

IN THE SUPREME COURT OF OHIO

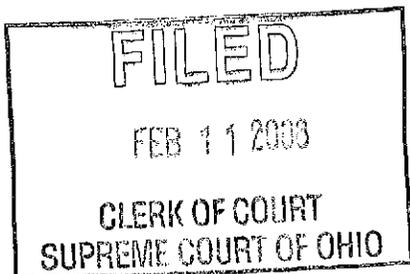
BENEFICIAL OHIO, INC. : Case No. 2007-1455
: :
Appellant/Plaintiff : :
: :
v. : :
: :
DALE S. ELLIS, et al. : :
: :
Appellees/Defendants : :
: :
v. : :
: :
ROBERT ELLIS, et al. : :
: :
Appellees/New Party : :
Defendants :

MERIT BRIEF OF BENEFICIAL OHIO, INC.

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STATEMENT OF FACTS

On December 30, 1998 Edna M. Jarman executed and delivered to her son, Dale S. Ellis, a Quit Claim Deed for lots 54, 55, 56, 57, 58 and 61 of the Ira B. Mackey plat in Vienna Township, Trumbull County, Ohio (Supp. 239).

On January 19, 1999 Dale S. Ellis obtained a mortgage from Bank One in the amount of \$25,500 secured by these six lots (Supp. 192).

On February 22, 2001 Dale S. Ellis obtained another mortgage from Bank One in the amount of \$45,000 also secured by the six lots. *Id.*

On May 29, 2001 Edna Jarman filed a lawsuit against her son (Supp. 239) in Case No. 2001 CV 1056 (Supp, 189). The caption of that case was styled “Complaint – Other Civil – Action to Set Aside Deed for Fraud”. *Id.*

Bank One was served with the complaint in the *Jarman* lawsuit on June 4, 2001 (Supp. 186). Dale Ellis was served by process server on July 26, 2001. *Id.*

On July 24, 2001, Dale S. Ellis executed and delivered to Beneficial Ohio, Inc. two mortgages. The first mortgage is in the amount of \$64,699.43. The second mortgage is in the amount of \$10,000 (Supp. 239). Both mortgages were filed in the office of the Trumbull County, Ohio Recorder on July 25, 2001 (Supp. 240).

On November 6, 2001 the trial court entered a default judgment against Dale Ellis in the *Jarman* case (Supp. 240). That order returned ownership of lots 54, 55, 56, 57, 58 to Edna Jarman (Supp.185-6).

On November 29, 2001 Edna Jarman and Bank One entered into a stipulated agreement keeping the Bank One mortgages intact on lot 61 (Supp. 186).

On September 21, 2003 Edna Jarman died, being survived by Dale Ellis and two other children. (Supp. 259 ¶ 8).

On October 27, 2003 Mr. Rudloff was appointed executor of Edna Jarman's estate. *Id.*

On February 3, 2004 Beneficial filed the underlying foreclosure action as to lots 54, 55, 56, 57, 58 and 61 which were security for it's mortgage (Supp. 240).

The trial court granted Beneficial's motion for summary judgment on February 16, 2006 (Supp. 260 ¶ 11).

On November 6, 2007 Lot 61 was sold at public sale (Supp. 246).

That sale was confirmed on November 20, 2007 (Supp. 249).

The sheriff's deed, for Lot 61, was filed January 7, 2008(Supp. 255).

ARGUMENT

I. THE DOCTRINE OF *LIS PENDENS* REQUIRES SERVICE OF PROCESS ON THE PROPERTY OWNER BEFORE RIGHTS OF THIRD PARTIES ARE CUT OFF.

The issue in this case is when *lis pendens* attaches to cut off rights of third parties in property which is the subject of the litigation. This Court addressed the doctrine of *lis pendens* in *Cook v. Mozer* (1923), 108 Ohio St. 30. The statute, Ohio Rev. Code § 2703.26 is a codification of the common law. *Sweigart v. Piqua Milling Co.* (1943), 57 N.E. 2d 327 (2nd Ap. Dist). The Ninth District Court of Appeals has said that “[n]o rule is better established than the doctrine of *lis pendens*, which had its origin in England in courts of chancery. It was early recognized in Ohio in *Ludlow’s Heirs v. Kidd’s Ex’rs*, 3 Ohio 541, 542 . . . and has been statutory in Ohio for many years – which is simply a declaration of the common law on the subject.” *Stone v. Equitable Mortgage Co.* (1927), 25 Ohio App. 382. In *Ludlow’s Heirs* the court held that a suit is considered to be pending from the date of service of the summons. *Ludlow’s Heirs v. Kidd’s Ex’rs* (1828), 3 Ohio 54, 1828 WL 38 Ohio, 3.

John A. Bennett, wrote in his *Treatise on the Law of Lis Pendens*, published in 1887 said, as to the common law doctrine:

“Where no *lis pendens* statutes are in force, and in those States where there is no statutory requirement that the bill should be filed before the subpoena may issue, the common law rule as to the commencement of *lis pendens* is in force. The law in such States undoubtedly is, that the *lis pendens* begins from the service of the subpoena after the bill is filed. This has been the rule for over three

hundred years, established by a long series of well considered cases, and while, as a new question, very strong reasons may assigned for different rule, it is too well established to be now shaken.”

Id. § 28 *The common law rule as to commencement of lis pendens.*

Ohio Rev. Code § 2703.26 states:

“When summons has been served or publication made, the action is pending so as to charge third persons with notice of its pendency. While pending, no interest can be acquired by third persons in the subject of this action, as against plaintiff’s title.”

This Court held in *Cook v. Mozer* that:

“In order for *lis pendens* to attach and cut off rights of third parties the following elements must be established: (1) The property must be of a character to be subject to the rule; (2) the court must have jurisdiction both of the person and the res; and (3) the property or res involved must be sufficiently described in the pleadings. It must be added that the litigation must be about some specific thing that must be necessarily affected by the termination of the suit.”

Cook v. Mozer (1923), Ohio St. 30, 36.

