In the United States Court of Appeals for the Third Circuit

No. 10–1135

RICHARD O. THOMPSON; KURT W. THOMPSON;
and KAY ALYSON THOMPSON,
Appellants,

v.

FLORIDA WOOD TREATERS, INC.

v.

COASTAL SUPPLY, INC.

On Appeal from the District Court of the U.S. Virgin Islands,
No. 06–cv–224 (Honorable Curtis V. Gomez, Chief Judge)

BRIEF FOR APPELLEE
FLORIDA WOOD TREATERS, INC.

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CORPORATE DISCLOSURE STATEMENT

Florida Wood Treaters, Inc. — a nongovernmental corporate party — hereby certifies that it does not have a parent company and there are no publicly held corporations that own 10% or more of its stock.

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I. INTRODUCTION

The arguments that appellants (collectively "the Thompsons") are raising on appeal exemplify the accuracy of the maxim that "if something sounds too good to be true, it usually is."

After the Hedges (the original guarantors of the debt at issue herein owed to appellee Florida Wood Treaters, Inc.) sought bankruptcy protection, the trustee of the Hedges' bankruptcy proceeding acknowledged in a court filing that Florida Wood possessed a valid allowed and secured claim against the Hedges in the amount of $719,429.53. App.459; DDE 88–22, at p.4. The debt was secured by a valuable piece of real estate that served as the Hedges' home on St. John, U.S. Virgin Islands.

The property had been appraised at $1.4 million during the Hedges' bankruptcy, and the bankruptcy trustee had received purchase offers on the property of $1.4 million and $1.5 million. App.340; DDE 88–4, at p.2. To thwart a sale to the highest bidder, the Thompsons filed an adversary proceeding in the Hedges' bankruptcy case seeking to enforce the Thompsons' earlier agreement with the Hedges to purchase the property. *Id.*

The trustee in the Hedges' bankruptcy case ultimately entered into a settlement agreement and stipulation with the Thompsons whereby the Thompsons would purchase the property for one dollar and pay the trustee's associated fees, not to exceed $50,000. *Id.* A central condition of the sale, however, was that the three liens that were then attached to the property would remain attached to the property after the sale. App.340–41; DDE 88–4, at p.2–3. In an accompanying stipulation, the Thompsons (through counsel authorized to act on their behalf) stipulated that "[t]he Thompsons will assume the Debtors' liability on amounts filed as secured claims in the bankruptcy," which included the secured claim of Florida Wood. App.473–74; DDE 88–25, at p.3–4.

The secured claims at issue consisted of not only the claim of Florida Wood, but also the first mortgage of First Bank VI in the amount of approximately $272,343 and, in third position, the judgment lien of appellee Coastal Supply, Inc. in the amount of approximately $44,529. App.341; DDE 88–4, at p.3.That the Hedges' bankruptcy trustee would agree to a sale of real estate valued at $1.4 million to the Thompsons, in exchange for less than a $50,000 payment in return, only makes rational economic sense in light of the Thompsons' express agreement to

assume and be bound by the over $1 million in liens that remained attached to the property following the sale.

Nevertheless, in their appeal to this Court, the Thompsons make the astounding argument that they outsmarted the Hedges, the Hedges' bankruptcy trustee, the bankruptcy judge who approved the real estate sale, the Hedges' other creditors, and Florida Wood because (at least according to the Thompsons) the lien that Florida Wood possessed against the property is invalid and cannot now be collected.

Although the Thompsons may have preserved their ability to challenge the Florida Wood debt and lien by means of their unilateral assertion in the settlement agreement that the Thompsons disputed the validity of "one of the liens" (App.476, DDE 88–25, at p.6), in this very case the Virgin Islands District Court considered and rejected on the merits the Thompsons' challenges to Florida Wood's lien in a well–reasoned opinion that correctly applies governing law.

Because the Thompsons have not and cannot demonstrate that the district court erred either in construing the corporate documents in question or in applying the law to the undisputed facts of this case, the

district court's entry of summary judgment in favor of Florida Wood should be affirmed.

II. COUNTER–STATEMENT OF THE ISSUES ON APPEAL

1. Did the district court correctly hold that the Thompsons' formal stipulation, through their authorized attorney, that "[t]he Thompsons will assume the Debtors' liability on amounts filed as secured claims in the bankruptcy" constituted the Thompsons' assumption of the guarantee obligation that the Hedges had owed to Florida Wood?

2. Did the district court correctly hold that the Hedges' Chapter 7 bankruptcy case did not discharge either the guarantee obligations that the Thompsons assumed or the lien against the real estate at issue?

3. Did the district court correctly hold that the bankruptcy of St. John Lumber, Co., the repayment of whose debt to Florida Wood the Hedges had guaranteed, did not diminish or eliminate the Hedges' obligations as guarantors?

