

IN THE SUPREME COURT OF OHIO

In re:	:	Case No. 2014-2036
	:	
Daren A. Messer and Angela Messer	:	
	:	
Petitioners	:	On Order of Certifications and Questions
	:	of State Law
v.	:	
	:	
JP Morgan Chase Bank NA	:	United States Bankruptcy Court for the
	:	Southern District of Ohio, Case No. 13-
	:	57467, Adversary Proceeding No. 13-2448
Respondent	:	

MOTION OF PETITIONERS DAREN A. MESSER AND ANGELA MESSER TO AVOID DISMISSAL FOR WANT OF PROSECUTION

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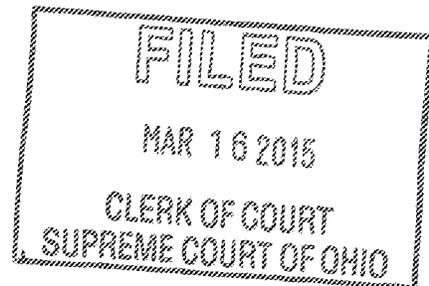
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I. MOTION

Now come Petitioners Daren A. Messer and Angela Messer (collectively “Petitioners”), by and through their counsel, and hereby respectfully request this Court to not dismiss the certified questions presented in the case *sub judice* and accept their “Merit Brief of Petitioners Daren A. Messer and Angela Messer” (“Merit Brief”) attached hereto as Exhibit “A” for filing.

Counsel for Respondent has indicated that she does not have any objection to the filing of Petitioners’ Merit Brief.

II. INTRODUCTION AND FACTUAL AND PROCEDURAL HISTORY

On September 19, 2013, Petitioners filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Ohio, which petition was assigned Case Number 13-57467. On December 20, 2013, Petitioners filed a “Complaint to Determine Validity and Extent of Lien, to Avoid the Mortgage Lien, to Recover Money Judgment and to Disallow Claim” (“Complaint”) against Respondent JP Morgan Chase Bank NA (“Respondent”) in the United States Bankruptcy Court for the Southern District of Ohio, thereby commencing an adversary proceeding captioned *Daren A. Messer, et al. v. JP Morgan Chase Bank NA* and assigned Case Number 13-2448.

The crux of Petitioner’s Complaint involves a mortgage that Respondent holds on Petitioners’ residence located at 359 West Waterloo Street, Canal Winchester, Ohio 43110. The Mortgage was signed by Petitioner Angela L. Messer individually and as attorney-in-fact for Petitioner Daren A. Messer. The Mortgage, however, was not acknowledged by Petitioners before a notary public that certified the acknowledgement and subscribed his or her name to the certificate of the acknowledgement as required by Ohio law. Thus, Petitioners sought to exercise derivative standing on behalf of the Chapter 13 Trustee and avoid the mortgage by

virtue of the Chapter 13 Trustee's avoidance powers (a) as a judicial lien creditor pursuant to 11 U.S.C. § 544(a)(1) and (b) as a bona fide purchaser pursuant to 11 U.S.C. § 544(a)(3).

On March 14, 2014, Respondent filed its "Motion of JP Morgan Chase Bank NA to Dismiss and/or for Judgment on the Pleadings" ("Motion"). That Motion was briefed and a hearing was conducted before the United States Bankruptcy Court. Thereafter, on September 26, 2014, this Court rendered its "Scheduling Order Directing the Submission of Memoranda and Setting Hearing Date Regarding Certified Question to the Supreme Court of Ohio" ("Scheduling Order"). The Scheduling Order directed the parties to file briefs as to whether this Court should certify to the Supreme Court of Ohio the question of its interpretation of Ohio Revised Code § 1301.401.

On November 21, 2014, an "Order of Certification to the Supreme Court of Ohio" ("Certification Order") was rendered *sua sponte* by the United States Bankruptcy Court. The Certification Order certified two questions to this Court for review:

Certified Question Number 1: Does O.R.C. § 1301.401 apply to all recorded mortgages in Ohio?

Certified Question Number 2: Does O.R.C. § 1301.401 act to provide constructive notice to the world of a recorded mortgage that was deficiently executed under O.R.C. § 5301.01?

This Court rendered an Entry ("Entry") dated January 28, 2015 agreeing to answer the foregoing questions. According to the Entry, Petitioners had up through and including March 9, 2015 within which to file their Merit Brief.

III. REQUESTED RELIEF

As mentioned in the preceding section of this motion, Petitioners were required to file their Merit Brief on or before March 9, 2015. Unfortunately, counsel for Petitioners

misdocketed the date by which the Merit Brief was due. As a result, Petitioners did not file their Merit Brief on or before that date.

Petitioners respectfully request that this Court accept their Merit Brief and not dismiss the certified questions presented to this Court. Dismissal of the certified questions is discretionary, and not mandatory, under S.Ct.Prac.R. 16.07(A). The misdocketing of the date by which to file Petitioners' Merit Brief was the result of excusable neglect and not the disregard of this Court's Entry. Counsel for Petitioners has procedures in place to receive and docket all matters requiring a response and the failure to properly docket the date by when to file Petitioners' Merit Brief was the result of inadvertence, mistake or a clerical error.

Petitioners represent that there will not be any harm to Respondent if the Merit Brief is accepted as Respondent's time within which to file its merit brief will be automatically extended pursuant to the Rules of Practice of the Supreme Court of Ohio. In fact, it is most likely favorable to Respondent for Petitioners' Merit Brief to be accepted because Respondent, as a financial institution, is likely to encounter similar situations in the future and would benefit by this Court's answer of the certified questions in this case and Respondent .

Finally, the acceptance of Petitioner's Merit Brief is in the interest of justice as the certified questions were presented by the United States Bankruptcy Court on its own initiative. Petitioners did not request that the certified questions be answered by this Court. Dismissing the certified questions because of a clerical mistake by counsel for Petitioners will result in the interest of the United States Bankruptcy Court not being served. In addition, the dismissal of the certified questions concerning O.R.C. § 1301.401 will have an impact in a substantial number of bankruptcy cases that are filed in Ohio and debtors, creditors, trustees and the bankruptcy courts will be aided by this Court rendering a decision on the certified questions presented in this case.

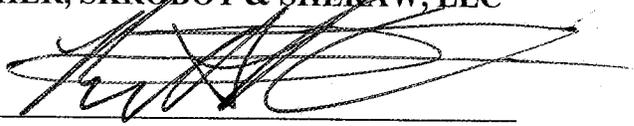
IV. CONCLUSION

In sum, and for the reasons set forth herein, Petitioners respectfully request that this Court exercise its authority under S.Ct.Prac.R. 16.07(A) and not dismiss the certified questions presented in the case *sub judice*. Petitioners also request that this Court accept their Merit Brief attached hereto as Exhibit "A" for filing. By doing so, this Court will avoid an adverse impact upon the United States Bankruptcy Court and Respondent.

Respondent's counsel has indicated that we may inform this Court that she does not have an objection to the filing of Petitioners' Merit Brief.