Thus, when Ohio Rev. Code § 2703.26 and it’s predecessors were enacted, the universal rule was that service had to be perfected before *lis pendens* could attach. The question here is whether the doctrine attaches when any defendant is served or whether the property owner must be served. The answer lies in two of this Court’s decisions. In *Mozer* this Court found that the trial court must have jurisdiction over the person and the res before the doctrine can be invoked. In *Shaw v. Foley* (1900), 62 Ohio St. 30, 43, this court held that a suit filed by a creditor prior to a second suit by another creditor was not *lis pendens* as the creditor in the second suit obtained service on all of the [relevant] defendants

before the plaintiff in the first case obtained service on all of it's [relevant] defendants. In the first case the property owner was served although the date of service was not noted. She waived service in the second case. The plaintiff in the second case served Mr. Foley, as a creditor's assignee, before the plaintiff in the first suit served Mr. Foley, or a least there was nothing in the record to establish a date of service for him. Thus this court held in favor of the plaintiff in the second case. This case minimally tells us that service must be perfected on the relevant parties before the doctrine will attach. (Note that the defendants were common to each suit and other than Mr. Foley and the owner, the defendants settled before this issue arose).

It follows that if, at a minimum, the property owner has not been served, the court does not obtain jurisdiction and the doctrine cannot attach. David Shepard Garland wrote in the *American and English Encyclopedia of Law*, (V)(3)(b) *Claimant Must be Impleaded* (1890), on the application of *lis pendens*:

“It is essential to a *res litigiosa* that the claimant of the *res* should be impleaded. If he is not before the court, the *res* is not bound. The rule *lis pendens* only binds claimants to the property involved who are impleaded and their *pendente lite* purchasers. If they are not impleaded, they are at liberty to dispose of the *res*, and the purchaser will take it unaffected by the suit, although it may be pending against parties other than the real owners. Lord Baron's rule expressly provides that it should not bind “any” one who “is made no party.”

Three appellate courts have interpreted the statute to require service on the property owner. In *National Union Fire Ins. Co. v. Hall* (2003 WL 203590)(2nd Ap. Dist) the court held that *lis pendens* was an extra protection for litigants

“once the debtor is served with notice that there is an action pending.” (*Id.*, 4). The Eighth Appellate District in *First Bank N.A. v. 10546 Euclid Avenue, Inc.* (1989 WL 73023)(8th Ap. Dist) found that *lis pendens* attached when the owner of the property was served. And in *RMV Ventures, LLC v. Stover Family Investments* (2005), 161 Ohio App. 3d 819 (3rd Ap. Dist.), a defendant property owner who was not served with summons until after he transferred property was not bound by the filing of the complaint. *Id.*, 824. Hence *lis pendens* could not be invoked.

In applying the doctrine to the *Jarman* case, it is evident that the Complaint described the real estate by full legal description (Supp. 189) but that the trial court did not have jurisdiction over the person of Dale Ellis until after the Beneficial mortgages were executed and filed.

This Court in *Mozer* explained that a court must have jurisdiction “of the person of the one from whom the interests are acquired, from a party to the proceeding” before *lis pendens* attaches. *Mozer*, 36. Mrs. Jarman did not acquire her interests in the subject property from Bank One, her son’s lender. In fact, she claims not to have known that Bank One held mortgages on the disputed property. Therefore, following the common law rule as adopted in this state and this court’s pronouncement in *Mozer*, the *Jarman* suit cannot be *lis pendens* to Beneficial’s mortgages.

II. THE CONCLUSION THAT SERVICE UPON ANY DEFENDANT TRIGGERS *LIS PENDENS* IS CONTRARY TO LAW.

The Appellate Court held that “service upon any defendant is sufficient to invoke the doctrine of *lis pendens*.” In so finding, the court conflated the doctrine and commencement under Civ. R. 3(A). In *Pease Company v. Huntington National Bank* (1985), 24 Ohio App. 3d 227 (10th Ap. Dist) the Court was presented with the argument that Civ. R. 3(A) commencement “impliedly changes the terms of the *lis pendens* statute”. In response the Court said that “commencement” and “pendency” are separate concepts. In the words of that court:

“the [civil] rule determines when an action is commenced with respect to a party to the action, whereas [the *lis pendens*] statute provides for notice to third persons who are not defendants. R.C. 2703.26 and Civ. R. 3(A) are therefore not inconsistent and the statute controls in this case.”

(*Id.*, 231).

The Appellate Court essentially held that since the *Jarman* case had commenced under Civ. R. 3(A), that Mr. Ellis was on notice. This conclusion is not supported in statute nor the treatises on the subject. Further, a strict reading of *Pease* would misconstrue both the decision and the statute. All of the commentators require service of summons before the doctrine can attach. This is true even of Mr. Ellis who is arguably not “a third party” as set forth in *Pease*. However, Beneficial is a third party and without a showing of actual notice, Mr. Ellis is not held to have notice of the pending *Jarman* case simply because it was

filed. If this were true, then the doctrine would be invoked at filing and not upon “subpoena” or summons. *See, supra*. In fact, Mrs. Jarman’s estate has not established that Dale Ellis had actual notice of her suit. Therefore, the estate cannot prevail to invoke *lis pendens* to cut off the rights of Beneficial. *See, Bennett in his Treatise on the Law of Lis Pendens* § 243 *Where conveyance before suit not pendente lite*, 289.

As a matter of practicality, the Appellate Court decision has been the subject of many discussions in the real estate and title insurance industries. For instance, at the fall meeting of the Ohio Land Title Association, underwriting counsel for at least one major title insurance company advised the assembled agents that the decision would not be followed as it: (a) was outside the custom and practice of the industry; and (b) invited litigation because it was inconsistent with precedent. For instance, it was noted, in a common foreclosure all persons having interests in the subject property should be named as defendants in the action. That would include the county treasurer. According to the Appellate Court decision, service upon the easiest defendant to find, i.e. the county treasurer, would impute notice of the action to third parties and trigger *lis pendens*. *See, Allen-Baker v. Shiffler* (1998), 99 Ohio Misc. 2d 49 (Lucas CP). Although it may appear to be a “positive” for the real estate industry to define the “cut off” at that point, eighty plus years of practice led a major title insurance underwriter to conclude that this was a risky venture at best given that no other courts in the state

have adopted the Eleventh District's interpretation and at least three have gone the other way.

Moreover, as noted by Beneficial in its jurisdictional brief, several treatises on the subject have followed *Mozer* and its progeny. See, Robert M. Curry & James Geoffrey Durham, *Ohio Real Property Law and Practice*, 5th ed. § 18-14 (1997) ("The rule of *lis pendens* generally cuts off rights of lienholders whose liens attach after the service of summons upon the title holder in a court action"); Kenton L. Kuehnle & Jack S. Levey, *Ohio Real Estate Law*, 3rd ed. § 10:8 (2003) ("The invocation of *lis pendens* occurs upon service of the complaint upon the defendant-owner of the property in question, not upon the 'commencement' of the action").

