Ronald D. Sablan ("Ronald") where Ronald attempted to assign his rights of redemption to Antonio A. Sablan ("Antonio") following an auction of the foreclosed property. Carlene Atalig Mitchell ("Mitchell"), Del A. Benson, and Karen Benson (collectively, the "Bensons"), were the purchasers of the foreclosed real property at the auction. The trial court found Ronald's assignment of his redemption rights to Antonio was valid and vested in Antonio the right to redeem as a "successor in interest." The trial court also found that the Bensons and Mitchell did not have standing to assert that the conveyance between Antonio and Ronald was fraudulent. The Bensons and Mitchell raise two issues on appeal: (1) whether the trial court erred in holding that Antonio was a "successor in interest" pursuant to 2 CMC § 4541 ("§ 4541"); and (2) whether they have standing to assert fraudulent conveyance.

¶ 2 We hold that the trial court erred in finding that Antonio was Ronald's successor in interest pursuant to § 4541 and erred by finding the right to redeem is an alienable property right. Additionally, we find the Bensons and Mitchell are proper plaintiffs and have standing to assert a claim of fraud. Therefore, we VACATE the trial court's order granting Antonio's petition for exercise of his redemption rights and REVERSE the trial court's finding that the Bensons and Mitchell did not have standing to assert fraud. Accordingly, we REMAND for further proceedings regarding the claim of fraud and for a factual determination of whether equitable tolling of the statutory redemption period is applicable.

I

¶ 3 Ronald and Maria Ana T. Sablan (collectively, the "Sablans") obtained a loan in the amount of $60,605.82 from Pacific Financial Corporation ("Pacific Financial") in August 1992. The loan was secured by a mortgage in favor of Pacific Financial on the property at issue.[2] At the time, the Sablans jointly owned the property in fee simple. In April 2001, the Sablans defaulted on their loan. Pacific Financial notified the Sablans of their default in May 2001, and initiated foreclosure proceedings in January 2002. No other persons or business entities were made parties to the action.

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[1] Former Chief Justice Miguel S. Demapan heard oral argument. He retired from the Commonwealth Judiciary prior to the issuance of this opinion.

[2] While the trial court order mentions various other properties and discusses other purchases, leases, and tax liens, only the loan from Pacific Financial to the Sablans mentioned above and its corresponding mortgage on the Lot.

¶ 4 In July 2002, Pacific Financial assigned all of its interest in the 1992 promissory note and mortgage agreement to Pacific Asset Management Corporation.[3] A judgment was entered in May 2005 against the Sablans and the property was sold at a public auction approximately two years later in June 2007.[4] The purchasers were the Bensons, who planned to take a 55-year lease on the property, and Mitchell, who planned to acquire title in fee simple. The trial court approved the sale the following month, entering a deficiency judgment of $44,514.36 against the Sablans in favor of Pacific Asset Management Corporation.

¶ 5 On July 17, 2007, approximately one week after the court approved Mitchell's and the Bensons' purchase of the property at issue, Ronald executed an "Assignment of Redemption Rights" (the "Assignment") in favor of Antonio, a relative of his living on Guam. Ronald granted the right of redemption to Antonio for the recited consideration of his "love and affection" and "Ten Dollars . . . ." Appellant's Excerpts of Record ("ER") at 7. The following day, Antonio attempted to exercise his purported right to redeem the foreclosed property. He petitioned the trial court for approval of the transaction[5] and tendered the proposed redemption price of $81,200.00 to the clerk of the Superior Court. The Bensons and Mitchell opposed the petition, arguing that Ronald's assignment of redemption rights to Antonio was invalid and the term "successor in interest" as used in § 4541 is limited to a third party who succeeds to the entire estate of the judgment debtor. Antonio argues that "successor in interest" should be construed broadly, such that it includes an assignee who acquires solely the redemption right without the underlying legal title.

¶ 6 The trial court denied the Bensons' and Mitchell's request to invalidate the Assignment. The court relied principally on its interpretation of § 4541, which states in full:

> All real property sold upon foreclosure of a mortgage by order, judgment, or decree of court may be redeemed pursuant to this article at any time, within 12 months after the date of the sale by the judgment debtor or a successor in interest; provided, however, that the judgment debtor or the successor in interest redeems all of the property as sold.