Respectfully submitted,

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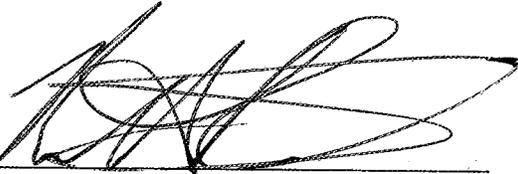
*Counsel for Petitioners Daren A. Messer and
Angela Messer*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing MOTION OF PETITIONERS DAREN A. MESSER AND ANGELA MESSER TO AVOID DISMISSAL FOR WANT OF PROSECUTION was served upon the following persons via ordinary U.S. Mail, postage prepaid from Columbus, Ohio, this 16th day of March, 2015:

Amelia A. Bower
Plunkett Cooney
300 East Broad Street, Suite 590
Columbus, Ohio 43215

By: _____



Brett R. Sheraw (0074130)
John C. Ridge (0086046)

EXHIBIT "A"

IN THE SUPREME COURT OF OHIO

In re: : Case No. 2014-2036
: :
Daren A. Messer and Angela Messer : :
: :
Petitioners : : On Order of Certifications and Questions
: : of State Law
v. : :
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JP Morgan Chase Bank NA : : United States Bankruptcy Court for the
: : Southern District of Ohio, Case No. 13-
: : 57467, Adversary Proceeding No. 13-2448
Respondent : :

MERIT BRIEF OF PETITIONERS DAREN A. MESSER AND ANGELA MESSER

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*Co-Counsel for Petitioners Daren A. Messer
and Angela Messer*

TABLE OF CONTENTS

TABLE OF AUTHORITIES _____	ii
STATEMENT OF THE FACTS _____	1
A. Procedural History _____	1
B. Relevant Facts _____	2
ARGUMENT	
<u>Proposition of Law No. I:</u>	
O.R.C. § 1301.401 does not apply to recorded mortgages in Ohio _____	3
<u>Proposition of Law No. I:</u>	
O.R.C. § 1301.401 does not act to provide constructive notice to the world of a recorded mortgage that was deficiently executed under O.R.C. § 5301.01 _____	5
CONCLUSION _____	7
PROOF OF SERVICE _____	8
APPENDIX	<u>Appx. Page</u>
Order of Certification to the Supreme Court of Ohio (Doc. No. 25) (November 21, 2014) _____	1
Entry (accepting certification) (January 28, 2015) _____	14
STATUTES:	
Ohio Rev. Code § 317.08 _____	15
Ohio Rev. Code § 1301.102 _____	18
Ohio Rev. Code § 1301.401 _____	19
Ohio Rev. Code § 5301.01 _____	20
Ohio Rev. Code § 5301.25 _____	21

TABLE OF AUTHORITIES

CASES

<i>First Federal Savings & Loan Assoc. of Toledo v. Perry's Landing, Inc.</i> (6 th Dist. 1983, 11 Ohio App. 3d 135 _____)	4
<i>Langmede v. Weaver</i> , 65 Ohio St. 17, 34 (1901) _____	7
<i>Mortgage Electronics Registration Systems v. Odita</i> , 159 Ohio App.3d 1 (10 th Dist. Ohio 2004) _____	6,7
<i>In re Nowak</i> (2004), Ohio St.3d 466, 2004-Ohio-6777 _____	5

STATUTES

Ohio Rev. Code § 317.08 _____	4
Ohio Rev. Code § 1301.102 _____	4
Ohio Rev. Code § 1301.401 _____	3,4,5,6,7
Ohio Rev. Code § 5301.01 _____	5,6,7
Ohio Rev. Code § 5301.25 _____	4,5,6

I. STATEMENT OF FACTS

A. Procedural History

On September 19, 2013, Petitioners Daren A. Messer and Angela Messer (collectively “Petitioners”) filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Ohio, which petition was assigned Case Number 13-57467. On December 20, 2013, Petitioners filed a “Complaint to Determine Validity and Extent of Lien, to Avoid the Mortgage Lien, to Recover Money Judgment and to Disallow Claim” (“Complaint”) against Respondent JP Morgan Chase Bank NA (“Respondent”) in the United States Bankruptcy Court for the Southern District of Ohio, thereby commencing an adversary proceeding captioned *Daren A. Messer, et al. v. JP Morgan Chase Bank NA* and assigned Case Number 13-2448.

The crux of Petitioner’s Complaint involves a mortgage that Respondent holds on Petitioners’ residence located at 359 West Waterloo Street, Canal Winchester, Ohio 43110. The Mortgage was signed by Petitioner Angela L. Messer individually and as attorney-in-fact for Petitioner Daren A. Messer. The Mortgage, however, was not acknowledged by Petitioners before a notary public that certified the acknowledgement and subscribed his or her name to the certificate of the acknowledgement as required by Ohio law. Thus, Petitioners sought to exercise derivative standing on behalf of the Chapter 13 Trustee and avoid the mortgage by virtue of the Chapter 13 Trustee’s avoidance powers (a) as a judicial lien creditor pursuant to 11 U.S.C. § 544(a)(1) and (b) as a bona fide purchaser pursuant to 11 U.S.C. § 544(a)(3).

On March 14, 2014, Respondent filed its “Motion of JP Morgan Chase Bank NA to Dismiss and/or for Judgment on the Pleadings” (“Motion”). That Motion was briefed and a hearing was conducted before the United States Bankruptcy Court. Thereafter, on September 26,

2014, this Court rendered its “Scheduling Order Directing the Submission of Memoranda and Setting Hearing Date Regarding Certified Question to the Supreme Court of Ohio” (“Scheduling Order”). The Scheduling Order directed the parties to file briefs as to whether this Court should certify to the Supreme Court of Ohio the question of its interpretation of Ohio Revised Code § 1301.401.

On November 21, 2014, an “Order of Certification to the Supreme Court of Ohio” (“Certification Order”) was rendered by the United States Bankruptcy Court. The Certification Order certified two questions to this Court for review and this Court accepted to answer the questions contained in the Certification order by Entry dated January 28, 2015

B. Relevant Facts

Petitioners are the joint owners of certain real property commonly known as 359 West Waterloo Street, Canal Winchester, Ohio 43110 (“Property”). (Complaint, ¶ 7) Petitioners obtained their interest in the Property by means of a General Warranty Deed dated November 26, 2007 and which was recorded in the Office of the Franklin County Recorder on December 4, 2007 as Instrument Number 200712040208185. (Complaint, ¶ 8 and Exhibit A)

On November 26, 2007, M/I Financial Corp. made a loan to Petitioners in the original principal amount of \$160,942.00, which loan was secured by a Mortgage (“Mortgage”) on the Property in favor of Mortgage Electronic Registration Systems, Inc. (“MERS”) as nominee for M/I Financial Corp. (Complaint, ¶ 10 and Exhibit C) The Mortgage was signed by Petitioner Angela L. Messer individually and as attorney-in-fact for Petitioner Daren A. Messer. (Complaint, ¶ 10 and Exhibit C) The Mortgage, however, was not acknowledged by Petitioners before a notary public that certified the acknowledgement and subscribed his or her name to the

certificate of the acknowledgement as required by Ohio law. (Complaint, ¶¶ 10 and 11 and Exhibit C)

On December 4, 2007, the Mortgage was filed in the Office of the Franklin County Recorder as Instrument Number 200712040208188. (Complaint, ¶ 11 and Exhibit C) MERS then assigned all of its interest in the Mortgage to Defendant on June 25, 2013 by virtue of an Assignment of Mortgage that was filed in the Office of the Franklin County Recorder on July 8, 2013 as Instrument Number 201307080113927 (Complaint, ¶¶ 10 and 11 and Exhibit C).

II. LAW AND ARGUMENT

Proposition of Law No. I

O.R.C. § 1301.401 does not apply to recorded mortgages in Ohio.