It is noteworthy that there is a lack of precedent supporting the *Jarman* defendant's position that was adopted by the Appellate Court. Although they cite *Pease, supra*, that case does not favor them. They also cite *In re Periandri*, 266 B.R. 651, in support of their cause. Ohio courts do not follow bankruptcy precedent. *Third Federal v. Savings and Loan Assoc. of Cleveland v. Hayward* (1998 WL 488642)(9th Ap. Dist.), 5. Even so, *Periandri* denied the bankruptcy trustee hypothetical *bona fide* purchaser status under 11 U.S.C. § 544 because a state court foreclosure had been filed prior to his lawsuit to challenge the mortgage. As a subtext, that decision could not have been reached had service of process not been completed on the borrower/debtor else the trial court would not have jurisdiction over the property or the debtor.

That appellate court decision also invades the faith that practitioners and lay people have in the rule of law. Such a vast departure from decades of practice is not warranted in this matter.

III. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT WAS FACIALLY DEFECTIVE THUS RENDERING THEIR DEFENSE MOOT

Edna Jarman filed a lawsuit to get back real property that she deeded to her son. After her death, the estate and her other two children defended the Beneficial foreclosure action. Their opposition brief/cross motion for summary judgment included an affidavit from Mr. Rudloff as executor of the estate (Supp. 185). That affidavit does not comply with Civ. R. 56(E) in that it is not made on personal knowledge nor does Mr. Rudloff establish his competency to testify. *Bonacorsi v. Wheeling & Lake Erie Ry. Co.*(2002), 95 Ohio St. 3d 314. Hence, it has no evidentiary value in this case.

Attached to the Rudloff affidavit are several documents including uncertified copies of resolutions abolishing torrenized property (Supp. 187-8), the Complaint in *Jarman* (Supp. 189) and the November 29, 2001 Judgment Entry from *Jarman* – a stipulated agreement between Bank One and the estate (Supp. 192). Mr. Rudloff states in his affidavit that the complaint was filed on Mrs. Jarman's behalf because her son procured the lots by fraud. He does not testify that he has personal knowledge of that fact or that the attached complaint is a true and exact copy. The attached complaint is not certified. Next, Mr. Rudloff states that Dale Ellis was served in *Jarman* on July 26, 2001 and that Bank One was

served on June 4, 2001. Again, he is not testifying from personal knowledge nor does he attach the docket or other proof of service. Finally, Mr. Rudloff testifies that the trial court, on October 26, 2001 granted judgment in favor of his client and that the lots, other than 61, were returned to her. He attaches the November 29, 2001 order and not the October 26, 2001 order, however. The earlier order is the default judgment against Mr. Ellis (Supp. 18).

The opposition affidavit of Mr. Rudloff is, therefore, fatally defective.

Given the lack of evidence from the defendants, Beneficial's Motion for Summary Judgment was properly granted. Likewise, the appellate court, sitting in *de novo* review, could not have made findings of fact beyond the evidential materials presented. If nothing else, *de novo* review should have denied relief to the estate without even reaching the *lis pendens* issue.

IV. PUBLIC POLICY FAVORS THE APPLICATION OF THE DOCTRINE OF *LIS PENDENS* AS FOUND BY THE TRIAL COURT

The purpose of the doctrine of *lis pendens* is to “preserve the status quo of the interests in the property that is the subject of the litigation until the court renders a final adjudication of the issues arising from that property.” *Levin v. Fraam* (1990), 65 Ohio App. 3d 841 (9th Ap. Dist.).

This court noted in *Mozer* that “it is almost universally held that strictly speaking the doctrine of *lis pendens* is not founded upon notice but upon reasons of public policy.”

Mr. Garland in the *American and English Encyclopedia of Law, supra.*

notes:

“Some cases seem to imply that one of the primary objects of *lis pendens* is notice. . . . While courts will endeavor to so apply this doctrine of *lis pendens* as to save, if possible the rights of innocent parties, that can only be a secondary object, and must yield to the paramount one of holding within the jurisdiction of the courts the subject matter of the litigation so as finally to enable them to pronounce judgment upon it.”

Id., 871.

Mrs. Jarman’s complaint was filed on May 29, 2001. Her son was not served until almost one month later (July 26, 2001). As noted in the *Sweigart* case, *supra.*, “[t]her person who claims the benefit of [*lis pendens*] must not be chargeable with laches.” *Id.*, 330.

When a party files a lawsuit, it is their burden to prosecute a case in a manner that preserves and protects their rights. There can be no question that case law in place at the time of the *Jarman* suit required service of summons if the plaintiff needed to invoke the doctrine to preclude alienation of the subject property. It was vitally important, therefore, for Mrs. Jarman to either seek preliminary relief from the trial court or serve her son right away especially in light of his history of refinancing the lots. Having done neither, her estate cannot now suggest that they relied upon *lis pendens* to defeat the Beneficial mortgages.

CONCLUSION

Ohio Rev. Code § 2703.26 codified the common law doctrine of *lis pendens*. There is no dispute that Ohio law requires service of summons before the doctrine can be invoked. The doctrine also requires, as it did at common law, that specific property be at the heart of the controversy. Thus to effectively trigger the statute, a plaintiff must specifically describe the property and the trial court must obtain jurisdiction. The appellate court found that the statute only requires service on “a” defendant. This conclusion ignores the jurisdictional requirement of the statute. It also ignores the “acquiring party” requirement that has been the law in this state since 1923. At least since that decision courts of this state have interpreted the statute to require that the owner of the property be served before *lis pendens* will attach. Real estate practitioners and title agents have stood safely on that precedent for all these years. In fact, looking at this record, and inquiring of a practitioner familiar with the doctrine, the conclusion would easily be reached that *lis pendens* did not apply to bar the claims of Beneficial. The decision of the Appellate Court has upset the apple cart. As a result, there is dysfunction and a lack of clarity on how to apply the rule. Will it be limited to that appellate district? Is it safe to discard the old rule and invoke the “easiest defendant to be served” new rule?

In order to right the ship, Beneficial Ohio, Inc. requests this Honorable Court reverse the decision of the Eleventh District Court of Appeals and find that

Ohio Rev. Code § 2703.26 requires service upon at least one owner of property which is the subject of the litigation before the doctrine of *lis pendens* is triggered.

