CHAPTER I

EQUITABLE MAXIMS & EQUITABLE DEFENSES

A. THE MAXIMS

The various equitable maxims are stated by courts or litigants as pronouncements possessing a magical quality, or at least as rules to be accorded a deference only a little less than constitutional mandates. In truth, these principles are general guides, and the seeds from which the substantive equitable rules have grown. As noted in 2 Pomeroy, Equity Jurisprudence § 360, p. 5 (Symons 5th ed. 1941) (hereafter cited as "Pomeroy"):

> . . . These maxims are in the strictest sense the principia, the beginnings out of which has been developed the entire system of truth known as equity jurisprudence . . . They do not exclusively belong either to the department which treats of equitable estates, property, and other primary rights, nor to that which deals with equitable remedies; their creative and molding influence is found alike throughout both of these departments. . .

These maxims are therefore a shorthand used to describe the equitable mindset — the starting point upon which a chancery judge's application of substantive rules will be based. In the early development of chancery jurisprudence, these principles served to differentiate the equitable proceeding from its legal counterpart and to provide a basis to correct omissions or inequities in the law by granting rights or remedies that the chancellor felt were necessary, applying his own sense of right and justice. 1 Pomeroy § 48-50, pp. 62-65. Although such individualized justice has settled over the years into a precedential system, the maxims remain to aid practitioner and court in discovering the meaning and basis of substantive and procedural equitable rules. The pure case-by-case determination of the chancellor had to give way to the constitutional guarantees of equal protection and due process, which require that litigants in similar situations receive similar equitable relief. Even though much of equity is still discretionary, the application of equity jurisprudence must be based upon established principles. *Hague v. Warren*, 142 N.J. Eq. 257, 263 (E. & A. 1948). As noted by Judge Muir, the conscience of which equity speaks is not the personal conscience of the judge, but rather a common standard of civil right and expediency combined, based upon general principles and limited by the established doctrines of equity by which it tests the conduct and rights of the litigants. *Matter of Quinlan*, 137 N.J. Super. 227, 255-256 (Ch. Div. 1975), *mod. on other grounds*, 70 N.J. 10 (1976), *cert. denied, sub nom. Garger v. N.J.*, 429 U.S. 922 (1976).

These maxims are the underlying framework for equity jurisprudence and have been applied in a considerable body of New Jersey equity cases. The subject headings that follow adhere to the New Jersey statement of the various maxims rather than that of Pomeroy for the ease of the practitioner in using New Jersey authorities. There are other authorities that explore this subject, but none is principally based upon New Jersey law. The best in this area is the article by Professor Howard L. Oleck, *Maxims of Equity Reappraised*, 6 RUTGERS L. REV. 528 (1952), citing national law, but with little reference to New Jersey precedents. See Appendix A. As a general note, be aware that "the power of the court to use equity can only be exercised when the court has proper jurisdiction." *Johnson v. Bradshaw*, 435 N.J. Super. 100, 115 (Ch. Div. 2014).

1. EQUITY SUFFERS NO RIGHT TO BE WITHOUT A REMEDY

This maxim has been alternatively expressed by Pomeroy as "wherever a legal right has been infringed a remedy will be given" (2 Pomeroy § 423); it is more usually cited now as "equity will not suffer a wrong without a remedy." *Orlowski v. Orlowski*, 459 N.J. Super. 95 (App. Div. 2019) (*quoting Crane v. Bielski*, 15 N.J. 342, 349 (1954)). The maxim is explained to mean that where there is civil wrong, there ought to be a remedy; if the law provides none, equity may take jurisdiction in order to correct the injustice. *Britton v. Supreme Council, R.A.*, 46 N.J. Eq. 102, 112 (Ch. Div. 1889), *aff'd sub nom*. *Royal Arcanum v. Britton*, 47 N.J. Eq. 325 (E. & A. 1890). An absence of precedent does not preclude an equity court from granting such relief as the circumstances require. *Briscoe v. O'Connor*, 115 N.J. Eq. 360, 364-65 (Ch. Div. 1934); *Brown v. Fidelity Union Tr. Co.*, 10 N.J. Misc. 555, 558 (Ch. Div. 1932). As noted by Justice Heher in *Sears Roebuck & Co. v. Camp*, 124 N.J. Eq. 403, 411-12 (E. & A. 1938):

> Equitable remedies are distinguished for their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application; the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties. [1 Pomeroy, Equity Jurisprudence, §109 (5th ed. 1941).]

"A lack of precedent, or mere novelty in incident, is no obstacle to the award of equitable relief, if the case presented is referable to an established head of equity jurisprudence — either of primary right or of remedy merely." *Sears Roebuck & Co.*, 124 N.J. Eq. at 412.

This language was later quoted by Justice (then Judge) Francis in *Roach v. Margulies*, 42 N.J. Super. 243, 246 (App. Div. 1956), in upholding Chancery's right to appoint a fiscal agent for a corporation — a remedy newly devised, but necessary to avoid the adverse financial impact of the appointment of a statutory receiver. *See also New Jersey Realty Concepts, LLC v. Mavroudis*, 435 N.J. Super. 118, 123 (App. Div. 2014).