4. Did the district court correctly hold that neither the expiration of the applicable statute of limitations nor the equitable doctrine of laches

precluded Florida Wood's mortgage foreclosure action against the Thompsons?

III. COUNTER–STATEMENT OF THE STANDARD OF REVIEW

This Court exercises plenary review of a district court's decision granting summary judgment. *See Smith* v. *Johnson & Johnson*, 593 F.3d 280, 284 (3d Cir. 2010) ("We exercise plenary review over a grant of summary judgment and apply the same standard used by the District Court.")

In this case, the district court based its summary judgment ruling on the meaning of written contracts and on the legal consequences flowing from the earlier resolutions of two bankruptcy cases. Applying Virgin Islands law, this Court has recognized that "it is a fundamental principle of contract law that disputes involving the interpretation of unambiguous contracts are resolvable as a matter of law, and are, therefore, appropriate cases for summary judgment." *Tamarind Resort Assocs.* v. *Government of Virgin Islands*, 138 F.3d 107, 110 (3d Cir. 1998) (internal quotations omitted).

IV. COUNTER–STATEMENT OF THE CASE

Both the "Statement of the Case" and the "Statement of Facts" sections of the Brief for Appellants that the Thompsons have submitted in this appeal inappropriately contain a pervasive amount of argument. Although counsel for appellee Florida Wood recognizes that the author of an appellate brief may undertake to set forth the "Statement of the Case" and the "Statement of Facts" in a manner that is advantageous to the filing party's positions on appeal, the Brief for Appellants that the Thompsons have filed in this case unquestionably surpasses whatever incidental amount of argument that may be permissible in those early sections of an appellate brief.

Regrettably, due to the excessive amount of argument contained in those sections of the Thompsons' opening brief, Florida Wood finds it necessary to provide the Court with the following complete descriptions of the relevant procedural and factual history of this case.

* * * * *

The case that directly gives rise to this appeal originated in the District Court for the U.S. Virgin Islands in December 2006. App.40; DDE 1. The Thompsons (appellants herein) initiated the lawsuit,

requesting an injunction that would force Florida Wood to release its lien on the real estate in question, a declaratory judgment that the lien is extinguished, and damages for slander of title and lost rental income due to the Thompsons' alleged inability to rent the property to third–parties while the property was under risk of foreclosure. App.10; DDE 122, at p.7.

In response, Florida Wood asserted a counterclaim for mortgage foreclosure, asserting that its outstanding lien then totaled $892,431.81. *Id.* Florida Wood also brought the most junior lienholder, Coastal Supply, into the case as a third–party defendant. *Id.*

Following discovery, Florida Wood filed a timely and properly supported motion for summary judgment. As the district court's summary judgment opinion explains, the Thompsons failed to file a timely opposition to Florida Wood's summary judgment motion, and the Thompsons' response to Florida Wood's statement of uncontested facts failed to comply with the applicable procedure for responding to a properly supported summary judgment motion. App.5; DDE 122, at p.2 n.1. In addition, the Thompsons sought to file an untimely cross–motion for summary judgment. *Id.*

Notwithstanding the significant procedural missteps that the Thompsons committed in responding to Florida Wood's summary judgment motion and in seeking summary judgment themselves, the district court, per the Honorable Curtis V. Gomez, Chief Judge, proceeded to adjudicate the cross–motions for summary judgment on the merits. In an opinion and order filed December 6, 2009, the district court ruled that Florida Wood's motion for summary judgment should be granted and that summary judgment should be entered in favor of Florida Wood on both its claim for mortgage foreclosure and on the Thompsons' claims against Florida Wood. App.4–31; DDE 122. In so ruling, the district court resolved all claims as to all parties in this case.

Thereafter, the Thompsons filed a timely notice of appeal to this Court. App.1; DDE 129.

V. COUNTER–STATEMENT OF FACTS

William and Marianne Hedges were the owners of a business known as St. John Lumber Company. App.5; DDE 122, at p.2. The Hedges personally guaranteed a debt that St. John Lumber Co. owed to appellee Florida Wood Treaters, Inc. App.6–7; DDE 122, at p.3–4.

A mortgage granted in favor of Florida Wood on a parcel of real estate that the Hedges owned served as security for the repayment of the debt that the Hedges had guaranteed. App.8; DDE 122, at p.5.