Respectfully Submitted,

PLUNKETT COONEY

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CERTIFICATE OF SERVICE

A true and exact copy of the foregoing has been sent this 11th day of February, 2008 by regular US Mail as follows:

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Amelia A. Bower

APPENDIX

GAK

IN THE SUPREME COURT OF OHIO

07 - 1455

BENEFICIAL OHIO, INC.,)	
)	
Appellant,)	On Appeal from the Trumbull
)	County Court of Appeals,
-vs-)	Eleventh Appellate District
)	
DALE ELLIS, ET AL.,)	Court of Appeals
)	Case No. 2006-T-0040
Appellees.)	

NOTICE OF APPEAL OF APPELLANT, BENEFICIAL OHIO, INC.

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<p>FILED</p> <p>AUG 08 2007</p> <p>CLERK OF COURT SUPREME COURT OF OHIO</p>

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 ROBERT W. ELLIS AND SANDRA LEE ELLIS

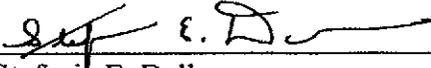
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Notice of Appeal of Appellant Beneficial Ohio, Inc.

Appellant Beneficial Ohio, Inc. hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Trumbull County Court of Appeals, Eleventh Appellate District, entered in Court of Appeals case No. 2006-T-0040 on June 25, 2007.

This case raises a question which is one of public or great general interest.

Respectfully submitted,

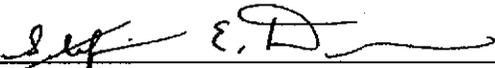


Stefanie E. Deller
Neema M. Bell

COUNSEL FOR APPELLANT,
BENEFICIAL OHIO, INC.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **Notice of Appeal of Appellant Beneficial Ohio, Inc.** was served by ordinary United States mail upon Randil J. Rudloff, Esq., Guarnieri & Secrest, P.L.L., 151 East Market Street, P.O. Box 4270, Warren, Ohio 44482, counsel for Appellants, this 7th day of August, 2007.



Stefanie E. Deller
Neema M. Bell

Attorneys for Plaintiff-Appellee

STATE OF OHIO)
)SS.
COUNTY OF TRUMBULL)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

BENEFICIAL OHIO, INC.,

Plaintiff-Appellee,

- vs -

DALE S. ELLIS, et al.,

Defendants,

ROBERT W. ELLIS, et al.,

New Party Defendants-Appellants.

JUDGMENT ENTRY

CASE NO. 2006-T-0040

FILED
COURT OF APPEALS

JUN 25 2007

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

For the reasons stated in the Opinion of this court, the sole assignment of error is with merit. The order of this court is that the judgment of the Trumbull County Court of Common Pleas, granting summary judgment in favor of appellee, is reversed, and judgment is hereby entered in favor of appellants.



JUDGE DIANE V. GRENDALL

COLLEEN MARY O'TOOLE, J., concurs,

WILLIAM M. O'NEILL, J., dissents with a Dissenting Opinion.

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO

FILED
COURT OF APPEALS

JUN 25 2007

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

BENEFICIAL OHIO, INC., : OPINION
Plaintiff-Appellee, :
- vs - : CASE NO. 2006-T-0040
DALE S. ELLIS, et al., :
Defendants, :
ROBERT W. ELLIS, et al., :
New Party Defendants-Appellants. :

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 04 CV 267.

Judgment: Reversed and judgment entered in favor of appellants.

Stefanie E. Deller and Neema M. Bell, Shumaker, Loop & Kendrick, L.L.P., North Courthouse Square, 1000 Jackson Street, Toledo, OH 43624 (For Plaintiff-Appellee).

Randil J. Rudloff, Guarnieri & Secrest, P.L.L., 151 East Market Street, P.O. Box 4270, Warren, OH 44482 (For Defendants-Appellants).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellants, Randil J. Rudloff, as executor of the estate of Edna M. Jarman, Robert W. Ellis, and Sandra Lee Ellis appeal the decision of the Trumbull County Court of Common Pleas, granting summary judgment in favor of plaintiff-appellee, Beneficial Ohio, Inc., in a foreclosure action. For the following reasons, we reverse the decision of the court below.

{¶2} On December 30, 1998, Jarman executed and delivered to her son, Dale S. Ellis, a quit claim deed, which conveyed to him lots 54, 55, 56, 57, 58, and 61 of the Ira B. Mackey plat in Vienna Township, Trumbull County, Ohio. Dale duly recorded the deed with the Trumbull County Recorder.

{¶3} On May 29, 2001, Jarman filed a civil action against Dale, seeking to set aside her previous conveyance of lots 54, 55, 56, 57, and 58 to Dale on the basis of fraud. Bank One, N.A., which held a mortgage on the contested parcels, was also named as a defendant.

{¶4} On June 4, 2001, Bank One was served with a copy of Jarman's complaint to set aside the December 1998 conveyances.

{¶5} On July 24, 2001, Beneficial entered into loan agreements with Dale for \$64,699.43 and \$10,000, secured by mortgages on the contested parcels. These mortgages were duly recorded on July 25, 2001.

{¶6} On July 26, 2001, Dale was served with a copy of Jarman's complaint to set aside the December 1998 conveyances.

{¶7} On October 26, 2001, a default judgment was entered in Jarman's suit against Dale and Bank One, setting aside the conveyance of lots 54, 55, 56, 57, and 58 to Dale and restoring ownership of them to Jarman. A certified copy of the October 26, 2001 judgment entry was duly recorded on November 6, 2001.

{¶8} Jarman died on September 21, 2003, and was survived by her children, Dale, Robert, and Sandra. On October 27, 2003, Rudloff was appointed executor of the estate.

{¶9} On February 4, 2004, Beneficial filed the present foreclosure action. The trial court ultimately entered a default judgment against Dale, finding the mortgages in default and Beneficial entitled to foreclose.

{¶10} On July 19, 2004, Beneficial moved for summary judgment on the issue of the validity and priority of its liens on the subject property over the interest of Jarman's estate. Appellants opposed Beneficial's motion on the grounds that the doctrine of lis pendens, as codified as R.C. 2703.26, applies to defeat the priority of Beneficial's liens and bar Beneficial from claiming an interest in the subject property. On these grounds, appellants also moved for summary judgment

{¶11} On February 16, 2006, the trial court entered judgment in favor of Beneficial, on the ground that "the lis pendens doctrine does not apply to invalidate a lien until the defendant from whom the lien holder acquired his interest in property receives service of process in an action. Since Beneficial's mortgage on the Property was recorded one day before Defendant, Dale Ellis received service of process in the *Jarman v. Ellis* case, lis pendens did not attach to Beneficial's lien." The trial court further ordered the appellants' redemption equity foreclosed and the subject property to be sold.