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[3] Although Pacific Financial essentially removed itself from this litigation by virtue of its transaction with Pacific Asset Management Corporation and the Benson and Mithcell were parties to the action below, the case has continued under the original caption of *Pacific Financial Corp. v. Sablan*.

[4] Two auctions were held, one on June 3, 2007, and the next on June 5, 2007. The first auction did not garner sufficient bids, but the June 5, 2007 auction was successful.

[5] City Trust Bank presented an issue by Amicus Curiae, for the first time on appeal, that the trial court did not have jurisdiction over the petition because the petition failed to comply with procedural requirements of 2 CMC § 4542. An Amicus is not permitted to "create, extend, or enlarge" issues on appeal unless also raised by a party. *Commonwealth v. Borja*, 3 NMI 156, 163 fn.2 (citing *Phoenix v. Phoenix Civic Auditorium & Convention Ctr. Assoc.*, 408 P.2d 818 (Ariz. 1965)).

2 CMC § 4541. The statute permits both the judgment debtor and his or her successor in interest to redeem property within twelve months of the date of sale. *Id*. The trial court broadly defined "successor in interest" as "one who acquires the same relevant interest in property that was previously held by another."[6] *Pacific Financial Corp. v. Sablan*, Civ. No. 02-0031 (NMI Super. Ct. Jan. 4, 2008) (Order Granting Pet. For Exercise of Redemption Rights at 7:2-3) (citing Blacks' Law Dictionary 1446 (7th ed. 1999)). According to the trial court, statutory redemption rights may be conveyed or assigned by the holder of such rights regardless of the existence of express statutory authority.[7] *Id*. at 9. The trial court concluded that Antonio held the statutory redemption interest in the property and he could freely redeem pursuant to 2 CMC §§ 4541-42. We disagree.

II

¶ 7 The Supreme Court has jurisdiction over this appeal pursuant to 1 CMC § 3102(a).

III

A. The Right of Redemption

¶ 8 The term "right of redemption," as used in the Commonwealth, describes the right to redeem property after a judicial foreclosure and sale. 2 CMC §§ 4541-4544. The right of redemption is a statutory right[8] and who may redeem property is specifically enumerated in § 4541 which limits the class of redeemers to the judgment debtor and their "successor in interest." To determine whether Antonio had the right to redeem, we first consider the meaning of the term "successor in interest" under our statute.

1. Who Qualifies as a "Successor in Interest"?

¶ 9 The meaning of the term "successor in interest" is an issue of statutory interpretation that we review de novo. *Commonwealth v. Cabrera*, 4 NMI 240, 250 (1995). "[O]ur principle responsibility in

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[6] Although the trial court cited to Black's Law Dictionary when defining successor in interest, the trial court used the phrase "same *relevant* interest in the property" rather than the stricter phrase found in the dictionary which actually states "*same rights* as the original owner, with no change. . . ." Black's Law Dictionary 1446 (7th ed. 1999) (emphasis added).

[7] In the time since the trial court issued its decision in this case, it was again faced with the same issue in *City Trust Bank, Inc v. Chong*, Civ. No. 02-0630 (NMI Super. Ct. Dec. 31, 2008) (Order Denying Redemptioners' Petition for Exercise of Redemption Rights). The relevant facts in *Chong* were identical – a judgment debtor attempted to assign his bare redemption rights without also conveying legal title. In the *Chong* case, however, the same court reached the opposite conclusion, holding that the bare right of redemption could not be severed from the underlying interest in the property and that the assignee was not eligible to redeem because he did not succeed to the judgment debtor's entire estate. In the order, the trial judge references its holding in this matter but distinguishes it by claiming that Ronald executed a quitclaim deed to Antonio. However, the trial court never found that Ronald executed a quitclaim deed.