This principle has even been extended to a situation where an elderly widow lost her home in a foreclosure sale, but contended she had been misinformed concerning the time of the sale, and would have taken action to redeem. The Court in *Crane v. Bielski*, 15 N.J. at 349, noted:

> If the court was swayed by the dilemma of an aged and distraught widow whose only asset, the roof over her head, was about to be taken from her by a process apparently quite beyond her comprehension, allegedly without notice of the time of the sale, we think in equity it was rightly influenced.
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> 'Equity is equality,' and if the facts here presented were as a matter of law insufficient to move the court, in its discretion, to set aside the sale, then a most stolid quality has crept surreptitiously into our equity jurisprudence, whose primary function over the many years has been the administration of essential and fundamental justice.
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> We find nothing in the record warranting a reversal of the relief granted upon the ground that it was 'a mistaken exercise of judicial discretion.' In fact, we are

> convinced that the trial court recognized and acted upon the maxim lying at the very foundation of equitable jurisprudence, that equity 'will not suffer a wrong without a remedy.' The court considered the problem encountered with reason and conscience to a just and equitable result.

In *Connecticut Gen. Life Ins. Co. v. Punia*, 884 F. Supp. 148, 151 (D.N.J. 1995), the court extended New Jersey's statutory fair market credit rule to protect guarantors of commercial loans, by ruling that the guarantors were entitled to have their obligation reduced by the fair market value of the property securing the loan, and not simply by the $100 that the mortgage lender had successfully bid for the property at a foreclosure sale. *Id.* In *Mooney v. Provident Sav. Bank*, 308 N.J. Super. 195 (Ch. Div. 1997), *aff'd*, 318 N.J. Super. 257 (App. Div. 1999), the court held that the reverse of the maxim is also true, "where there is no wrong, there is no basis for equitable relief." *Id*. at 205. *See also Graziano v. Grant*, 326 N.J. Super. 328 (App. Div. 1999); *In re Mossavi*, 334 N.J. Super. 112 (Ch. Div. 2000). "A court of equity should not permit a rigid principle of law to smother the factual realities to which it is sought to be applied."

2. EQUITY REGARDS SUBSTANCE RATHER THAN FORM

This maxim has both substantive and procedural elements, and is applied to disregard the corporate form, *Fortugno v. Hudson Manure Co.*, 51 N.J. Super. 482, 500-01 (App. Div. 1958); to pierce the corporate veil (*infra*), *Telis v. Telis*, 132 N.J. Eq. 25, 29-30 (E. & A. 1942), *overruled in part on other grounds by Frank v. Frank's, Inc.*, 9 N.J. 218 (1952); *Stochastic Decisions v. DiDomenico*, 236 N.J. Super. 388, 393-95 (App. Div. 1989), *certif. denied*, 121 N.J. 607 (1990); *Trachman v. Trugman*, 117 N.J. Eq. 167, 170 (Ch. Div. 1934); *see also State Dept. of Environmental Protection v. Ventron Corp.*, 94 N.J. 473, 500-01 (1983); *OTR Associates v. IBC Services, Inc.*, 353 N.J. Super. 48, 52 (App. Div. 2002), *certif. denied*, 175 N.J. 78 (2002); to uphold the validity of a meeting where a decision was made by a religious group to affiliate itself with the Roman Catholic Church, despite a minor procedural infraction, particularly where the will of the majority was expressed, *Ardito v. Bd. of Trustees, Our Lady of Fatima*, 281 N.J. Super. 459, 468 (Ch. Div. 1995); to determine family corporate realities, *Kleinberg v. Schwartz*, 87 N.J. Super. 216 (App. Div. 1965), *aff'd o.b.*, 46 N.J. 2 (1965); in election cases, to look behind the labels parties have given to transactions, *Cavanagh v. Morris Cty. Democratic Committee*, 121 N.J. Super. 430, 436 (Ch. Div. 1972); to regard joint tenants as tenants in common, *Brodzinsky v. Pulek*, 75 N.J. Super. 40, 47-48, 56 (App. Div. 1962), *certif. denied*, 38 N.J. 304 (1962); to convert a conveyance to a husband and his wife as tenants in common into a conveyance to the wife as the sole owner, *Luebbers v. Luebbers*, 97 N.J. Eq. 172, 173 (Ch. Div. 1925); to disregard strict terms requiring deposit upon the execution of an option on a land lease when landlord allowed deadline to pass to avoid lease renewal, *Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Center Assocs.*, 182 N.J. 210 (2005); to disregard labels of agreements of consignment as opposed to sale on account, *Shapiro v. Marzigliano*, 39 N.J. Super. 61, 65 (App. Div.), *certif. denied*, 21 N.J. 549 (1956); or to deeds as opposed to mortgages, *Applestein v. United Board & Carton Corp.*, 60 N.J. Super. 333, 348 (Ch. Div. 1960), *aff'd o.b.*, 33 N.J. 72 (1960). As Judge Kilkenny noted in *Applestein*:

> It is a fundamental maxim of equity that 'Equity looks to the substance rather than