O.R.C. § 1301.401 became effective on March 27, 2013 and is part of Ohio's Uniform Commercial Code set forth in Chapters 1301 through 1310 of the Ohio Revised Code. The statute reads as follows:

- (A) For purposes of this section, "public record" means either of the following:
 - (1) Any document described or referred to in section 317.08 of the Revised Code;
 - (2) Any document the filing or recording of which is required or allowed under any provision of Chapter 1309. of the Revised Code.
- (B) The recording with any county recorder of any document described in division (A)(1) of this section or the filing or recording with the secretary of state of any document described in division (A)(2) of this section shall be constructive notice to the whole world of the existence and contents of either document as a public record and of any transaction referred to in that public record, including, but not limited to, any transfer, conveyance, or assignment reflected in that record.
- (C) Any person contesting the validity or effectiveness of any transaction referred to in a public record is considered to have discovered that public record and any transaction referred to in the record as of the time that the record was first filed with the secretary of state or tendered to a county recorder for recording.

Ohio Rev. Code § 1301.401.

Although O.R.C. § 317.08(A)(19) identifies mortgages among the multiple types of documents that shall be recorded with a county recorder, O.R.C. § 1301.401 is contained within Ohio's Uniform Commercial Code. The general provisions of the Uniform Commercial Code, such as those set forth in O.R.C. §§ 1301.101-310, apply to transactions to the extent that the transaction is governed by Chapters 1302 through 1310 of the Ohio Revised Code. *See* Ohio Rev. Code § 1301.102.

Like the other statutes contained within Chapter 1301 of the Ohio Revised Code, O.R.C. § 1301.401 is also a general provision of the Uniform Commercial Code. Although reference is not made to O.R.C. § 1301.401 as being applicable to a transaction to the extent that it is governed by those Chapters, it should be noted that the scope of Chapter 1301 as set forth in O.R.C. § 1301.102 preceded the enactment of O.R.C. § 1301.401. Furthermore, the Official Comment to O.R.C. § 1301.102 evidences an intention to limit such general provisions to transactions governed by the Uniform Commercial Code as it provides as follows:

This section is intended to resolve confusion that has occasionally arisen as to the applicability of the substantive rules in this article. This section makes clear what has always been the case – the rules in Article 1 apply to transactions to the extent that those transactions are governed by one of the other articles of the Uniform Commercial Code.

A mortgage is a contract and is governed by Ohio contract law. *See First Federal Savings & Loan Assoc. of Toledo v. Perry's Landing, Inc.* (6th Dist. 1983), 11 Ohio App. 3d 135, 143. The priority and validity of a mortgage is governed by Chapter 5301 of the Ohio Revised Code. There is no aspect of a mortgage that is governed by the Uniform Commercial Code.

Moreover, O.R.C. § 1301.401 is inconsistent with other sections of the Ohio Revised Code that govern mortgages. Specifically, it is inconsistent with O.R.C. § 5301.25(A), which

states that a mortgage that is not properly executed is fraudulent insofar as it relates to a “subsequent bona fide purchaser having, at the time of purchase, no knowledge of the existence of that former [mortgage].” Ohio Rev. Code § 5301.25(A). It is also inconsistent with O.R.C. § 5301.01(B), which provides for constructive notice only for a mortgage executed prior to February 1, 2002 that was “not acknowledged in the presence of, or was not attested by, two witnesses as required” prior to that date. Ohio Rev. Code § 5301.01(B). Clearly, if the Ohio legislature wished to create constructive notice for mortgages that were not properly executed as required by O.R.C. § 5301.01(A), the legislature would have amended that statute or another statute within Chapter 5301 of the Ohio Revised Code. The legislature did not do so, evidencing its clear intent that O.R.C. § 1301.401 was not intended to apply to any transactions other than those governed by Ohio’s Uniform Commercial Code.

The fact that the legislature did not intend for O.R.C. § 1301.401 to apply to mortgages is more compelling upon a review of the history of former O.R.C. § 5301.234, which provided constructive notice for recorded mortgages regardless of whether there was an actual or alleged defect in the witnessing or acknowledgment on the recorded mortgage. *See In re Nowak* (2004), Ohio St.3d 466, 469, 2004-Ohio-6777, ¶ 17. This Court ruled that former O.R.C. § 5301.234 was unconstitutional as having violated the one-subject rule of the Ohio Constitution. *See In re Nowak* (2004), Ohio St.3d 466, 469, 2004-Ohio-6777, ¶ 17. However, the location of former O.R.C. § 5301.234 demonstrates that statutes governing mortgages is properly contained within Chapter 5301 of the Ohio Revised Code. Thus, had the legislature intended for O.R.C. § 1301.401 to apply to mortgages, it would have certainly incorporated a similar statutory provision within Chapter 5301 of the Ohio Revised Code. It chose not to do so.

Proposition of Law No. II

O.R.C. § 1301.401 does not act to provide constructive notice to the world of a recorded mortgage that was deficiently executed under O.R.C. § 5301.01.

As mentioned in the previous section of this memorandum, mortgages are governed by Chapter 5301 of the Ohio Revised Code. O.R.C. § 5301.25(A) provides the effect of a recorded mortgage as upon third persons. That statute reads, in its entirety, as follows:

All deeds, land contracts referred to in division (a)(21) of section 317.08 of the Revised Code, and instruments of writing **properly executed** for the conveyance or encumbrance of lands, tenements, or hereditaments, other than as provided in division (C) of this section and section 5301.23 of the Revised Code, shall be so recorded in the office of the county recorder of the county in which the premises are situated. Until so recorded or filed for record, they are fraudulent insofar as they relate to a subsequent bona fide purchaser having, at the time of purchase, no knowledge of the existence of that former deed, land contract, or instrument.

Ohio Rev. Code § 5301.25(A) (emphasis added).

Based upon the foregoing statute, a mortgage does not provide constructive notice unless it is properly executed. In order to be properly executed, a mortgage must comply with the four requirements of O.R.C. § 5301.01. Those requirements are that the mortgage (1) must be signed by the mortgagors; (2) the signing of the mortgage must be acknowledged before a notary public; (3) the notary public must certify that acknowledgment; and (4) the notary public must subscribe his name to the certificate of acknowledgment. *See* Ohio Rev. Code § 5301.01. If a mortgage does not satisfy those four requirements, the mortgage is not entitled to be recorded and is treated as though it has not been recorded. *See Mortgage Electronics Registration Systems v. Odita*, 159 Ohio App.3d 1, 5 (10th Dist. Ohio 2004).

O.R.C. § 1301.401, if interpreted to provide constructive notice to the world of a recorded mortgage that was not properly executed as required by O.R.C. § 5301.01, would be entirely inconsistent with Chapter 5301 of the Ohio Revised Code. Chapter 5301 of the Ohio Revised Code is applicable to, and governs, mortgages. According to the plain language of the

statutes within that Chapter, a mortgage that is not properly executed is simply not entitled to record, and even if it is recorded, the defective mortgage is treated as though it has not been recorded. *See id.* As an unrecorded mortgage, it does not vest in the mortgagee any interest in the premises, either legal or equitable, as against subsequent purchasers or judgment creditors of the mortgagor and does not provide constructive notice to the world of the recorded mortgage. *See Langmede v. Weaver*, 65 Ohio St. 17, 34 (1901). The only exception crafted by the legislature is contained within O.R.C. § 5301.01(B), which provides for constructive notice only for a mortgage executed prior to February 1, 2002 that was “not acknowledged in the presence of, or was not attested by, two witnesses as required” prior to that date. Ohio Rev. Code § 5301.01(B).