[8] Equitable redemption, on the other hand, exists where certain redemption rights are not governed by statute. *E.g. Lobsenz v Micucci Holdings, Inc*., 316 A.2d 59, 59-60 (N.J. Super. Ct. App. Div.1974). We need not address the applicability, if any, of equitable redemption rights in the Commonwealth since Antonio does not make any arguments based in equity. Antonio's only argument is that he is statutorily permitted to redeem.

statutory construction is not judicial speculation, but to give effect to the author's intent." *Commonwealth v. Saburo*, 2002 MP 3 ¶ 12. "'A basic principle of construction is that language must be given its plain meaning. When language is clear, we will not construe it contrary to its plain meaning.'"[9] *King v. Bd. of Elections*, 2 NMI 398, 403 (1991) (quoting *Govendo v. Micronesian Garment Manufacturing, Inc.*, 2 NMI 270, 284 (1991). This ensures that we "give effect to the intent of the legislature." *Commonwealth Ports Auth. v. Hakubotan Saipan Ent., Inc.*, 2 NMI 212, 221 (1991) (internal quotations omitted). If the plain meaning of "successor in interest" is not clear from the language of the statute, we look to other jurisdictions for guidance. *Commonwealth v. Lee*, 2005 MP 19 ¶ 12 (we may look to the common law for guidance when a term contained in a statute is otherwise undefined and the word has an established meaning at the common law.)

¶ 10 Turning to the plain meaning, "successor in interest" has been generally defined as "[o]ne who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance." *Home Builders Ass'n v. City of Maricopa*, 158 P.3d 869, 874 (Ariz. Ct. App. 2007) (quoting Black's Law Dictionary 1473 (8th ed. 2004)). Here, Antonio did follow Ronald in *some* control of the property and Antonio obtained the same substantive right of redemption as Ronald held. The question remains whether the successor must hold the *identical* rights – nothing more or nothing less – as the original owner. Because the plain meaning of "successor in interest" is not clarified within the statute, we will seek guidance from jurisdictions with analogous statutes. *Lee*, 2005 MP 19 ¶ 12.

¶ 11 We look first to *Fidelity Mutual Savings Bank v. Mark*, a case relied on by the trial court. 767 P.2d 1382 (Wash. 1989).[10] In *Fidelity*, Albert and Mae Mark's property was sold at a foreclosure sale and thereafter, they executed a document titled "Assignment of Interest" which purported to convey all their interest in the property to the family business, Marks' Westside. *Id.* at 1383. Mark's Westside then attempted to redeem the property pursuant to the state's redemption statutes. The court found that because the Assignment of Interest was not properly recorded as required by Washington's real property transfer statute,[11] title was not properly conveyed. Marks' Westside conceded that title had not been properly

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[9] Because this is a case of first impression, even if the language of the statute is clear, we may examine the legislative history in order to ascertain legislative intent. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 29. However, thorough attempts at finding legislative history did not produce any results.

[10] There is a dissenting opinion that does not bear upon our reliance on the case which holds that the conveyance of legal title was eventually perfected after payment for redeeming was tendered and that the technical error of failing to record the deed until after redemption payment should not have prevented redemption. *Fidelity*, 767 P.2d at 1387 (Callow, C.J. dissenting).

[11] Washington's redemption statute defining who may redeem property sold subject to redemption – although slightly broader – is analogous to the Commonwealth's statute. The Washington statute reads in relevant part:

conveyed but argued that the right to redeem is property that could be assigned without the underlying interests in the property. The court disagreed and held that "the right of redemption is not an interest in land, but a mere personal privilege given by statute to the mortgagor" that can only be assigned along with the underlying interest in the property. *Id*. at 1384-85 (citing 2 L. Jones, *Mortgages of Real Property* § 1335, at 798 (8th ed. 1928)).

¶ 12 The *Fidelity* decision found support in *Call v. Thunderbird Mortgage Co*., 375 P.2d 169 (Cal. 1962). In *Call*, the California Supreme Court defined the judgment debtor's "successor in interest" in an analogous statute[12] as "'one who has acquired (or succeeded to) the interest of the judgment debtor in the property, subject, of course, to the effect of the judgment and the sale.'" *Id*. at 173-74 (quoting Ogden's California Real Property Law, § 17.57 pp. 662-63). The court held that the grantee was a successor in interest and had the right to redeem where the judgment debtor conveyed his "property (and all his interest therein)" to the grantee. *Id*. at 173. Thus, the judgment debtor must transfer all of his or her interest in the property to the grantee before the grantee will be deemed a successor in interest. Accordingly, the successor in interest retains the same property rights as the judgment debtor – no more and no less.