As explained in more detail below, St. John Lumber Co. declared bankruptcy in 1996. *Id.* Thereafter, in 2002, the Hedges themselves filed for bankruptcy protection. App.9; DDE 122, at p.6. Florida Wood filed an allowed, secured claim in the Hedges' bankruptcy case, and the bankruptcy trustee in the Hedges' case agreed that, as of April 21, 2005, Florida Wood's claim was appropriately valued at $719,429.53. *Id.*

In September 2005 in the Hedges' personal bankruptcy case, the Thompsons (appellants herein) and the bankruptcy trustee filed a stipulation and settlement agreement to obtain the bankruptcy court's approval of the sale of the real estate at issue in this appeal from the Hedges' bankruptcy estate to the Thompsons. App.471–88; DDE 88–25. The stipulation and settlement agreement resolved an adversary proceeding that the Thompsons themselves initiated in the Hedges' bankruptcy case to force the Hedges to sell the property in question to the Thompsons. *Id.*

The stipulation was signed by the attorney for the bankruptcy trustee and by the attorney for the Thompsons, Ronald W. Belfon, Esquire, who is also representing the Thompsons in the district court and on appeal in this case. *Id.* The settlement agreement was signed both by counsel for the trustee and counsel for the Thompsons along with the trustee and the Thompsons themselves. *Id.*

The stipulation, which attorney Belfon signed in his authorized role as attorney for the Thompsons, states in pertinent part that "[t]he Thompsons will assume the Debtors' [meaning the Hedges'] liability on amounts filed as secured claims in the bankruptcy." App.473–74; DDE 88–25, at p.3–4. That same paragraph of the stipulation expressly states that Florida Wood was a secured claimant in the Hedges' bankruptcy proceeding. *Id.* The paragraph concludes by stating that "[a]ll secured claimants will retain their liens which will remain attached to the Property." *Id.* The "Property" is defined in the stipulation to mean the real estate that is at issue in this appeal. App.472, DDE 88–25, at p.2.

A section of the stipulation titled "Argument in Support of Approval" concludes with the following paragraph:

> The Trustee, his counsel, the Thompsons and their counsel agree and contend that the complexity of the issues in the Adversary Proceeding and underlying bankruptcy estate, the inconvenience, delays and expense associated with continuing the litigation through appeals and the difficulties experienced and expected to be encountered in preserving the sole asset of the estate, real property, if such assets were not disposed of upon a sale for value greater than the combined total of liens and administrative expenses (and *upon which the parties do not agree on* the clarity of title as is or *the validity and value of one of the liens*) all place the proposed settlement within the range of reasonableness consistent with current law.

App.475–46; DDE 88–25, at p.5–6 (emphasis added). Both before the district court and now on appeal, the Thompsons contend that their assertion in the stipulation that they did not agree on the validity and value of "one of the liens" somehow gives rise to an ambiguity over the existence and enforceability of the debt owed to Florida Wood and Florida Wood's lien on the property.

Paragraph 8 of the settlement agreement entered into between the Hedges' bankruptcy trustee and the Thompsons states in full:

> The parties expressly agree and state that nothing contained herein shall be interpreted in any way, to settle, resolve, impair, reduce, alter or in any way affect any rights, claims or causes of action of, by or against any third parties not specifically identified herein, including but not limited to Firstbank, Virgin Islands (as successor in interest to JP Morgan Chase Bank), Florida Wood Treaters, Inc. and Coastal Supply, Inc.

App.485; DDE 88–25, at p.15.

On February 16, 2006, the bankruptcy court in the Hedges' bankruptcy case approved the sale of the property securing Florida Wood Treaters' lien by means of a quitclaim deed, with all liens intact, in exchange for $1 and the Thompsons' subsequent payment of a $46,000 commission to the trustee. App.340; DDE 88–4, at p.2. The property itself had been valued at $1.4 million at that time, and the Hedges' bankruptcy trustee had received purchase offers on the property of $1.4 million and higher. *Id.* The combined value of the liens that were then attached to the property, including the lien of Florida Wood, was slightly in excess of $1 million. App.340–41; DDE 88–4, at p.2–3. The property was formally conveyed to the Thompsons on April 1, 2006. App.10; DDE 122, at p.7.

Thereafter, on June 6, 2006, the Hedges received a discharge of their debts in the bankruptcy proceeding. App.9; DDE 122, at p.6 n.4.

* * * * *

The debt that the Hedges' real estate secured, and that the Hedges themselves had personally guaranteed, arose in 1992. The amount of the debt originally owed was $515,000, which the Hedges' company, St.

John Lumber, owed to Florida Wood for goods and materials supplied and used in the building of the Hedges' house. App.5; DDE 122, at p.2. In December 1992, so that St. John Lumber could obtain a Small Business Administration loan, Florida Wood entered into an agreement with both St. John Lumber and the Hedges personally to restructure St. John Lumber's debt. App.344; DDE 88–5, at p.1.

Under the terms of the restructuring, Florida Wood received immediate repayment of $150,000, leaving the principal amount of $365,000 unpaid. *Id.* In addition, Florida Wood received a promissory note from St. John Lumber in the amount of $65,000. *Id.* And Florida Wood received preferred stock in St. John Lumber valued at $300,000, paying a nine percent annual dividend in the amount of $27,000 per year. App.345; DDE 88–5, at p.2.