It should be noted that the constructive notice provision contained within O.R.C. § 1301.401 is significantly more broadly drafted than the constructive notice provisions within Chapter 5301 of the Ohio Revised Code. Certainly, had the legislature intended to make such a broadly crafted statute applicable to mortgages, it would have amended Chapter 5301 of the Ohio Revised Code contemporaneously with the enactment of O.R.C. § 1301.401. It elected not to do so, thereby evidencing an intent that O.R.C. § 1301.401 was only intended to be applicable to transactions governed by the Uniform Commercial Code. Otherwise, the constructive notice provisions of Chapter 5301 of the Ohio Revised Code would be rendered meaningless.

III. CONCLUSION

In conclusion, this Court should answer Certified Questions 1 and 2 in the negative. O.R.C. § 1301.401 applies only to transactions governed by the Uniform Commercial Code. It does not apply to mortgages. Therefore, O.R.C. § 1301.401 does not apply to mortgages and

does not act to provide constructive notice to the world of a recorded mortgage that was not properly executed as required by O.R.C. § 5301.01.

Respectfully submitted,

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*Counsel for Petitioners Daren A. Messer and
Angela Messer*

PROOF OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing MERIT BRIEF OF PETITIONERS DAREN A. MESSER AND ANGELA MESSER was served upon the following persons via ordinary U.S. Mail, postage prepaid from Columbus, Ohio, this 16th day of March, 2015:

Amelia A. Bower
Plunkett Cooney
300 East Broad Street, Suite 590
Columbus, Ohio 43215

By: 

Brett R. Sheraw (0074130)

John C. Ridge (0086046)

APPENDIX

ORIGINAL

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

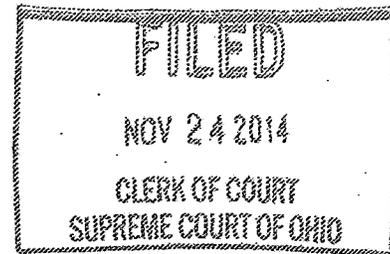


Charles M. Caldwell
Charles M. Caldwell
United States Bankruptcy Judge

Dated: November 21, 2014

14-2036

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:	:	Case No. 13-57467
Daren A. Messer	:	Chapter 13
Angela L. Messer,	:	
Debtors.	:	Judge Caldwell
<hr/>		
Daren Messer &	:	
Angela L. Messer,	:	
Plaintiffs.	:	
v.	:	Adv. Pro. No. 13-2448
JPMorgan Chase Bank, NA	:	
Defendant.	:	

ORDER OF CERTIFICATION TO THE SUPREME COURT OF OHIO (DOC. NO. 25)

Pursuant to Section 9 of the Supreme Court of Ohio Rules of Practice, the above signed Judge of the United States Bankruptcy Court for the Southern District of Ohio hereby certifies questions of state law, *sua sponte*, to the Supreme Court of Ohio. No controlling precedent of the Supreme Court of Ohio answers these questions, which will be dispositive of the above-captioned case. For reasons explained in more detail below, this Court requests that the Supreme Court of Ohio answer the certified questions of state law asked in this Certification Order.



I certify that this is a
copy of the original
filed Nov 21, 2014
Clerk of the Bankruptcy Court
By [Signature] Deputy Clerk
Issued Nov 24 2014

A. Name of the Case

The name of the case is Messer v. JPMorgan Chase Bank, NA (In re Messer), No. 2:13-ap-024480-JCC.

Darren A. and Angela L. Messer are the debtors in this Chapter 13 bankruptcy case (13-57467). After filing, they commenced an adversary proceeding to challenge the validity of the security interest of JPMorgan Chase Bank, NA (*In re Messer*, Adv. Pro. No. 13-2448).

B. Statement of Facts

I. The Certified Questions

1. Does O.R.C. §1301.401 apply to all recorded mortgages in Ohio?
2. Does O.R.C. §1301.401 act to provide constructive notice to the world of a recorded mortgage that was deficiently executed under O.R.C. §5301.01?

II. A Brief History of Ohio Revised Code Section 5301.234

The Ohio General Assembly first attempted to ease the requirements for what is considered a properly recorded mortgage on June 30, 1999, when O.R.C. §5301.234 (addressing the recordation of mortgages) became effective. This legislation created an irrefutable presumption that any recorded mortgage was properly executed, regardless of whether there were defects in the witnessing or acknowledgement of the mortgage. O.R.C. §5301.234 further provided that any recorded mortgage afforded constructive notice to the world of its existence, again, regardless of defects.

This provision was short lived, both in the courts and legislature. In 2001, a Northern District of Ohio Bankruptcy Court ruled that the statute was unconstitutional as a violation of the "One-Subject" rule, and that the irrefutable presumption was unconstitutional, as a violation of the Ohio Rules of Evidence. *In re Barkley*, 263 B.R. 553, 567 Bankr. N.D. Ohio 2001). Then, on February 1, 2002, O.R.C. §5301.234 was repealed and replaced by an updated O.R.C. §5301.01 (addressing the acknowledgment of mortgages) which did not include the language "regardless of defect."

Though repealed and replaced, O.R.C. §5301.234 litigation continued. Later in 2002, the Supreme Court of Ohio ruled in one sentence that the former statute could be applied

retroactively, but did not rule on its constitutionality. *In re Stewart*, 96 Ohio St. 3d 67, 2002-Ohio-3526 (in response to a certified question from the Bankruptcy Appellate Panel). In 2003 this Court agreed with *In re Barkley* that O.R.C. §5301.234 violated the “One-Subject” rule, and was thus unconstitutional before it was repealed. *In re Carte*, 303 B.R. 338, 342 (Bankr. S.D. Ohio 2003). A year later, the Supreme Court of Ohio agreed that O.R.C. §5301.234 had been unconstitutional due to the “One-Subject” rule. *In re Nowak*, 104 Ohio St. 3d 466, 482 2004-Ohio-6777.

III. A Brief History of Ohio Revised Code Section 1301.401

In December 2012, the General Assembly enacted O.R.C. §1301.401, which may or may not resurrect the substance of O.R.C. §5301.234. This new provision, effective March 27, 2013, provides in relevant part as follows:

(A) For purposes of this section, “public record” means either of the following:

(1) Any document described or referred to in section 317.08 of the Revised Code;

(2) Any document the filing or recording of which is required or allowed under any provision of Chapter 1309 of the Revised Code.

(B) The recording with any county recorder of any document described in division (A)(1) of this section or the filing or recording with the secretary of state of any document described in division (A)(2) of this section shall be constructive notice to the whole world of the existence and contents of either document as a public record and of any transaction referred to in that public record, including, but not limited to, any transfer, conveyance, or assignment reflected in that record.

(C) Any person contesting the validity or effectiveness of any transaction referred to in a public record is considered to have discovered that public record and any transaction referred to in the record as of the time that the record was first filed with the secretary of state or tendered to a county recorder for recording.

O.R.C. §1301.401 (emphasis supplied).

IV. The Facts and the Procedural History of Messer v. JPMorgan

Darren and Angela Messer are the Plaintiffs in the above-captioned adversary proceeding and the Debtors in the parent bankruptcy case. JP Morgan Chase Bank, NA, is the Defendant in the above-captioned adversary proceeding and a Creditor in the parent bankruptcy case. The facts necessary to this Certification Order are not in dispute between the Parties.

On November 26, 2007, Plaintiffs executed a promissory note and a Mortgage ("Mortgage") on real property located at 359 W. Waterloo St., Canal Winchester, OH 43110, in favor of Mortgage Electronic Registrations Systems, Inc. ("MERS"). The notary acknowledgement on the Mortgage was left blank, and there is no indication as to whether the Plaintiffs executed the Mortgage in front of a notary. On December 4, 2007, the Mortgage was recorded with the Franklin County Recorder, with the notary section still incomplete. On June 25, 2013, MERS assigned all of its interest in the Mortgage to the Defendant. The Assignment of Mortgage was recorded with the Franklin County Recorder on July 8, 2013.