¶ 13 The majority of other jurisdictions interpreting analogous statutory redemption rights hold that the right to redeem cannot be transferred separately from the underlying interest in the property, further supporting our holding that the successor in interest must hold the same rights in the property as the judgment debtor. *E.g. Beckhart v. HTS Properties, LLC*, 981 P.2d 208, 209 (Colo. Ct. App. 1998) (interpreting a comparable Colorado statute and holding that the "statutory right of redemption *may not be assigned separate from the underlying lease or other interest* in the real property." (emphasis added)); *Perry v. Safety Fed. Sav. & Loan Ass'n*, 544 P.2d 267, 269 (Ariz. Ct. App. 1976) (interpreting analogous statute and holding that the right to redeem cannot be conveyed separately); *Hieb v. Mitchell*, 793 P.2d 1247, 1250 (Ida. 1990) (interpreting analogous Idaho redemption statute and finding that "the right to redeem is contingent upon possession of a lien or mortgage; it cannot exist without the mortgage and cannot be transferred independently therefrom."); *Central Life Assurance Soc'y v. Spangler*, 216 N.W. 116, 117 (Iowa 1927) (citing *Wissmath Packing Co. v. Mississippi River Power Co*., 162 N.W. 846

> (1) Real property. . . may be redeemed by the following persons, or their successor in interest: (a) The judgment debtor . . . . (b) A creditor . . . .
>
> (2) As used in this chapter, the terms "judgment debtor," "redemptioner," and "purchaser," refer also to their respective successors in interest.

Wash. Rev. Code § 6.23.010.

[12] California's relevant redemption statute interpreted in *Call* read: "'Property sold subject to redemption . . . may be redeemed in the manner hereinafter provided, by . . . 1. The judgment debtor, or his successor in interest, in the whole or any part of the property.'" *Call*, 375 P.2d 169, 173 (quoting Cal. Civ. Proc. Code § 701 (repealed 1983)).

(1917)) ("the ownership of real estate and the right of redemption thereof are inseparable, and in a sense identical, in that they are parts of the same thing."). Indeed, most jurisdictions which do permit assignment of the naked right of redemption do so on basis of equity or because there is express statutory authority and are thus distinguishable. *See, e.g. Dominex, Inc. v. Key*, 456 So. 2d 1047, 1052-53 (Ala. 1984) (recognizing an equitable right to assign redemption rights prior to foreclosure but finding that the statutory right to redeem, which governs post-foreclosure sale redemption, is not a property right but rather a mere personal privilege); *Lobsenz*, 316 A.2d at 59-60 (finding that the right to redeem is not based in statute but is created by equity and subject to transfer).

¶ 14 We find it particularly relevant that, unlike the Commonwealth statute, most of these jurisdictions also grant creditors the right to redeem and generally permit any part of the property to be redeemed. In comparison, the Commonwealth statute is exceedingly narrower because it limits the class of people who may redeem to the judgment debtor and their successor in interest. As a further restriction, and unlike many of the jurisdiction relied upon, § 4541 requires the entire property to be redeemed rather than permitting redemption of only portions of the property. Thus, the trial court's reliance on *Babb v. Frank*, 947 F. Supp. 405 (W.D. Wis. 1996), is misplaced. The *Babb* court interpreted a broader federal redemption statute which states that "[t]he owners of any real property sold . . . their heirs, executors, or administrators, or any person *having any interest* therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property . . . ." 26 U.S.C. § 6337(b)(1) (emphasis added). This federal statute permits a person holding *any interest* in the property to redeem and is thus remarkably broad compared to the narrow language found in the Commonwealth statute.

¶ 15 In light of the foregoing authority, we hold that the right to redeem is not an alienable property right but a personal privilege that may not be separated from the underlying ownership in the real property. Thus, pursuant to § 4541, the successor in interest must hold the same rights in the property as the judgment debtor.