{¶12} Rudloff, Robert, and Sandra timely appeal and raise the following assignment of error: "The trial court committed reversible error in granting appellee's motions for summary judgment."

{¶13} "The doctrine of *lis pendens* has long been established and recognized as the general law of the land upon the broad public policy of maintaining the status quo of rights and interests in property involved in litigation, not only as between the parties thereto but as to third parties having conflicting interests, until the action pending has

been finally adjudicated." *Cook v. Mozer* (1923), 108 Ohio St. 30, at paragraph one of the syllabus; *Katz v. Banning* (1992), 84 Ohio App.3d 543, 549 (citation omitted). The origin of the doctrine is in equity and, thus, equitable principles apply in its application. *Katz*, 84 Ohio App.3d at 550.

{¶14} "The general rule is that one not a party to a suit is not affected by the judgment. The exception is that one who acquires an interest in property which is at that time involved in litigation in a court having jurisdiction of the subject-matter and of the person of the one from whom the interests are acquired, from a party to the proceeding, takes subject to the judgment or decree, and is as conclusively bound by the result of the litigation as if he had been a party thereto from the outset. This is so irrespective of whether he has been made a party to the proceeding, or had actual notice of the pendency of the proceeding, and even where there was no possibility of his having had notice of the pendency of the litigation. It is immaterial that a purchaser was a *bona fide* purchaser and for a valuable consideration. While there is no doubt whether *lis pendens* has the effect of constructive notice, it is almost universally held that strictly speaking the doctrine of *lis pendens* is not founded upon notice but upon reasons of public policy founded upon necessity. For practical purposes, however, it is immaterial whether the doctrine of *lis pendens* be considered as based on constructive notice or on public policy." *Cook*, 108 Ohio St. at 36-37 (citation omitted).

{¶15} The doctrine has been codified as follows: "When summons has been served or publication made, the action is pending so as to charge third persons with notice of its pendency. While pending, no interest can be acquired by third persons in the subject of the action, as against the plaintiff's title." R.C. 2703.26 (former G.C. 11300 and R.S. 5052 and 5055).

{¶16} The issue before us is whether the doctrine of lis pendens applied to Jarman's action to recover the properties fraudulently conveyed to Dale, in particular, whether "summons ha[d] been served" in that action, as required by the statute, so as to charge Beneficial with pendency of the action at the time it acquired its interest from Dale.

{¶17} As described above, Jarman's action was brought against Dale and Bank One. Beneficial acquired its interest after the service of summons and the complaint on Bank One but before such service was effected on Dale. Thus, the narrow question is whether service of summons on one defendant is sufficient to invoke the doctrine, or whether it is necessary that the particular defendant from whom the third party acquires its interest must have been served before the doctrine applies.

{¶18} We hold that service upon any defendant is sufficient to invoke the doctrine of lis pendens. We note that R.C. 2703.26 is silent regarding who must be served for the action to be deemed pending. Accordingly, it was not necessary for Jarman to serve any particular defendant in order to gain the protection afforded by the doctrine. This construal of the statute is consistent with Ohio Civil Rule 3(A), which provides that "[a] civil action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant." In the prior litigation, service was obtained upon a named defendant, Bank One, within one year from the filing of the complaint. Under R.C. 2703.26 and Civ.R. 3(A), at the time Beneficial acquired its interest, an action involving the subject property was pending.

{¶19} Beneficial argued, and the lower court ruled, that it was necessary that Dale be served with summons before its interest could be subject to Jarman's. Beneficial relies upon the Ohio Supreme Court's decision in *Cook*, which states "it is

essential to the existence of a valid and effective *lis pendens* that three elements be present: (1) The property must be of a character to be subject to the rule; (2) the court must have jurisdiction both of the person and the *res*; and (3) the property or *res* involved must be sufficiently described in the pleadings. It may be added that the litigation must be about some specific thing that must be necessarily affected by the termination of the suit." *Cook*, 108 Ohio St. at 37.

{¶20} Although this language has been quoted in subsequent appellate decisions, the necessity of acquiring jurisdiction over a particular defendant was not specifically addressed or argued in those decisions. Cf. *Pease Co. v. Huntington Natl. Bank* (1985), 24 Ohio App.3d 227, 230 (indicating that service upon "a defendant" would be sufficient to invoke the doctrine) (emphasis added).

{¶21} The requirement that the court has jurisdiction over a particular defendant before the doctrine will apply to the acquisition of interests from that defendant does not serve the "sound and wholesome" purpose of the doctrine, i.e. "preserving the *status quo* of all conflicting rights and interests in the property in question until there is a final adjudication of the issues raised in the pending suit." *Cook*, 108 Ohio St. at 39.

{¶22} As noted above, this purpose is both practical and equitable. There is no practical benefit in effecting service upon a particular defendant in a lawsuit before the doctrine will apply. In terms of providing notice, the pendency of Jarman's suit to set aside the conveyance to Dale was equally discoverable before the actual service of summons upon Dale as afterwards. However, as the Ohio Supreme Court has observed, the doctrine is not founded upon notice, but upon public policy. *Cook*, 108 Ohio St. at 36-37.

{¶23} Beneficial argues that the effects of allowing lis pendens to apply when any party to an action involving particular property is served with process would be disastrous. For example, Beneficial maintains that a property owner and third-party purchaser could never be certain if the owner is transferring a valid legal interest in property, since the property could be the subject of litigation of which the owner is unaware. Jarman's suit against Ellis and Bank One, however, was a matter of public record. What is important is that the subject property be properly identified in the public record and that the court be authorized to exercise jurisdiction over the property. These two essentials are met upon service of process upon any defendant. Cf. *American Land Co. v. Zeiss* (1911), 219 U.S. 47, 68 (discussing relationship between lis pendens and due process: where "the proceedings and judgment [are] in the nature of proceedings in rem, *** it should be immaterial that the ownership of the lands might be incorrectly alleged in the proceedings").