On September 19, 2013, the Plaintiffs initiated the above-captioned Chapter 13 bankruptcy by filing a voluntary petition for relief under the Bankruptcy Code. On December 13, 2013, the Plaintiffs, through assigned authority from the Chapter 13 Trustee, commenced the above-captioned adversary proceeding, asking to avoid the Mortgage under 11 U.S.C. §544(a)(1) and/or 11 U.S.C. §544(a)(3) as defectively executed under O.R.C. §5301.01. The Defendant filed a Motion to Dismiss the adversary, alleging that under O.R.C. §1301.401, detailed above, Plaintiffs had constructive notice of the Mortgage, and thus their claims should fail as a matter of law. This Court held a hearing on the Motion to Dismiss on June 27, 2014.

Upon reviewing the briefing of both Parties and the arguments made at the hearing on Defendant's Motion to Dismiss, this Court determined that its interpretation of O.R.C. §1301.401 would be dispositive of the case. Upon research, this Court found no interpretation of O.R.C. §1301.401 by the Supreme Court of Ohio – or any other court. There is no dispute in this case that the Mortgage was improperly executed under O.R.C. §5301.01, and there is no dispute that prior to the enactment of O.R.C. §1301.401 the Plaintiffs could have avoided the mortgage. The questions concern whether the new statute changes the result.

V. The Supreme Court of Ohio Should Have the First Opportunity to Interpret O.R.C. §1301.401

The decision to certify is within the sound discretion of the federal court, and is most beneficial when there is a novel question of state law and no guidance from state courts. *Gascho v. Golbal Fitness Holdings, LLC*, 918 F.Supp.2d 708, 713 (S.D. Ohio 2013). The Supreme Courts of Ohio and the United States have each instructed on the virtues of certification. “[S]tate sovereignty is unquestionably implicated when federal courts construe state law.” *Scott v. Bank One Trust Co.*, 62 Ohio St. 3d 39, 42 (1991). “[Certification of] novel or unsettled questions of state law for authoritative answers by a State’s highest court ... may save time, energy, and resources and help build a cooperative judicial federalism.” *Arizonans for Official English v. Arizona*, 520 U.S. 43, 46 (1997).

There are millions of mortgages on Ohio homes. Even if less than 1% of these were executed improperly, the interpretation of this statute could potentially affect tens of thousands of properties. The Supreme Court of Ohio has previously answered certified questions from federal courts concerning Ohio statutes which change recording laws. *In re Stewart*, 96 Ohio St. 3d 67, 2002-Ohio-3526; *In re Nowak*, 104 Ohio St. 3d 466, 2004-Ohio-6777. This Federal Bankruptcy Court defers the opportunity to the Supreme Court of Ohio to interpret this Ohio law as well.

C. The Parties

Daren & Angela Messer, *Plaintiffs*
359 W. Waterloo St.
Canal Winchester, OH 43110

JPMorgan Chase Bank, NA, *Defendant*
3415 Vision Drive
Columbus, OH 43219

D. Counsel for the Parties

Plaintiffs’ Counsel

John C. Ridge (74130)
Brett R. Sheraw (86046)
Fisher, Skrobot, & Sheraw, LLC
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Danielle R. Weinzimmer (82119)
Thomas M. Fesenmeyer (73901)
Courtney A. Cousino (82136)
Fesenmyer Law Offices, LLC
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Columbus, Ohio 43206
(614) 228-4435

Defendant's Counsel

Amelia A. Bower (13474)
Plunkett Cooney
300 E. Broad St., Suite 590
Columbus, Ohio 43215
(614) 629-3004

E. Designation of Moving Party

Although neither party requested or desired certification, this Court designates Plaintiffs Daren and Angela Messer as the moving party. This designation is made because Plaintiffs initiated this case, and because they are procedurally positioned as the "challengers" to the applicability of O.R.C. §1301.401.

Instructions to the Clerk

The Clerk of the United States Bankruptcy Court of the Southern District of Ohio, Kenneth Jordan, is directed to serve copies of this Certification Order upon counsel for the parties and to file this Certification Order under the seal of this Court with the Supreme Court of Ohio, along with appropriate proof of service.

IT IS SO ORDERED.

Copies to:

Amelia A. Bower, Esq. (electronic service)
Brent R. Sheraw, Esq. (electronic service)
Danielle R. Weinzimmer, Esq. (electronic service)
Kathleen Tourgemon, Courtroom Deputy

**U.S. Bankruptcy Court
Southern District of Ohio (Columbus)
Adversary Proceeding #: 2:13-ap-02448
Internal Use Only**

Assigned to: Charles M Caldwell

Date Filed: 12/20/13

Lead BK Case: 13-57467

Lead BK Title: Daren A Messer and Angela L Messer

Lead BK Chapter: 13

Demand:

Nature[s] of Suit: 21 Validity, priority or extent of lien or other interest in property

Plaintiff

Daren Messer
359 W. Waterloo St.
Canal Winchester, OH 43110

represented by **John C Ridge**
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Plaintiff

Angela L Messer
359 W Waterloo St.
Canal Winchester, OH 43110

I certify that this is a
copy of the original
filed Nov 21 2014

[Signature]
Deputy Clerk
[Signature]
Nov 24, 2014
(See above for address)



Brett R Sheraw
(See above for address)

Danielle R Weinzimmer
(See above for address)

V.

Defendant

JPMorgan Chase Bank, NA
3415 Vision Drive
Columbus, OH 43219

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Filing Date	#	Docket Text
12/20/2013	<u>1</u>	Adversary case 2:13-ap-02448. (21 (Validity, priority or extent of lien or other interest in property)): Complaint by Daren Messer, Angela L Messer against JP Morgan Chase Bank NA. Receipt Number exempt, Fee Amount of \$ 0.00 is Exempt (Weinzimmer, Danielle) (Entered: 12/20/2013)
12/20/2013	<u>2</u>	Summons(es) on JP Morgan Chase Bank NA Issued On 12/20/2013, and Answer Due On 01/21/2014 (Weinzimmer, Danielle) (Entered: 12/20/2013)
01/23/2014	<u>3</u>	Motion to Extend/Shorten Time to Move or Plead in Response to Plaintiffs' Complaint Filed by Defendant JPMorgan Chase Bank, NA (Johnson, Kenneth) (Entered: 01/23/2014)
01/28/2014	<u>4</u>	Agreed Order Granting Motion of JPMorgan Chase Bank, N.A. for Extension of Time to Move or Plead in Response to Plaintiffs' Complaint (Related Doc # 3) (2ss) (Entered: 01/29/2014)