2. Whether Antonio is a Successor in Interest

¶ 16 To determine whether Antonio was a "successor in interest" for purposes of § 4541, we must determine what interests in the Lot Ronald conveyed to Antonio via the Assignment. The interpretation of the Assignment is a question of law we review de novo. *Pangelinan v. Itaman*, 1996 MP 16 ¶ 2 ("Interpretation of a deed is a question of law, reviewable de novo."); *In re Estate of Deleon Castro*, 4 NMI 102, 106 (1994) (determining the legal nature and effect of a document involves a legal question subject to de novo review). This issue presents two questions: (1) what was the extent of Ronald's interest in the Lot at the time of the Assignment and, (2) what interests did Ronald convey to Antonio.

¶ 17 As to the first question, Commonwealth real estate mortgage law is based on a "lien theory" rather than the "title theory" of mortgages. *Villanueva v. City Trust Bank*, 2002 MP 1 ¶ 15. Under the lien theory, legal title to the mortgaged property remains with the mortgagor for the duration of the mortgage and the mortgage is simply treated as a lien on the property. *Id.* at ¶ 13-15 (citing 12 Thompson on Real Property § 101.01(b)(2) (David A. Thomas ed. 1994)). Further, pursuant to 2 CMC § 4537(f), title remains with the mortgagor throughout the redemption period. Section 4537(f) states that "the person making the sale must give to the purchaser a certificate of sale . . ." after a foreclosed property is sold at a public auction. Nothing in the provision indicates that the certificate transfers title to the estate. On the contrary, the statute states that "[a]t the expiration of the time for the redemption of the property . . . the person making the sale . . . must make to the purchaser . . . or to any person who has acquired the title of the purchaser . . . a deed or deeds to the property." *Id.* Thus, the certificate of sale is nothing more than a "inchoate interest" in the title that essentially holds the purchasers place in line for a chance to acquire legal title at the end of the 12-month redemption period. *E.g. Fidelity Mut. Sav. Bank v. Mark*, 767 P.2d 1382, 1385 (Wash. 1989) (quoting *W.T. Watts, Inc. v. Sherrer*, 571 P.2d 203, 206 (1977)). The certificate of sale has no operative function regarding legal title. Accordingly, because 2 CMC § 4357(f) does not require the judgment debtor to execute a deed until the close of the redemption period, legal title remains with the judgment debtor in the interim. Therefore, up until the time of the assignment to Antonio, Ronald held legal title to the property.[13]

¶ 18 Having determined that Ronald held legal title to the property throughout the redemption period, we now consider whether Ronald assigned the entirety of his interest to Antonio. The document purporting to convey Ronald's property rights to Antonio is titled "Assignment of Redemption Rights". ER 6-8. The three-page Assignment repeatedly mentions phrases suggesting a transfer of only redemption rights. *E.g., id.* ("assignment of redemption rights"; "[a]ssignor's redemption rights"; "his right to redeem"). Additionally, the parties plainly state that their intent is to transfer the redemption rights from Ronald to Antonio. ER 7 ("Assignee desires to acquire Assignor's redemption rights . . . Assignor desires to transfer his redemption rights to Assignee . . . ."). There is no indication in the Assignment that the parties intended to convey legal title. The Assignment is devoid of any language which purports to transfer legal title from Ronald to Antonio.

¶ 19 In support of the proposition that the Assignment conveyed legal title, Antonio cites to the following language in the Assignment:

II. TRANSFER OF INTEREST

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[13] Regarding the right of redemption, neither party disputes that it rested with Ronald until he attempted to convey it to Antonio. *See* 2 CMC § 4541 (conferring the right of redemption to the judgment debtor).

> A. Assignor hereby assigns to Assignee all of the Assignor's redemption rights in and to Lot EA 850-1.
> B. Assignee hereby accepts the assignment of all of Assignor's redemption rights in and to Lot EA 850-1.
> C. Assignor and Assignee agree that upon execution of this Agreement *Assignee shall be the sole owner and possessor* of Assignor's redemption rights in and *to Lot EA 850-1*.