The restructuring agreement also expressly provided that Florida Wood would receive a mortgage on the home of the Hedges (which is the property in question on appeal) to secure repayment of the $300,000 in preferred stock, the payment of dividends due on the preferred stock, and repayment of the $65,000 note should any or all of those amounts not be repaid by St. John Lumber. *Id.* The Hedges' personal guarantee

of the debt as restructured, and the mortgage on the Hedges' residence to serve as security for that guarantee, were integral parts of the transaction from Florida Wood's perspective.

Less than four years later, in August 1996, St. John Lumber sought bankruptcy protection under Chapter 11. App.8; DDE 122, at p.5. The plan of self–liquidation that the bankruptcy court ultimately approved in St. John Lumber's bankruptcy case provided as follows with regard to the preferred stock that Florida Wood held:

> Florida Wood Treaters is the preferred stockholder of the debtor company.
>
> After debtor company has completely liquidated and this Plan is consummated, debtor company will cease to do business, and its Virgin Islands charter will, in due time, be canceled.
>
> The stockholders will technically retain their stock positions in debtor company * * * .

App.393; DDE 88–16, at p.6.

Although the Thompsons argued before the district court that the bankruptcy of St. John Lumber automatically effectuated the redemption of the preferred stock issued to Florida Wood, thereby extinguishing Florida Wood's ability to recover on the guarantee of the $300,000 debt whose value the preferred stock represented, the district

court in this case recognized that there is nothing in the St. John Lumber plan of reorganization that so provides. App.25–26; DDE 122, at p.22–23. Rather, instead of expressly effectuating the redemption of St. John Lumber's preferred stock, that debtor's plan of reorganization provided that Florida Wood retained its stock position in St. John Lumber. App.393; DDE 88–16, at p.6.

* * * * *

At his deposition under oath in this very case, plaintiff Kurt Thompson testified that when he and his co–plaintiffs acquired the property in question from the Hedges via quitclaim deed, Thompson understood that Florida Wood had a valid lien against the property, that the property secured a debt to Florida Wood totaling approximately $900,000, and that Florida Wood was entitled to be repaid that amount in order for Florida Wood's lien against the property to be released. App.385–86; DDE 88–14, at p.2–3.

VI. SUMMARY OF THE ARGUMENT

The district court, in granting summary judgment in favor of Florida Wood, properly recognized that each and every argument that the Thompsons have raised in their attempt to invalidate or reduce Florida Wood's lien on the property and in trying to escape personal liability on any deficiency judgment lacked merit.

To begin with, the district court properly rejected the Thompsons' argument that the Hedges' personal bankruptcy somehow invalidated the guarantee repayment obligation that the Thompsons voluntarily agreed to assume. The Thompsons assumed that obligation in the stipulation that accompanied the settlement agreement, which the Thompsons presented to the bankruptcy court to obtain that court's approval of the sale of the Hedges' real property to the Thompsons for $1 plus a commission of less than $50,000 paid to the bankruptcy trustee.

The district court also correctly held that St. John Lumber's bankruptcy case did not effectuate a *sua sponte* redemption of the preferred stock issued to Florida Wood or a *sua sponte* cancellation of the corresponding debt that the Hedges had guaranteed in the event

that the preferred stock was not redeemed for $300,000 and the accompanying $27,000 annual dividend payments were not made.

The Thompsons' argument is in essence that they have somehow outsmarted everyone — the Hedges, the Hedges' bankruptcy trustee, the judge presiding over the Hedges' bankruptcy case, the Hedges' other creditors, and Florida Wood Treaters — to walk away from the purchase of the Hedges' real estate with more than $750,000 in additional equity, whose existence no one else perceived, free of charge. That additional $750,000 in equity could have, should have, and of course would have been used to pay the Hedges' other creditors or would have been returned to the Hedges had it actually existed.

As the district court in this case and the trustee in the Hedges' bankruptcy case both correctly recognized, the Thompsons' efforts to dispute the validity of the guarantee of the debt owed to Florida Wood lack any substance. Moreover, the district court also correctly recognized that Florida Wood's mortgage foreclosure action is neither time–barred under the applicable statute of limitations nor barred under the equitable doctrine of laches.

For all of these reasons, the district court's entry of summary judgment in favor of Florida Wood and against the Thompsons should be affirmed.

VII. ARGUMENT

A. The District Court Did Not Err In Holding That The Thompsons Had Expressly Assumed The Hedges' Obligations To Florida Wood In The Stipulation That The Thompsons Filed In The Hedges' Bankruptcy Case

The first argument that the Thompsons pursue on appeal is that the district court erred in holding that the Thompsons personally assumed the Hedges' obligations to Florida Wood under the guarantee as the result of a stipulation that the Thompsons filed in the Hedges' bankruptcy case. That stipulation expressly stated that "[t]he Thompsons will assume the Debtors' liability on amounts filed as secured claims in the bankruptcy." App.473–74; DDE 88–25, at p.3–4. That very same paragraph of the stipulation expressly stated that Florida Wood was a secured claimant in the Hedges' bankruptcy proceeding. *Id.*

For the following reasons, the district court correctly ruled that the Thompsons assumed the Hedges' personal guarantee of the underlying debt owed to Florida Wood.