01/29/2014		(private) JPMorgan Chase Bank, NA Answer Deadline Reset for 2/10/2014 - per Order 4. (2ss) (Entered: 01/29/2014)
01/31/2014	5	BNC Certificate of Mailing - PDF Document (RE: related documents(s) 4 Order on Motion to Extend/Shorten Time) Notice Date 01/31/2014. (Admin.) (Entered: 02/01/2014)
02/10/2014	6	Answer to Complaint to <i>Determine Validity and Extent of Lien, to Avoid Mortgage Lien, to Recover Money Judgment and to Disallow Claim</i> Filed by JPMorgan Chase Bank, NA. (Johnson, Kenneth) (Entered: 02/10/2014)
02/13/2014	7	Order Governing Pretrial and Trial Procedures in Adversary Proceedings (or Prehearing and Hearing Procedures in Certain Contested Matters) and Ordering Preliminary Pretrial Statement. Each Party Shall File a Preliminary Pretrial Statement No Later than March 17, 2014 . (2ss) (Entered: 02/14/2014)
02/16/2014	8	BNC Certificate of Mailing - PDF Document (RE: related documents(s) 7 Order Governing Pretrial) Notice Date 02/16/2014. (Admin.) (Entered: 02/17/2014)
02/26/2014	9	Notice of Appearance and Request for Notice by Amelia A Bower Filed by Defendant JPMorgan Chase Bank, NA. (Bower, Amelia) (Entered: 02/26/2014)
03/14/2014	10	Motion to Dismiss Adversary Proceeding <i>Motion to Dismiss and/or for Judgment on the Pleadings</i> Filed by Defendant JPMorgan Chase Bank, NA (Bower, Amelia) (Entered: 03/14/2014)
03/14/2014	11	Pretrial Statement Filed by Defendant JPMorgan Chase Bank, NA (RE: related document(s) 1 Complaint). (Bower, Amelia) (Entered: 03/14/2014)
03/17/2014	12	Pretrial Statement Filed by Plaintiffs Angela L Messer, Daren Messer (RE: related document(s) 1 Complaint). (Weinzimmer, Danielle) (Entered: 03/17/2014)
03/19/2014	13	Notice of Pretrial Conference (related document(s) 1 Complaint filed by Plaintiff Daren Messer, Plaintiff Angela L Messer) Pretrial set for 4/23/2014 at 02:00 PM Judge Caldwell's Chambers. (2kg) (Entered: 03/19/2014)
03/21/2014	14	BNC Certificate of Mailing (RE: related documents(s) 13 Hearing (Adv Other) Set) Notice Date 03/21/2014. (Admin.) (Entered: 03/22/2014)

03/27/2014	15	Notice of Supplemental Authority in Support of Its Motion to Dismiss and/or Judgment on the Pleadings Filed by Defendant JPMorgan Chase Bank, NA (RE: related document(s) 10 Motion to Dismiss Adversary Proceeding <i>Motion to Dismiss and/or for Judgment on the Pleadings</i> Filed by Defendant JPMorgan Chase Bank, NA filed by Defendant JPMorgan Chase Bank, NA). (Bower, Amelia) (Entered: 03/27/2014)
04/03/2014	16	Notice of Appearance and Request for Notice by Brett R Sheraw Filed by Plaintiffs Angela L Messer, Daren Messer. (Sheraw, Brett) (Entered: 04/03/2014)
04/03/2014	17	Motion to Extend/Shorten Time to Respond to Moton of JP Morgan Chase Bank NA to Dismiss and/or For Judgment on the Pleadings Filed by Plaintiffs Angela L Messer, Daren Messer (Sheraw, Brett) (Entered: 04/03/2014)
04/08/2014	18	Agreed Order Granting Motion of Plaintiffs Daren A. Messer and Angela L. Messer for Extension of Time to File a Response to the Motion of JPMorgan Chase Bank NA to Dismiss and/or for Judgment on the Pleadings (Related Doc # 17) (2ss) (Entered: 04/09/2014)
04/11/2014	19	BNC Certificate of Mailing - PDF Document (RE: related documents(s) 18 Order on Motion to Extend/Shorten Time) Notice Date 04/11/2014. (Admin.) (Entered: 04/12/2014)
04/18/2014	20	Response to (related document(s): 10 Motion to Dismiss Adversary Proceeding <i>Motion to Dismiss and/or for Judgment on the Pleadings</i> filed by Defendant JPMorgan Chase Bank, NA) Filed by Plaintiffs Angela L Messer, Daren Messer (Sheraw, Brett) (Entered: 04/18/2014)
04/24/2014	21	Proceeding Memo: 4/23/14 Pretrial Conference Held - Appearances: A. Bower, B. Sheraw, D. Weinzimmer - Oral Arguments on dispositive motions to be heard 6/27/14 at 1:00 p.m. Defendant has until May 9, 2014, to reply to Plaintiffs Response to Motion to Dismiss. Deadline for filing of Amended Answer is 5/9/14. Court to prepare scheduling order. (2kg) (Entered: 04/24/2014)
05/01/2014	21	Scheduling Order for Adversary Complaint (RE: related document(s) 1 Complaint filed by Plaintiff Daren Messer, Plaintiff Angela L Messer). Hearing to be held on 6/27/2014 at 01:00 PM Courtroom B for 1 , (2ss) (Entered: 05/02/2014)
05/04/2014	22	

		BNC Certificate of Mailing - PDF Document (RE: related documents(s) <u>21</u> Order to Set Hearing) Notice Date 05/04/2014. (Admin.) (Entered: 05/05/2014)
05/09/2014	 <u>23</u>	Answer to Complaint (<i>Amended Answer</i>) Filed by JPMorgan Chase Bank, NA. (Bower, Amelia) (Entered: 05/09/2014)
05/09/2014	 <u>24</u>	Reply to (related document(s): <u>20</u> Response filed by Plaintiff Daren Messer, Plaintiff Angela L Messer) Filed by Defendant JPMorgan Chase Bank, NA (Bower, Amelia) (Entered: 05/09/2014)
06/27/2014		Proceeding Memo: 6/27/14 Hearing Held on Motion of JPMorgan Chase Bank NA to Dismiss And/Or For Judgment On The Pleadings (10) - Appearances: A. Bower, B. Sheraw, D. Weinzimmer - Oral arguments made by both parties. Matter taken under advisement. (2kg) (Entered: 06/30/2014)
09/18/2014		(private) Transcript of June 27, 2014 Hearing Ordered on 9/18/14 - Requested by: Judge Caldwell - Transcribing Company: Transcripts Plus - 30 day deadline. (2km) (Entered: 09/18/2014)
09/26/2014	 <u>25</u>	Scheduling Order Directing the Submission of Memoranda and Setting Hearing Date Regarding Certified Question to the Supreme Court of Ohio (RE: related document(s) <u>10</u> Motion to Dismiss Adversary Proceeding filed by Defendant JPMorgan Chase Bank, NA). Hearing to be held on 11/13/2014 at 02:00 PM Courtroom B for <u>10</u> . (2ss) (Entered: 09/29/2014)
09/29/2014		Judge's Deadlines Updated per Order <u>25</u> - Brief due by 10/27/2014. (2ss) (Entered: 09/29/2014)
10/01/2014	 <u>26</u>	BNC Certificate of Mailing - PDF Document (RE: related documents(s) <u>25</u> Order to Set Hearing) Notice Date 10/01/2014. (Admin.) (Entered: 10/02/2014)
10/14/2014	 <u>27</u>	Submission of Transcript for Court Review. This document is not available for public view. (Hartmann, Karen) (Entered: 10/14/2014)
10/14/2014	  <u>28</u>	Transcript regarding Hearing Held 6/27/14 RE: Motion to Dismiss and/or for Judgment on the Pleadings. TRANSCRIPT IS RESTRICTED UNTIL 1/12/2015. Notice of Intent to Request Redaction Deadline Due By 10/21/2014. Redaction Request Due By 11/4/2014. Redacted Transcript Submission Due By 11/14/2014. Transcript access will be restricted through 1/12/2015. (2km) (Entered: 10/14/2014)