Appellee's Br. at 19 (quoting ER at 8) (emphasis added by Antonio). Antonio represents to the Court that the above section is essentially a quitclaim deed assigning Antonio any interest that Ronald had in the property.[14] However, we direct the parties' attention to the repeated references to "redemption rights" contained in the Assignment. The plain language of the section makes clear that the Assignment purported to convey only the right of redemption – *not* complete legal title.

¶ 20 We accordingly hold that because Antonio did not have legal title to the Lot, he was not a successor in interest pursuant to § 4541. For this reason, we vacate that portion of the trial court's order granting Antonio's petition for exercise of redemption rights. Because the time period for redemption has passed, our holding necessarily requires title to pass to the Bensons and Mitchell as valid purchasers at the foreclosure sale unless the redemption period was tolled pursuant to principles of equitable tolling.

3. The Doctrine of Equitable Tolling[15]

¶ 21 Even where redemption is governed by statute, the time for redemption may be equitably tolled under certain circumstances. *E.g. Millay v. Cam*, 955 P.2d 791, 796-97 (Wash. 1998).[16] "Numerous courts acknowledge inherent judicial authority to toll statutory redemption periods upon a finding of fraud, oppression, or other equitable circumstances" and "equitable tolling is appropriate when consistent with both the purpose of the statute providing the cause of action and the purpose of the statute of limitations." *Id.* (citations omitted). In reaching a determination of whether equitable tolling should apply, courts have considered prejudice to opposing party, the existence of bad faith, fraud, or mistake, and other

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[14] Antonio even quotes directly from the agreement, yet deletes relevant language in order to support his claim: "Clearly, Antonio Sablan 'shall be the sole owner and possessor . . . to Lot EA 850-1' as expressly stated in the Assignment of Redemption Rights." Appellee's Br. at 19. This quoted language removes the quintessential language of the document: Antonio "shall be the sole owner and possessor of [Ronald's] *redemption rights* . . . ." ER at 8. Appellee's brief appears to be a deliberate attempt to mislead this Court. Counsel shall take caution when filing future briefs before this Court.

[15] Although not raised in Antonio's brief, this issue was raised by the panel *sua sponte* during oral argument and was briefly addressed by both parties during arguments. *See Reyes v. Reyes*, 2001 MP 13 ¶ 12 (court could address issue not raised by the parties because "it is one of first impression and a discussion is useful for future lower court application. . . . .").

[16] We have acknowledged principles of equitable tolling but only in the narrow situation where a civil plaintiff has previously filed a claim in federal court and while the claim is pending in the federal court, the statute of limitations expires so that the same claim cannot be filed in the Commonwealth Superior Court. *Oden v. Northern Marianas College*, 2003 MP 13 ¶ 20; *Zhang v. Commonwealth*, 2001 MP 18 ¶ 18.

circumstances as equity requires. *See, e.g. Powers v. Powers*, 34 Cal. Rptr. 835, 836 (Cal. Ct. App. 1963) ("There is an exception when the judgment debtor shows fraud, mistake or other conditions appealing to equity. . . ."); *Buell v. White*, 908 P.2d 1175, 1177-78 (Colo. Ct. App. 1995) (extension of time for statutory redemption if prospective redemptioner advised payment would not be accepted); *Williams v. McCallum*, 917 P.2d 794, 795 (Idaho 1996) (statutory redemption may be permitted by granting equitable relief); *Pace v. Malonee*, 385 P.2d 353, 367-68 (Nev. 1963) (equitable relief permitted for statutory redemption in fraud, mistake, or under other equitable circumstances); *Dalton v. Franken Constr. Cos.*, 914 P.2d 1036, 1040 (N.M. Ct. App. 1996) (equitable relief permitted only upon showing of wrongful conduct by person relief is sought against).

¶ 22 While no definitive test has emerged which governs the applicability of equitable tolling to redemption statutes, the foregoing provides the general principles courts have considered when exercising their inherent judicial authority. In light of the abovementioned, we find equitable tolling principles do apply to the statutory redemption period in the Commonwealth and we remand for a factual determination of whether such equitable circumstances exist which necessitate the tolling of the time period for redemption.