The district court properly based its ruling on the stipulation's plain language. The stipulation — signed by counsel for the Thompsons, attorney Belfon, and filed in the Hedges' bankruptcy case — expressly provides that "[t]he Thompsons will assume the Debtors' liability on amounts filed as secured claims in the bankruptcy." *Id.* The very same paragraph of the stipulation also expressly recognizes that Florida Wood was a secured claimant in the Hedges' bankruptcy proceeding. *Id.*

As this Court has explained, in the absence of local law to the contrary, the U.S. Virgin Islands have adopted the law of the Restatement as binding law. *See Morales* v. *Sun Constructors, Inc.*, 541 F.3d 218, 221 (3d Cir. 2008) ("In the absence of contrary Virgin Islands law, this case is governed by the rules of the common law, as expressed in the restatements of law approved by the American Law Institute."); *see also* 1 V.I. Code Ann. § 4 (2007) ("The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute, and to the extent not so expressed, as generally

understood and applied in the United States, shall be the rules of decision in the courts of the Virgin Islands in cases to which they apply, in the absence of local laws to the contrary.").

In this case, the district court — relying both on the language from the stipulation filed in the Hedges' bankruptcy case signed by the Thompsons' attorney that "[t]he Thompsons will assume the Debtors' liability on amounts filed as secured claims in the bankruptcy" and on Restatement (Third) of Property: Mortgages §5.1 and the accompanying comments thereto — properly held that the Thompsons had personally assumed the guarantee obligation that had previously belonged to the Hedges. App.20–23; DDE 122, at p.17–20.

Comment a to Restatement (Third) Property: Mortgages §5.1 states, in pertinent part, that "[t]he transferree's assumption of liability need not be in any particular form or follow any particular verbal pattern." Illustration 2 to comment a states that language which provides "C agrees to assume the existing mortgage on the premises" would suffice to constitute C's personal assumption of the liability evidenced by the mortgage. Similarly, here the Thompsons (acting through their authorized counsel) filed a stipulation in the Hedges' bankruptcy case

acknowledging that "[t]he Thompsons will assume the Debtors' liability on amounts filed as secured claims in the bankruptcy" (App.473–74; DDE 88–25, at p.3–4), which were the very same debts that the mortgage on the Hedges' real property secured. This language, the district court correctly ruled, constituted the Thompsons' personal assumption of those debt obligations.

In the face of the express language of the stipulation quoted above and the Restatement's explanation that such express language suffices to constitute an assumption of personal liability, the Thompsons advance two interrelated arguments for reversal.

First, they argue that somehow the district court failed to view the stipulation and settlement agreement in the proper context as a whole. But the Thompsons' main argument seems to be that the district court did not appreciate the significance of language found in the final paragraph of the "Argument in Support of Approval" section of the stipulation wherein the Thompsons unilaterally asserted in a parenthetical that they "do not agree on * * * the validity and value of one of the liens." App.476; DDE 88–25, at p.6.

The trustee of the Hedges' bankruptcy and the Thompsons were the only two parties to the aforementioned stipulation. In support of its summary judgment motion, Florida Wood submitted the affidavit of Theodore G. Dawe, the Chapter 7 trustee for the Hedges, who stated under oath in that affidavit that "I would not have agreed to the settlement with the Thompsons had I known or believed that the Thompsons would claim that the secured claim of First Bank VI, Florida Wood Treaters or Coastal Supply Inc. was invalid." App.341; DDE 88–4, at p.3.

It is thus clear that the only party to the stipulation that did "not agree on * * * the validity and value of one of the liens" was the Thompsons. Yet, at most, this language of the stipulation merely preserved the Thompsons' ability to have adjudicated their challenges to the validity and value of Florida Wood's lien, which is precisely what the Thompsons have accomplished in this case. To be sure, the district court did not find merit in the Thompsons' challenges to the validity and value of Florida Wood's lien. And, for the reasons explained below, the district court's rulings rejecting the Thompsons' challenges were absolutely correct.

The Thompsons' unilateral assertion that they do "not agree on * * * the validity and value of one of the liens" is of no greater consequence than if they had asserted in the stipulation that they "do not agree that the force of gravity exists on the surface of the earth." The Thompsons may be entitled to hold opinions that are demonstrably incorrect, but the fact that the Thompsons unilaterally hold an incorrect opinion does not render the Thompsons' assumption of personal liability from the Hedges on the Florida Wood lien any less effective or ambiguous in any respect whatsoever.