{¶24} Our position is consistent with that of other jurisdictions. Contrary to the position stated in Beneficial's appellate brief, New York does not require service upon all defendants or any particular defendant before the doctrine of lis pendens will apply. See *Merchants Bank of New York v. Rosenberg* (2006), 818 N.Y.S.2d 565, 566; also *Micheli Contracting Corp. v. Fairwood Assoc.* (1979), 423 N.Y.S.2d 533, 534-535 ("[s]ervice upon one defendant is sufficient to preserve a notice of pendency in a multidefendant situation"). Likewise, the Supreme Court of Washington has held "that personal service of the summons and complaint upon *** a named defendant *** was a sufficient compliance with the [lis pendens] statute." *Kritzer v. Collier* (Wa.1947), 183 P.2d 195, 200.

{¶25} For the foregoing reasons, appellants' sole assignment of error has merit.

The trial court erred in concluding that service of summons upon Dale was necessary before *lis pendens* would apply to acquisition of Beneficial's interest in the property. The judgment of the Trumbull County Court of Common Pleas, granting summary judgment in favor of Beneficial Ohio, Inc. is reversed and judgment is entered in favor of appellants.

COLLEEN MARY O'TOOLE, J., concurs,

WILLIAM M. O'NEILL, J., dissents with a Dissenting Opinion.

WILLIAM M. O'NEILL, J., dissenting.

{¶26} The central question in this matter is whether the doctrine of *lis pendens* was applicable to protect Edna Jarman's interest in the unimproved lots from Beneficial's mortgage interest.

{¶27} The following elements are required to invoke the doctrine of *lis pendens*:

{¶28} “(1) The property must be of a character to be subject to the rule; (2) the court must have jurisdiction both of the person and the *res*; and (3) the property or *res* involved must be sufficiently described in the pleadings. It may be added that the litigation must be about some specific thing that must be necessarily affected by the termination of the suit.”¹

1. *Third Fed. S. & L. Assn. of Cleveland v. Hayward* (Aug. 19, 1998), 9th Dist. No. 18561, 1998 Ohio App. LEXIS 3765, at *13, quoting *Cook v. Mozer* (1923), 108 Ohio St. 30, 37.

{¶29} In addition, Ohio's lis pendens statute provides:

{¶30} "When summons has been served or publication made, the action is pending so as to charge third persons with notice of its pendency. While pending, no interest can be acquired by third persons in the subject of the action, as against the plaintiff's title."²

{¶31} The problem with the language of this statute is that it is ambiguous. Specifically, "summons" is referred to in the singular. Apparently, the drafters of the statute did not anticipate a situation such as this, where there are multiple defendants and, thus, multiple summons.

{¶32} Further, the statute does not specify which defendant needs to be served in order for the action to be "pending." If the statute is construed to mean any defendant, as appellants and the majority assert, then the doctrine of lis pendens would protect Edna Jarman's interest in the unimproved lots. This is because service of the summons on Bank One occurred prior to the filing of the mortgage document signed by Dale Ellis in favor of Beneficial.

{¶33} However, if the statute is interpreted to require service upon the defendant, in this case Dale Ellis, from whom the property interest is acquired, which the trial court found and Beneficial argues, then the doctrine of lis pendens would not preclude Beneficial's interest in the unimproved lots. This is because the mortgage interest was given to Beneficial prior to Dale Ellis being served with a summons.

{¶34} In determining that lis pendens did not apply to this matter, the trial court relied on the case of *Cook v. Mozer*, wherein the Supreme Court of Ohio held:

2. R.C. 2703.26.

{¶35} “The general rule is that one not a party to a suit is not affected by the judgment. The exception is that one who acquires an interest in property which is at that time involved in litigation in a court having jurisdiction of the subject-matter and of the person of the one from whom the interests are acquired, *from a party to the proceeding*, takes subject to the judgment or decree, and is as conclusively bound by the result of the litigation as if he had been a party thereto from the outset.”³

{¶36} Since the third party must acquire the interest from a “party to the proceeding,” a summons must have been served upon that individual. This is because a summons is the way a defendant becomes aware of an action against him.⁴ Dale Ellis did not become a “party to the proceeding” until one day after Beneficial acquired its mortgage interest.

{¶37} I agree with the trial court’s conclusion that the date of service of the summons refers to the date the defendant who conveyed the property interest to the third party was served. This conclusion is supported by the Eighth Appellate District’s decision in *First Bank Natl. Assn. v. 10546 Euclid Ave., Inc.*, where the court held: “Cleveland, a lienholder named as a defendant, was also served but *lis pendens* requires service on the party from whom plaintiff acquired its title.”⁵⁶

{¶38} In support of their argument that *lis pendens* applies upon service of a summons to any defendant in an action, appellants cite *Pease Co. v. Huntington Natl. Bank*, wherein the Tenth Appellate District held that *lis pendens* did not apply to defeat a security interest in a property when the interest was secured four days before service

³ (Citation omitted and emphasis added.) *Cook v. Mozer*, 108 Ohio St. at 36.

⁴ Civ.R. 4(A).

⁵ *Cook v. Mozer*, *supra*.

⁶ *First Bank Natl. Assn. v. 10546 Euclid Ave., Inc.* (June 29, 1989), 8th Dist. Nos. 55426, 55427, 55428, 55429, & 55430, 1989 Ohio App. LEXIS 2674, at *6, fn. 6.

of the summons.⁷ The court noted that the mortgage attached "prior to service upon any defendant[.]"⁸ However, the court did not specifically address whether service upon any defendant would have invoked *lis pendens*. The court merely noted that *none* of the defendants in that matter were served at the time the interest in the property was secured.

{¶39} I recognize that the ultimate purpose of *lis pendens* does not concern notice, but rather public policy:

{¶40} "While there is no doubt whether *lis pendens* has the effect of constructive notice, it is almost universally held that strictly speaking the doctrine of *lis pendens* is not founded upon notice but upon reasons of public policy founded upon necessity."⁹

{¶41} However, while notice may not be the ultimate purpose of *lis pendens*, it remains a critical element of the doctrine, as the statute itself speaks of notice to third parties.¹⁰ Perhaps the language in R.C. 2703.26 is outdated. With computer technology, it is possible to determine almost instantaneously whether a complaint has been filed against an individual. However, as currently written, the date the complaint is filed is not the predicate act for *lis pendens* to operate.¹¹ In *Pease Co. v. Huntington Natl. Bank*, the Tenth Appellate District noted that an action is "commenced" when a complaint is filed, but it is not "pending," as required by R.C. 2703.26, until a summons has been served.¹² As I interpret that statute, an action cannot be "pending" against an individual until he or she has been served with a summons. If the statute needs to be

7. *Pease Co. v. Huntington Natl. Bank*. (1985), 24 Ohio App.3d 227, 230.