10/14/2014	29	Notice of Filing of Official Transcript. Notice is hereby given that an official transcript of the Motion to Dismiss and/or for Judgment on the Pleadings hearing held on 6/27/14 has been filed. Pursuant to the new policy adopted by the Judicial Conference, transcripts are available for inspection only at the clerk's office or may be purchased from the court transcriber for a 90 day period (RE: related document(s) 28 Transcript) (2km) (Entered: 10/14/2014)
10/27/2014	30	<i>Brief in Response to Scheduling Order Directing the Submission of Memoranda and Setting Hearing Date Regarding Certified Question to the Supreme Court of Ohio</i> Filed by Plaintiffs Angela L Messer, Daren Messer. (Sheraw, Brett) (Entered: 10/27/2014)
10/27/2014	31	<i>Brief of JP Morgan Chase NA on the Issue of Certification to the Ohio Supreme Court</i> Filed by Defendant JPMorgan Chase Bank, NA. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Bower, Amelia) (Entered: 10/27/2014)
11/13/2014	30	Proceeding Memo: 11/13/14 Hearing Canceled. Order regarding certification pending. (2kg) (Entered: 11/14/2014)
11/21/2014	32	Order Of Certification To The Supreme Court Of Ohio. (Doc. No. 25) (2ao) (Entered: 11/21/2014)
11/23/2014	33	BNC Certificate of Mailing - PDF Document (RE: related documents(s) 32 Order (Generic)) Notice Date 11/23/2014. (Admin.) (Entered: 11/24/2014)

The Supreme Court of Ohio

In re: Daren A. Messer, Angela Messor,
Debtors Daren Messer & Angela Messer

v.

JPMorgan Chase Bank, NA

11/25/2014

13-57467

2014-2036

S.Ct.Prac.R. 9.03(B)
**NOTICE OF FILING OF
CERTIFICATION ORDER**
United States Bankruptcy Court for
the Southern District of Ohio, Eastern
Division

TO: Amelia A. Bower

John C. Ridge

An order of certification of question(s) of state law was filed on November 24, 2014, and assigned Supreme Court of Ohio case number 2014-2036. As provided by S.Ct.Prac.R. 9.05, a memorandum of no more than fifteen pages addressing the question(s) of law certified must be filed within twenty days after the certification order is filed in the Supreme Court. Accordingly, a preliminary memorandum addressing the question(s) certified in the above-referenced matter must be filed with the Clerk of the Court on or before December 15, 2014.

The Rules of Practice of the Supreme Court of Ohio are available online at <http://www.supremecourt.ohio.gov/LegalResources/Rules/practice/rulesofpractice.pdf>. Additionally, Deputy Clerks can provide assistance on procedural and mechanical issues from 8:00 a.m. to 5:00 p.m., Monday through Friday.

Pursuant to S.Ct.Prac.R. 2.01, attorneys must be registered for active status with the Office of Attorney Services or must comply with the pro hac vice requirements of S.Ct.Prac.R. 2.02 and Gov. Bar R. XII(A)(6)(a) through (e).

Sandra H. Grosko
Clerk of the Court

The Supreme Court of Ohio

FILED

JAN 28 2015

CLERK OF COURT
SUPREME COURT OF OHIO

In re: Daren A. Messer, Angela Messor,
Debtors
Daren Messer & Angela Messer
v.
JPMorgan Chase Bank, NA

Case No. 2014-2036

ENTRY

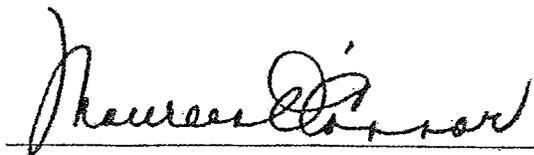
This cause, here on the certification of a state law question from the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division, was considered in the manner prescribed by law. Upon review pursuant to S.Ct. Prac. R. 9.05, the court will answer the following questions:

“Does O.R.C. §1301.401 apply to all recorded mortgages in Ohio?”

“Does O.R.C. § 1301.401 act to provide constructive notice to the world of a recorded mortgage that was deficiently executed under O.R.C. §5301.01?”

It is ordered by the court that petitioners shall file their merit brief within 40 days of the date of this entry and the parties shall otherwise proceed in accordance with S.Ct.Prac.R. 16.02 - 16.04, and S.Ct.Prac.R. 9.07.

(U.S. Bankruptcy Court for the Southern District of Ohio, Eastern Division; No. 13-57467)



Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>.

317.08 [Effective Until 3/23/2015] Records to be kept by county recorder.

(A) The county recorder shall record all instruments in one general record series to be known as the "official records." The county recorder shall record in the official records all of the following instruments that are presented for recording, upon payment of the fees prescribed by law:

- (1) Deeds and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements, and hereditaments;
- (2) Notices as provided in sections 5301.47 to 5301.56 of the Revised Code;
- (3) Judgments or decrees in actions brought under section 5303.01 of the Revised Code;
- (4) Declarations and bylaws, and all amendments to declarations and bylaws, as provided in Chapter 5311. of the Revised Code;
- (5) Affidavits as provided in sections 5301.252 and 5301.56 of the Revised Code;
- (6) Certificates as provided in section 5311.17 of the Revised Code;
- (7) Articles dedicating archaeological preserves accepted by the director of the Ohio historical society under section 149.52 of the Revised Code;
- (8) Articles dedicating nature preserves accepted by the director of natural resources under section 1517.05 of the Revised Code;
- (9) Conveyances of conservation easements and agricultural easements under section 5301.68 of the Revised Code;
- (10) Instruments extinguishing agricultural easements under section 901.21 or 5301.691 of the Revised Code or pursuant to the terms of such an easement granted to a charitable organization under section 5301.68 of the Revised Code;
- (11) Instruments or orders described in division (B)(2)(b) of section 5301.56 of the Revised Code;
- (12) No further action letters issued under section 122.654 or 3746.11 of the Revised Code;
- (13) Covenants not to sue issued under section 3746.12 of the Revised Code, including all covenants not to sue issued pursuant to section 122.654 of the Revised Code;
- (14) Restrictions on the use of property contained in a no further action letter issued under section 122.654 of the Revised Code, restrictions on the use of property identified pursuant to division (C)(3)(a) of section 3746.10 of the Revised Code, and restrictions on the use of property contained in a deed or other instrument as provided in division (E) or (F) of section 3737.882 of the Revised Code;
- (15) Any easement executed or granted under section 3734.22, 3734.24, 3734.25, or 3734.26 of the Revised Code;
- (16) Any environmental covenant entered into in accordance with sections 5301.80 to 5301.92 of the Revised Code;
- (17) Memoranda of trust, as described in division (A) of section 5301.255 of the Revised Code, that

describe specific real property;

(18) Agreements entered into under section 1506.44 of the Revised Code;

(19) Mortgages, including amendments, supplements, modifications, and extensions of mortgages, or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or encumbered;

(20) Executory installment contracts for the sale of land executed after September 29, 1961, that by their terms are not required to be fully performed by one or more of the parties to them within one year of the date of the contracts;

(21) Options to purchase real estate, including supplements, modifications, and amendments of the options, but no option of that nature shall be recorded if it does not state a specific day and year of expiration of its validity;

(22) Any tax certificate sold under section 5721.33 of the Revised Code, or memorandum of it, that is presented for filing of record

;

(23) Powers of attorney, including all memoranda of trust, as described in division (A) of section 5301.255 of the Revised Code, that do not describe specific real property;

(24) Plats and maps of town lots, of the subdivision of town lots, and of other divisions or surveys of lands, any center line survey of a highway located within the county, the plat of which shall be furnished by the director of transportation or county engineer, and all drawings and amendments to drawings, as provided in Chapter 5311. of the Revised Code;

(25) Leases, memoranda of leases, and supplements, modifications, and amendments of leases and memoranda of leases;

(26) Declarations executed pursuant to section 2133.02 of the Revised Code and durable powers of attorney for health care executed pursuant to section 1337.12 of the Revised Code;

(27) Unemployment compensation liens, internal revenue tax liens, and other liens in favor of the United States as described in division (A) of section 317.09 of the Revised Code, personal tax liens, mechanic's liens, agricultural product liens, notices of liens, certificates of satisfaction or partial release of estate tax liens, discharges of recognizances, excise and franchise tax liens on corporations, broker's liens, and liens provided for in section 1513.33, 1513.37, 3752.13, 4141.23, 5111.022, or 5311.18 of the Revised Code; and

(28) Corrupt activity lien notices filed pursuant to section 2923.36 of the Revised Code and medicaid fraud lien notices filed pursuant to section 2933.75 of the Revised Code.