In sum, the district court properly ruled that the Thompsons assumed the Hedges' personal repayment obligation by means of the stipulation that the Thompsons executed and filed in the Hedges' bankruptcy case to accomplish the purchase of a $1.4 million piece of real property for less than a $50,000 out–of–pocket payment. The district court's ruling in this regard should therefore be affirmed.

B. The District Court Correctly Ruled That The Hedges' Bankruptcy Did Not Discharge Or Reduce The Guarantee Obligation That The Thompsons Assumed In Purchasing The Real Property At Issue

For their second argument on appeal, the Thompsons assert that the discharge in bankruptcy that the Hedges received on June 6, 2006 either eliminated or otherwise made unenforceable the guarantee obligation that the Thompsons assumed when purchasing the real property in question from the Hedges for one dollar plus a trustee's commission of $46,000.

For three reasons, the Thompsons' argument is completely without merit. First, as the district court recognized, Florida Wood's allowed, secured claim would have been paid in full from the proceeds of the Hedges' real estate, appraised at $1.4 million, had the sale of that real estate to the Thompsons not occurred. App.13–16; DDE 122, at p.10–13. In other words, the outcome that the Thompsons are seeking on appeal — the elimination of the guarantee obligation owed to Florida Wood in the absence of any repayment of the debt owing to Florida Wood — is not the outcome that would have come to pass in the absence of the sale of the real estate in question to the Thompsons. *See Johnson* v. *Home State Bank*, 501 U.S. 78, 82–83 (1991) (recognizing that a Chapter 7

bankruptcy discharge does not discharge a mortgage lien against the debtor's real property). Rather, had the real estate remained a part of the Hedges' bankruptcy estate, the debt to Florida Wood would have been repaid in full in due course in the bankruptcy case, or Florida Wood would have retained its lien against the property. *See id.*

Second, as the district court also correctly recognized, the Thompsons' argument fails as a matter of well–settled law. As this Court has explained, a discharge in bankruptcy only discharges the debts of the debtors; it does not affect the debts or guarantee obligations of third–parties, such as the Thompsons. *See In re Continental Airlines*, 203 F.3d 203, 211 (3d Cir. 2000) ("Section 524(e) of the Bankruptcy Code makes clear that the bankruptcy discharge of a debtor, by itself, does not operate to relieve non–debtors of their liabilities. The Bankruptcy Code does not explicitly authorize the release and permanent injunction of claims against non–debtors * * * ."). The Thompsons were not debtors in the Hedges' bankruptcy case, and thus the bankruptcy discharge that the Hedges' obtained did not affect or release any obligations belonging to the Thompsons.

Third and finally, as the district court's decision implicitly recognizes, the Thompsons' argument that the bankruptcy discharge of the Hedges eliminated the debt or guarantee obligation owed to Florida Wood lacks any valid factual basis. The Thompsons entered into the stipulation and settlement agreement, whereby they agreed to assume the Hedges' guarantee obligation and accept the property subject to the lien of Florida Wood, in September 2005. App.471–88; DDE 88–25. The sale of the real estate valued at $1.4 million to the Thompsons in exchange for one dollar (plus a trustee's commission of $46,000) occurred on April 1, 2006. App.10; DDE 122, at p.7. As the district court's opinion recognizes, the Hedges did not receive their discharge in bankruptcy until June 6, 2006. App.9; DDE 122, at p.6.

Thus, simply as a matter of factual accuracy, the Thompsons are incorrect when they assert that the Hedges' bankruptcy case discharged or reduced the guarantee or debt to Florida Wood. Rather, the Thompsons voluntarily assumed the guarantee obligations and the real estate subject to Florida Wood's lien before the Hedges' bankruptcy case had reached the point of discharging any of the Hedges' obligations.

Later, when the Hedges' bankruptcy case produced a discharge of the Hedges' debts on June 6, 2006, the guarantee and lien benefitting Florida Wood no longer constituted obligations of the Hedges, because the Thompsons had previously assumed those obligations as a part of the real estate sale that was consummated on April 1, 2006.

For all of these reasons, both as a matter of law and as a matter of fact, the district court correctly ruled that the Hedges' bankruptcy case neither eliminated nor otherwise adversely affected the guarantee to Florida Wood or the lien of Florida Wood that the Thompsons voluntarily assumed when purchasing the real estate at issue.

C. The District Court Correctly Ruled That The Bankruptcy Of St. John Lumber Did Not Eliminate Or Alter The Hedges' Guarantee Of Repayment To Florida Wood Of The Debt Represented By St. John Lumber Preferred Stock

As part of the restructuring of St. John Lumber's debt to Florida Wood that occurred to enable St. John Lumber to receive a Small Business Administration loan, Florida Wood agreed to accept preferred stock in St. John Lumber valued at $300,000 that would pay an annual dividend of $27,000. App.345; DDE 88–5, at p.2. In addition, and as part of that very same debt restructuring arrangement, the Hedges as

owners of St. John Lumber agreed to personally guarantee the repayment of that $300,000 plus any unpaid dividends in the event that St. John Lumber was unable to satisfy those obligations for any reason whatsoever, including the liquidation of the company. App.352; DDE 88–6, at p.2.