8. *Id.*

9. (Citation omitted.) *Cook v. Mozer*, 108 Ohio St. at 37.

10. R.C. 2703.26.

11. See *Pease Co. v. Huntington Natl. Bank.*, 24 Ohio App.3d at 230.

12. *Id.*

rewritten to align it with our electronic era, then such is the responsibility of the Ohio General Assembly.

{¶42} Therefore, as applied to this matter, the initial lawsuit was not “pending” against Dale Ellis until his receipt of a summons on July 26, 2001. Since Beneficial’s mortgage was filed on July 25, 2001, prior to the case being pending against Dale Ellis, the doctrine of lis pendens does not apply to this matter.

{¶43} This position is consistent with the Third Appellate District’s analysis of a lis pendens issue. In *RMW Ventures, L.L.C. v. Stover Family Invest., L.L.C.*, the plaintiff filed petitions for appropriation against four defendants.¹³ One of the defendants transferred its property to the city after the action was commenced, but prior to that defendant being properly served with a summons.¹⁴ The Third District’s analysis only concerned the date of service of summons to the defendant who transferred the property.¹⁵ It did not address when service was perfected on the other defendants.¹⁶ The court held that since the summons was not served on the defendant who transferred the property to the city prior to the date of service, the doctrine of lis pendens did not apply.¹⁷

{¶44} The judgment of the trial court should be affirmed.

13. *RMW Ventures, L.L.C. v. Stover Family Invest., L.L.C.*, 161 Ohio App.3d 819, 2005-Ohio-3226.

14. *Id.* at ¶10.

15. *Id.* at ¶9-11.

16. *Id.*

17. *Id.* at ¶11.

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

BENEFICIAL OHIO INC.)	CASE NO. 04CV267
)	
Plaintiff)	
)	
-vs-)	JUDGE PETER J. KONTOS
)	
DALE S. ELLIS, et al)	
)	
Defendants)	<u>JUDGMENT ENTRY</u>

This matter is before the Court on Plaintiff, Beneficial Ohio Inc.'s ("Beneficial") Motion to Request Immediate Ruling on Plaintiff's Brief on the Legal Insignificance of Actual and Constructive Notice to the Lis Pendens Doctrine. Due to the long and complex history of this case, a discussion of the facts and procedural posture of this case is necessary.

The Court finds that on or about December 30, 1998, Edna M. Jarman, who has since died, executed and delivered to her son, Dale S. Ellis, a Quit Claim Deed, which conveyed to him lots 54, 55, 56, 57, 58 and 61 of the Ira B. Mackey plat in Vienna Township, Trumbull County, Ohio (the "Property"). The Quit Claim Deed was duly recorded and appears in the records of the Office of the Trumbull County Recorder.

The Court further finds that on or about May 29, 2001, over two years after the completion of the transfer of the six lots to her son, Edna M. Jarman filed a civil action against him. Through that suit Ms. Jarman sought to set aside the aforementioned Quit Claim Deed on the basis of fraud. Beneficial, however, was not named a party to the action.

The Court further finds that on or about July 24, 2001, Beneficial entered into certain loan

agreements with Defendant, Dale S. Ellis, whereby Beneficial agreed to loan to Defendant, Dale S. Ellis, the sum of \$64,699.43 and \$10,000.00. To secure payment of the loans, Defendant, Dale S. Ellis, executed and delivered to Beneficial two mortgages (the "Mortgages"), conveying to Beneficial the aforementioned Property. On or about July 25, 2001, the Mortgages were also recorded in the Office of Trumbull County Recorder as instrument number 200107250028077 and instrument number 200107250028078, respectively.

The Court further finds that, on July 26, 2001, Dale S. Ellis was served with a copy of Edna M. Jarman's complaint. Thereafter, on November 6, 2001, the Court in the *Jarman v. Ellis* suit entered a default judgment against Defendant, Dale S. Ellis, and in favor of Edna M. Jarman. The default judgment returned ownership of lots 54, 55, 56, 57 and 58 to Edna M. Jarman.

Beneficial filed the present foreclosure action with this Court on February 3, 2004. The Court finds that Defendant, Dale S. Ellis was served with a copy of the summons and complaint by certified mail on February 10, 2004, and such service is hereby approved. The Court further finds that Defendant, Dale S. Ellis is in default for answer or appearance to Beneficial's complaint and that by reason of such default the allegations of the complaint are confessed by Defendant, Dale S. Ellis to be true.

The Court finds further that Beneficial's Mortgages were upon the conditions described in the complaint; that said conditions have been broken; that the Mortgages are in default, and that Beneficial is entitled to have the same foreclosed.

Beneficial has represented that on May 30, 2002, Defendant, Dale S. Ellis, filed a voluntary petition for relief of his debts under Chapter 7 of Title 11 of the United States Code, 11 U.S.C. Section 101-1330, as amended (the "Bankruptcy Code"). Beneficial also represented that on October 17, 2002, Defendant, Dale S. Ellis, was granted a discharge under Chapter 7 of the

Bankruptcy Code. The Court accepts such findings.

The Court further finds that Beneficial is entitled to judgment in the amount owed under the note, as described in the complaint. The proceeds from the sale of the property shall be applied to satisfy the judgment. In the event that the sale proceeds are insufficient to satisfy the entire balance of the judgment, however, Plaintiff is not entitled to and may not seek to recover the deficiency from Defendant, Dale S. Ellis, personally.

Regarding the other defendants in this case, the Court further finds that the Trumbull County Treasurer filed an answer to Beneficial's complaint on February 13, 2004, and Defendant, Randil Rudloff, Executor of the Estate of Edna Jarman filed an answer, counterclaim and cross-claim on March 5, 2004. Beneficial filed an answer to the counterclaim on March 31, 2004. Defendant, Estate of Edna Jarman filed a Motion for Default Judgment against Defendant, Dale Ellis on May 24, 2004. Beneficial filed a Motion for Default Judgment on June 14, 2004. Beneficial also filed a Motion for Judgment on the Pleadings with respect to Defendant, Estate of Edna Jarman's counterclaim on June 4, 2004. Defendant, Estate of Edna Jarman subsequently dismissed the counterclaim against Beneficial; therefore, Beneficial's Motion for Judgment on the Pleadings is now moot.