B. The Bensons and Mitchell Have Standing to Assert Fraud

¶ 23 Standing is a jurisdictional issue and a question of law we review de novo. *Commonwealth v. Anglo*, 1999 MP 6 ¶ 3. The trial court, relying on Commonwealth Rule of Civil Procedure 9(b) and *Benavente v. Marianas Public Land Corp*., 2000 MP 13, found that the purchasers did not have standing as creditors and, therefore, could not assert that the assignment should be set aside as a fraudulent conveyance.[17] The Bensons and Mitchell argue on appeal that their purchase of the Lot vested them with a "personal stake in the outcome," thereby granting them standing to assert fraud.[18]

¶ 24 Standing to sue is "that aspect of justiciability focusing on the party seeking a forum rather than on the issues he wants adjudicated." *State v. Levinson*, 795 P.2d 845, 850 (Haw. 1990) (quoting *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975)). A party has standing to assert fraud when they are "sufficiently affected so as to insure that a justiciable controversy is presented." *Lifoifoi v. Lifoifoi-Aldan*, 1996 MP 14

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[17] The trial court cites to *Benavente* for the proposition that the Bensons and Mitchell have no standing as creditors. However, the issue of standing was not before us in *Benavente.*

[18] The Bensons and Mitchell also argue they have alleged circumstances constituting fraud with sufficient particularity to meet the requirements of Commonwealth Rule of Civil Procedure 9(b). Appellant's Br. at 14. The brief presents two separate issues which have been conflated: 1) whether the Bensons and Mitchell have standing to assert fraud and 2) if there is proper standing, whether the Bensons and Mitchell plead fraud with sufficient particularity as required by Rule 9(b). However, the trial court made no findings about whether fraud was pled with sufficient particularity. Com. R. Civ. P. 9(b) ("circumstances constituting fraud or mistake shall be stated with particularity"). Therefore, we will only consider whether the Bensons and Mitchell had standing to assert the Assignment was a fraudulent conveyance.

¶ 39 (quoting *Borja v. Rangamar*, 1 NMI 347, 359-60 (1990)). "The purpose of the law of standing is to protect against improper *plaintiffs."* *Borja*, 1 NMI at 360 (quoting K Davis Administrative Law Text 427 (1972)). Thus, a party has standing to sue when: (1) he or she has suffered an actual or threatened injury as a result of defendant's conduct; (2) the injury is fairly traceable to the defendant's actions; and (3) a favorable court decision will likely provide relief for the injury. *Pele Def. Fund v. Paty*, 837 P.2d 1247, 1258 (Haw. 1992).

¶ 25 Here, the Bensons and Mitchell argue that, as a result of the fraudulent assignment, they have been forced to pay two housing payments and have lost their purchased interests in the Lot. ER 21-22. Appellants Br. at 14. Thus, as purchasers at the foreclosure sale, the Assignment has directly affected their interests in the Lot. As alleged, this constitutes a personal injury and the injury is "distinct and palpable." *Fisher v. Grove Farm Co., Inc*. 230 P.3d 382, 413 (Haw. Ct. App. 2009). Further, the alleged injury is traceable to the Assignment and the injury could be remedied by the court, thereby giving them a personal stake in the outcome. Should the trial court find that the assignment was fraudulent, this pronouncement would adjudicate the legal rights of the Bensons and Mitchell. Thus, the Bensons and Mitchell are proper plaintiffs in a claim for fraud and have standing to assert that the Assignment was a fraudulent conveyance.[19]

IV

¶ 26 In light of the foregoing, the judgment of the trial court, which held that the Assignment was a valid transfer of Ronald's redemption rights and granted Antonio the right to redeem as a successor in interest pursuant to 2 CMC § 4541, is hereby VACATED. Further, trial court's finding that the Bensons and Mitchell did not have standing to sue is hereby REVERSED. We REMAND for further proceedings regarding the claim of fraud and for a factual determination of whether equitable tolling is applicable.

SO ORDERED this 30th day of December, 2011.

/s/
Edward Manibusan
Justice Pro Tem

/s/
Herbert D. Soll
Justice Pro Tem

[19] This finding does not speak to the merits – if any – of the underlying fraud claim, which will be for the trial court to decide on remand.