The Thompsons' third argument on appeal asserts that as a result of St. John Lumber's bankruptcy, annual dividends in the amount of $27,000 ceased to accrue on the $300,000 debt evidenced by the preferred stock. This argument should be rejected for two reasons.

To begin with, the Thompsons did not raise this argument in the district court in opposing Florida Wood's motion for summary judgment. App.512–29; DDE 96, at p.1–18. As a result, the district court's opinion did not address this argument. Unless an appellant has properly raised and thereby preserved an argument in the district court, the appellant may not advance that argument as a ground for reversal on appeal. *See DIRECTV Inc.* v. *Seijas*, 508 F.3d 123, 125 n.1 (3d Cir.2007) ("It is well established that arguments not raised before the District Court are waived on appeal."). Thus, based on waiver, this Court should reject this aspect of the Thompsons' third argument on appeal.

Second, even if this aspect of the Thompsons' argument had not been waived, it would still lack merit. When Florida Wood filed its secured claim in the Hedges' bankruptcy proceeding, Florida Wood clearly disclosed that its claim included unpaid dividends that had continued to accrue on the St. John Lumber preferred stock up until the time that Florida Wood's claim was filed in the Hedges' bankruptcy case, years after the liquidation of St. John Lumber. App.334; DDE 88–3, at p.2.

Neither the Hedges nor the trustee of the Hedges' bankruptcy case objected to or disputed Florida Wood's assertion that the Hedges' guarantee and the mortgage encompassed the obligation to repay dividends that continued to accrue on the $300,000 debt even after St. John Lumber had its plan of liquidation confirmed in bankruptcy. App.456–59; DDE 88–22. Assuredly, if the argument that St. John Lumber's bankruptcy terminated the ongoing accrual of dividends had any merit, either the Hedges or their bankruptcy trustee would have raised that argument themselves.

What the Thompsons actually argued to the district court in opposition to Florida Wood's motion for summary judgment was that when St. John Lumber liquidated itself in a Chapter 11 bankruptcy

proceeding, the resulting effect as a matter of law was the redemption in exchange for zero dollars of the preferred stock issued to Florida Wood. App.523–26; DDE 96, at p.12–15. The Thompsons further contended that this supposed stock redemption would have had the effect of extinguishing the Hedges' guarantee of the $300,000 debt that the preferred stock represented and of the unpaid dividends thereon. *Id.*

It does not appear that the Thompsons are pursuing this particular argument on appeal, but in any event the district court properly rejected that argument.

First, as the district court explained in its opinion, the Thompsons failed to cite any authority to the district court in support of their contention that the liquidation of a company in bankruptcy automatically effectuates the redemption of outstanding stock for zero dollars in consideration, thereby waiving that issue. App.25–26; DDE 112, at p.22–23. And, second, the plan of liquidation actually confirmed in St. John Lumber's bankruptcy case did not even purport to redeem the preferred stock that Florida Wood possessed. Rather, the plan recognized that Florida Wood "will technically retain [its] stock position in debtor company * * * ." App.393; DDE 88–16, at p.6.

Lastly on this point, the Thompsons argue on appeal that the district court erred when, in a footnote, the district court explained that the preferred stock that Florida Wood received in St. John Lumber could properly be recharacterized as debt. App.25; DDE 122, at p.22 n.6. The statement that the Thompsons challenge represented dicta in the district court's ruling, because whether the preferred stock should be recharacterized as debt was of no consequence to the district court's ruling, nor is it of any consequence to this appeal.

The reason why the characterization of the preferred stock as equity or debt is of no moment is because it is undisputed that the Hedges personally guaranteed the repayment of the $300,000 obligation that the preferred stock represented in the event that St. John Lumber did not first repay that amount itself. App.352; DDE 88–6, at p.2. Here, it is undisputed that St. John Lumber never repaid the $300,000 obligation. Thus, regardless of whether the preferred stock could or should be recharacterized as debt, the guarantee obligation of the Hedges that the Thompsons agreed to assume, as secured by the real estate in question, remained in effect.

For all of these reasons, this Court should hold that the district court correctly ruled that the bankruptcy of St. John Lumber did not eliminate or alter the Hedges' guarantee of repayment to Florida Wood of the debt represented by St. John Lumber's preferred stock.

D. The District Court Correctly Rejected The Thompsons' Contention That The Statute Of Limitations Or The Doctrine Of Laches Barred Florida Wood's Mortgage Foreclosure Action

The district court correctly ruled that a 20–year statute of limitations applies to a mortgage foreclosure action arising under the law of the U.S. Virgin Islands.