On July 19, 2004, Beneficial filed a Motion for Summary Judgment against Defendant, Estate of Edna Jarman on the issue of the validity and priority of Beneficial's lien. The Defendant, Estate argued that since Beneficial's lien was recorded after Edna Jarman's suit against Defendant, Dale Ellis was filed, that lien was invalid under the doctrine of lis pendens. Beneficial claimed that is held a valid first and best lien on the Property because that lien was recorded prior to Defendant, Dale Ellis receiving service of process in the Jarman suit.

Before the Court could rule on Beneficial's Motion for Summary Judgment, Beneficial

moved to add Robert Ellis and Sandra L. Ellis as Defendants in this case because of their interest in the Property as heirs of the Estate of Edna Jarman. Beneficial's motion was granted on August 20, 2004. The new party Defendants were served with process and filed answers to the Supplemental Complaint. Beneficial then filed a Motion for Summary Judgment against the New Party Defendants on November 22, 2004. This Motion for Summary Judgment dealt with the same issue as the Motion for Summary Judgment filed against Defendant, Estate of Edna Jarman. These Motions for Summary Judgment are before the Court for decision today.

After numerous requests for extension of time, Defendants filed their own Motion for Summary Judgment and Memorandum Contra Motion for Summary Judgment on February 18, 2005. On May 24, 2005, the Court held a status/telephone conference with the parties. At that time, the Court denied Defendant's Motion for Summary Judgment and granted Beneficial's Motion for Summary Judgment in part. At that time, the Court requested that the parties brief the issue of whether there are any legal consequences if Beneficial is alleged to have actual or constructive notice of Edna Jarman's fraudulent conveyance action against Defendant, Dale Ellis. The Court set a briefing schedule to assist the parties.

Beneficial's Brief on Legal Insignificance of Actual and Constructive Notice to the Doctrine of Lis Pendens was filed on July 20, 2005, in compliance with the Court's briefing schedule. Defendants failed to take any depositions or file a brief. Instead, on August 12, 2005, Defendants filed a motion requesting an extension of time to complete the briefing schedule. The Court granted this motion and entered an order for a second briefing schedule. Once again, Defendants failed to complete depositions or file a brief. Defendants requested another extension of time on November 14, 2005, which the Court granted on November 28, 2005. This Order set a third briefing schedule, which provided that Defendants file their brief on or before January 31, 2006. When the

Defendants failed to file a brief as required by the briefing schedule, Beneficial filed a motion for immediate ruling on Plaintiff's brief. In granting Beneficial's request, the Court files this judgment entry.

The Court has reviewed the Motions for Summary Judgment filed by Beneficial and Defendants, as well as the memorandum in opposition to the motions for summary judgment filed by the parties. In addition, the Court has also considered Beneficial's Brief on Legal Insignificance of Actual and Constructive Notice to the Doctrine of Lis Pendens, which brief has not been responded to. After reviewing the briefs and authority submitted by the parties, the Court holds that, under the authority of *Cook v. Mozer*, 108 Ohio St. 30(1923), the lis pendens doctrine does not apply to invalidate a lien until the defendant from whom the lien holder acquired his interest in property receives service of process in an action. Since Beneficial's mortgage on the Property was recorded one day before Defendant, Dale Ellis received service of process in the *Jarman v. Ellis* case, lis pendens did not attach to Beneficial's lien. Beneficial's lien is, therefore, a good and valid first lien on the Property, with the exception of amounts due for real estate taxes and assessments.

The Court further holds that whether Beneficial has actual or constructive notice of the *Jarmon v. Ellis* action is irrelevant as regards the validity of Beneficial's lien on the Property. Ohio Revised Code Section 2703.26 and *Cook v. Mozer* hold that lis pendens does not attach to invalidate a lien unless and until the defendant property owner is served with process. There is no requirement either in the statute or in case law that the third party lien holder have no knowledge of the existence of a lawsuit involving the property. As long as the lien was properly acquired and recorded prior to the defendant property owner receiving service of process, the doctrine of lis pendens will not attach. Any argument that actual or constructive notice of a lawsuit does have legal significance where lis pendens has not attached nullifies the timing requirements set by Ohio

Revised Code Section 2703.26 and would shift the attachment of lis pendens from service on the defendant property owner to mere filing of a suit. Neither the Ohio Revised Code nor Ohio case law supports such an interpretation. Therefore, since lis pendens has not attached in this case to invalidate Beneficial's lien, whether Beneficial had actual or constructive notice of the *Jarman v. Ellis* suit is irrelevant.

Therefore, it is ORDERED, ADJUDGED and DECREED that, for the reasons stated above, Plaintiff, Beneficial Ohio Inc.'s Motion for Summary Judgment, Motion for Summary Judgment against New Party Defendants and Motion for Default Judgment are granted. Defendants' Motion for Summary Judgment is denied.

It is further ORDERED, ADJUDGED and DECREED that Plaintiff is entitled to the amount of Sixty-six Thousand One Hundred Ninety One and 12/100 Dollars (\$66,191.12), plus accruing interest at the daily rate of \$19.13, plus the cost of the Preliminary Judicial Report, the real estate appraisal and court costs.

It is further ORDERED, ADJUDGED and DECREED that no judgment has been sought nor has been obtained against Defendant, Dale S. Ellis, personally.

It is further ORDERED, ADJUDGED and DECREED that the Defendants' equity of redemption in the mortgaged premises, as described in the complaint shall forever be foreclosed, and that an Order of Sale be issued to the Sheriff of Trumbull County, Ohio, directing him to appraise, advertise and sell such premises upon execution and to report his proceedings to this Court for further order.

It is further ORDERED, ADJUDGED and DECREED that said Sheriff, upon confirmation of said sale, pay the proceeds of said sale to the Clerk of Courts for distribution upon further Order of this Court.

It is further ORDERED, ADJUDGED and DECREED that Plaintiff is not entitled to and may not seek to recover and deficient amounts remaining after the sale of the mortgaged premises from Defendant, Dale S. Ellis, personally.

Date: February 15, 2006



Judge Peter J. Kontos

cc: N.M. Bell
R.J. Rudloff
J.C. Earnhart
D.S. Ellis

MARIE HEAVINE ALLEN
CLERK OF COURTS
TRUMBULL COUNTY

TRUMBULL COUNTY
CLERK OF COURTS
2006 FEB 16 P 2:45

➔2703.26 Lis pendens in general

When summons has been served or publication made, the action is pending so as to charge third person with notice of its pendency. While pending, no interest can be acquired by third persons in the subject of the action, as against the plaintiff's title.

(1953 H 1, eff. 10-1-53; GC 11300)