(B) All instruments or memoranda of instruments entitled to record shall be recorded in the order in which they are presented for recording.

The recording of an option to purchase real estate, including any supplement, modification, and amendment of the option, under this section shall serve as notice to any purchaser of an interest in the real estate covered by the option only during the period of the validity of the option as stated in the option.

(C) In addition to the official records , a county recorder may elect to keep a separate set of records that contain the instruments listed in division (A) (24) of this section.

(D)

As part of the official records, the county recorder shall keep a separate set of records containing all transfers, conveyances, or assignments of any type of tangible or intangible personal property or any rights or interests in that property if and to the extent that any person wishes to record that personal property transaction and if the applicable instrument is acknowledged before a notary public. If the transferor is a natural person, the notice of personal property transfer shall be recorded in the county in this state in which the transferor maintains the transferor's principal residence. If the transferor is not a natural person, the notice of personal property transfer shall be recorded in the county in this state in which the transferor maintains its principal place of business. If the transferor does not maintain a principal residence or a principal place of business in this state and the transfer is to a trustee of a legacy trust formed pursuant to Chapter 5816. of the Revised Code, the notice of personal property transfer shall be recorded in the county in this state where that trustee maintains a principal residence or principal place of business. In all other instances, the notice of personal property transfer shall be recorded in the county in this state where the property described in the notice is located.

Amended by 130th General Assembly File No. 41, HB 72, §1, eff. 1/30/2014.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No. 201, HB 479, §1, eff. 3/27/2013.

Effective Date: 07-20-2004; 12-30-2004; 10-01-2005; 06-30-2006; 2007 HB119 09-29-2007

Note: *This section is set out twice. See also § 317.08 , as amended by 130th General Assembly File No. TBD, HB 9, §1, eff. 3/23/2015.*

1301.102 Scope of chapter 1301 - UCC 1-102.

Part 1. General Provisions

Sections 1301.101 to 1301.310 of the Revised Code apply to a transaction to the extent that it is governed by Chapter 1302., 1303., 1304., 1305., 1307., 1308., 1309., or 1310. of the Revised Code.

Added by 129th General Assembly File No.9, HB 9, §1, eff. 6/29/2011.

1301.401 Effect of recording documents.

Part 3. Territorial Applicability and General Rules

(A) For purposes of this section, "public record" means either of the following:

(1) Any document described or referred to in section 317.08 of the Revised Code;

(2) Any document the filing or recording of which is required or allowed under any provision of Chapter 1309. of the Revised Code.

(B) The recording with any county recorder of any document described in division (A)(1) of this section or the filing or recording with the secretary of state of any document described in division (A)(2) of this section shall be constructive notice to the whole world of the existence and contents of either document as a public record and of any transaction referred to in that public record, including, but not limited to, any transfer, conveyance, or assignment reflected in that record.

(C) Any person contesting the validity or effectiveness of any transaction referred to in a public record is considered to have discovered that public record and any transaction referred to in the record as of the time that the record was first filed with the secretary of state or tendered to a county recorder for recording.

Added by 129th General Assembly File No.201, HB 479, §1, eff. 3/27/2013:

5301.01 Acknowledgment of deed, mortgage, land contract, lease or memorandum of trust.

(A) A deed, mortgage, land contract as referred to in division (A) (21) of section 317.08 of the Revised Code, or lease of any interest in real property and a memorandum of trust as described in division (A) of section 5301.255 of the Revised Code shall be signed by the grantor, mortgagor, vendor, or lessor in the case of a deed, mortgage, land contract, or lease or shall be signed by the trustee in the case of a memorandum of trust. The signing shall be acknowledged by the grantor, mortgagor, vendor, or lessor, or by the trustee, before a judge or clerk of a court of record in this state, or a county auditor, county engineer, notary public, or mayor, who shall certify the acknowledgement and subscribe the official's name to the certificate of the acknowledgement.

(B)

(1) If a deed, mortgage, land contract as referred to in division (A) (21) of section 317.08 of the Revised Code, lease of any interest in real property, or a memorandum of trust as described in division (A) of section 5301.255 of the Revised Code was executed prior to February 1, 2002, and was not acknowledged in the presence of, or was not attested by, two witnesses as required by this section prior to that date, both of the following apply:

(a) The instrument is deemed properly executed and is presumed to be valid unless the signature of the grantor, mortgagor, vendor, or lessor in the case of a deed, mortgage, land contract, or lease or of the settlor and trustee in the case of a memorandum of trust was obtained by fraud.

(b) The recording of the instrument in the office of the county recorder of the county in which the subject property is situated is constructive notice of the instrument to all persons, including without limitation, a subsequent purchaser in good faith or any other subsequent holder of an interest in the property, regardless of whether the instrument was recorded prior to, on, or after February 1, 2002.

(2) Division (B)(1) of this section does not affect any accrued substantive rights or vested rights that came into existence prior to February 1, 2002.

Amended by 130th General Assembly File No. 41, HB 72, §1, eff. 1/30/2014.

Effective Date: 07-20-2004; 2007 SB134 01-17-2008

5301.25 Recording in county where real estate situated - survey form.

(A) All deeds, land contracts referred to in division (A) (21) of section 317.08 of the Revised Code, and instruments of writing properly executed for the conveyance or encumbrance of lands, tenements, or hereditaments, other than as provided in division (C) of this section and section 5301.23 of the Revised Code, shall be recorded in the office of the county recorder of the county in which the premises are situated. Until so recorded or filed for record, they are fraudulent insofar as they relate to a subsequent bona fide purchaser having, at the time of purchase, no knowledge of the existence of that former deed, land contract, or instrument.

(B) Whenever a survey is made of lands that are being conveyed, the county auditor shall require that the name of the person who made the survey appear in the deed. The name shall either be printed, typewritten, stamped, or signed in a legible manner. An instrument is in compliance with this division if it contains a statement in the following form:

"A survey of this property was made by"

This division does not apply to any court decree, order, judgment, or writ, to any instrument executed or acknowledged outside of this state, or to any instrument executed within this state prior to September 20, 1965.

(C) All tax certificates sold pursuant to section 5721.32 or 5721.33 of the Revised Code, or memoranda thereof, may be recorded in the office of the county recorder of the county in which the premises are situated, as provided in division (B) of section 5721.35 of the Revised Code; provided, however, that the first and superior lien of the state and its taxing districts conveyed to the holder of the tax certificate, as provided in division (A) of section 5721.35 of the Revised Code, shall in no way be diminished or adversely affected if the tax certificate evidencing the conveyance of such first and superior lien, or memorandum thereof, is not recorded as provided in this section.

Amended by 130th General Assembly File No. 41, HB 72, §1, eff. 1/30/2014.

Effective Date: 07-20-2004