In so ruling, the district court first correctly relied on this Court's decision in *UMLIC VP LLC* v. *Matthias*, 364 F.3d 125, 130–31 (3d Cir. 2004), wherein this Court, applying Virgin Islands law, rejected the argument that a mortgage foreclosure action shares the same statute of limitations as the underlying debt.

As the district court's summary judgment ruling explains, section 32(b) of Title 5, Virgin Islands Code Annotated, specifies that "[a]n action for the determination of any right or claim to or interest in real property shall be deemed within the limitations provided for actions for

the recovery of the possession of real property." Here, the district court correctly recognized, Florida Wood's mortgage foreclosure action constituted an action for the determination of an interest in real property represented by Florida Wood's mortgage on the real estate in question. App.26–27; DDE 112, at p.23–24.

Section 31(1) of Title 5, Virgin Islands Code Annotated, prescribes a 20–year limitations period for actions for the recovery of real property. Thus, properly construing in combination sections 32(b) and 31(1) of Title 5, Virgin Islands Code Annotated, the district court correctly ruled that a 20–year limitations period applied to Florida Wood's mortgage foreclosure action and that the mortgage foreclosure action was thus timely.

The Thompsons further argue that the district court erred in failing to conclude that laches barred Florida Wood's mortgage foreclosure action. Yet, as this Court has recognized, the doctrine of laches only provides a defense in the absence of any applicable statute of limitations. *See Mantilla* v. *United States*, 302 F.3d 182, 186 (3d Cir. 2002) (recognizing that where a "claim survives the statute of limitations, the equitable defense of laches is presumptively

inapplicable"). Since Florida Wood's mortgage foreclosure action was timely under the applicable statute of limitations, the doctrine of laches simply had no applicability.

Moreover, the doctrine of laches is an equitable doctrine, and yet it would not be equitable to apply that doctrine to deprive Florida Wood of its recovery. The Thompsons knew when they agreed to assume the Hedges' personal guarantee and the real estate subject to Florida Wood's lien that the bankruptcy trustee, the Hedges, and Florida Wood all were of the view that the debt owing to Florida Wood was valid and deserving of payment and would indeed by paid by the Thompsons. Thus, they can show no prejudice resulting from the delay. *See Pappan Enterprises, Inc.* v. *Hardee's Food Systems, Inc.*, 143 F.3d 800, 804 (3d Cir. 1998) (recognizing that, to invoke laches, prejudice as a result of the delay must be shown).

If laches prohibited Florida Wood from recovering repayment of the allowed, secured claim that Florida Wood filed in the Hedges' bankruptcy case, then the Thompsons should have paid nearly $720,000 more to purchase the real estate in question from the Hedges. And that $720,000 more that the Thompsons should have paid could have been

used to repay the Hedges' other creditors or, in the absence of other debts, could have been returned to the Hedges themselves. If Florida Wood's allowed, secured claim was barred by laches, neither the Hedges' bankruptcy trustee nor the bankruptcy judge presiding over the Hedges' bankruptcy case would have approved the sale of the real estate appraised at $1.4 million to the Thompsons in exchange for out–of–pocket payments of less than $50,000.

For these reasons, the district court properly held that Florida Wood's mortgage foreclosure action was not time–barred under Virgin Islands law.

E. Because Florida Wood Was Properly Granted Summary Judgment On Its Mortgage Foreclosure Claim, Summary Judgment Was Also Properly Entered Against The Thompsons On Their Claims

The Thompsons, in their claims against Florida Wood, sought an order from the district court requiring Florida Wood to release its lien on the property in question for no consideration whatsoever and sought to hold Florida Wood liable in damages for slander of title.

For the reasons already explained above, the district court correctly ruled that the Thompsons were personally obligated to pay the

guarantee that the Hedges had entered into in favor of Florida Wood and that the mortgage on the property in question continues to secure that guarantee obligation.

As a consequence of those rulings, the district court properly entered summary judgment in favor of Florida Wood on the Thompsons' claims against Florida Wood. App.28–30; DDE 112, at p.25–27. Because Florida Wood's lien against the property continues to exist, the district court correctly held both that the Thompsons were not entitled to have the mortgage discharged and that Florida Wood cannot be liable for slander of title. *Id.*

VIII. CONCLUSION

For the foregoing reasons, the district court's entry of summary judgment in favor of Florida Wood and against the Thompsons should be affirmed.

Respectfully submitted,

Dated: July 28, 2010

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CERTIFICATION OF COMPLIANCE WITH TYPE–VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

This brief complies with the type–volume limitations of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,867 words excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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Dated: July 28, 2010

/s/ *Howard J. Bashman*
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CERTIFICATION OF BAR MEMBERSHIP

I hereby certify that I am a member of the Bar of the United States Court of Appeals for the Third Circuit.

Dated: July 28, 2010

/s/ *Howard J. Bashman*
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Counsel hereby certifies that the electronic copy of this Brief for Appellee is identical to the paper copies filed with the Court.

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