Supreme Court of Ohio Clerk of Court - Filed April 07, 2015 - Case No. 2014-2036

IN THE SUPREME COURT OF OHIO

In re: Daren A. Messer and Angela Messer Petitioners v. JP Morgan Chase Bank NA Respondent	: : : : : : : : : : :	Case No. 2014-2036 On Order of Certification of Questions of State Law United States Bankruptcy Court for the Southern District of Ohio Case No. 13-57467, Adversary Proceeding No. 13-02448

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I. INTRODUCTION

A. Two questions have been certified to this Court by the United States Bankruptcy Court for the Southern District of Ohio

This Court has been asked to answer two questions certified by the United States Bankruptcy Court for the Southern District of Ohio:

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

This Answer to both questions should be in the affirmative.

II. SUMMARY OF ARGUMENT

R.C. § 1301.401 does not eliminate the need for mortgages to be notarized. Indeed, R.C. § 1301.401 has no effect on the execution of mortgages. R.C. § 1301.401 establishes constructive notice for all recorded mortgages.

Notarization of mortgages is part of the execution process for recordable instruments. Recording, on the other hand, is a system for constructive notice through which the world determines the status of title to property. Thus, the recording of a mortgage informs the world that there is a debt related to a particular property.

The recording of a mortgage with an error in the acknowledgment does not change the fact that a land owner voluntarily encumbered his property. However, the act of recording cannot entirely eliminate or negate the possibility that any mortgage, even those without apparent errors, could be the result of forgery or other fraudulent conduct. Since notarization does not negate fraud; and since recording is required for notice, it cannot be said that the recording of a defectively notarized mortgage defeats constructive notice.

Moreover, R.C. § 1301.401 closes a loophole in the recording system. The loophole is that *bona fide* purchasers (notably competing mortgage creditors and bankruptcy trustees) treat defectively notarized mortgages as if they do not exist.

Subsequent purchasers, also being *bona fide* purchasers, could also challenge a defective mortgage, but are highly unlikely to do so given their desire to obtain clear title to property. On the other hand, a homeowner would be unable to use such an error to his advantage, having voluntarily entered into his mortgage.

Once there is an understanding of who benefits when the execution of mortgages is not perfect, the notion that this case will obliterate the need for mortgages to be notarized evaporates. If creditors and bankruptcy trustees need a method by which to improve their positions, it should not be as a result of a voluntary transaction, shown to the world to be free of fraud.

The concept of constructive notice and its effect on *bona fide* purchasers was best summarized in *Argent Mortgage Corporation v. Drown (In re Bunn),* 578 F. 3d 487, 490 (6th Cir. 2009) where the court held that "a reasonably prudent real estate purchaser [seeing a recorded but defective mortgage] is unlikely to proceed as if the lot were unencumbered". Such a purchaser would, therefore, not disregard that mortgage at all. Thus the rational that defective mortgages are treated as nullities protects no one except those wishing to gain from the error.

III. STATEMENT OF FACTS

Daren Andrew Messer and Angela Lynn Messer own real property located at 359 W. Waterloo Street, Canal Winchester, Ohio. The Messers acquired that property on November 26, 2007 [Complaint ¶ 8]. Their deed was filed on December 4, 2007 in Instrument No. 200712040208185 of Franklin County, Ohio records [Complaint Ex. A].

In order to finance the acquisition of the Waterloo Street property, Daren Andrew Messer and Angela Lynn Messer executed and delivered a mortgage to Mortgage Electronic Registration Systems ("MERS") as nominee for M/I Financial Corp. The mortgage was signed on November 26, 2007 by Angela Lynn Messer as "POA" for Daren Andrew Messer and for herself individually. The notary failed to certify the mortgage acknowledgment although she did notarize other documents at the same time for this transction. The mortgage was filed on December 4, 2007 in Instrument No. 200712040208188 of Franklin County, Ohio records [Complaint ¶ 10].

The Messer's mortgage was subsequently assigned to JP Morgan Chase Bank, N.A. [Complaint ¶ 11].

Daren Andrew Messer and Angela Lynn Messer filed a Chapter 13 bankruptcy petition on September 19, 2013 [Complaint ¶ 6]. In their bankrutpcy petition, the Messers scheduled Chase's mortgage as a secured claim on the Waterloo property [Doc. No. 1 Case No. 2:13-bk-57467].

On December 20, 2013 Daren Andrew Messer and Angela Lynn Messer filed an Adversary Proceeding against JP Morgan Chase Bank, N.A. seeking to extinguish their mortgage.

On March 24, 2014 JP Morgan Chase Bank, N.A. filed a Motion to Dismiss the Adversary Proceeding. That motion addressed two issues: (i) that Daren Andrew Messer and Angela Lynn Messer lacked standing to challenge their mortgage with Chase because, under Ohio law, they are not *bona fide* purchasers for value; and (ii) that R.C. § 1301.401 provides constructive notice of the Chase mortgage to *bona fide* purchasers because it was recorded and the Messers consented to the voluntary lien.

The Messers responded to that motion and a reply was filed by Chase. The bankruptcy court heard argument on the Motion to Dismiss and asked the parties to submit supplemental briefing regarding certification to this Court on the applicability of R.C. § 1301.401 to the Adversary Proceeding. The question of standing has not been decided by the Bankruptcy Court.

On November 24, 2014, the United States Bankruptcy Court for the Southern District of Ohio filed an Order of Certification to this Court.

IV. ARGUMENT

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

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

Propositions of Law No. I:

A recorded mortgage provides constructive notice to *bona fide* purchasers dealing with real property which is the subject of the mortgage.

Propositions of Law No. II:

A defectively executed, recorded mortgage provides constructive notice to *bona fide* purchasers dealing with real property which is the subject of the mortgage.

Proposition of Law No. III:

The recording of a mortgage creates a rebuttable presumption that the mortgage is properly executed

A. R.C. § 1301.401 is part of Sub. H. B. 479

On March 27, 2013 Sub. H.B. 479 became law in Ohio as the Ohio Asset Management Modernization Act of 2012 ("Act"). The Act affords asset protection to Ohioans.

R.C. § 1301.401 is one part of the Act. This new statute creates constructive notice for any document filed in the public record:

(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.

Mortgages are among the documents for which constructive notice is provided under R.C. § 1301.401 and R.C. § 317.08(A)(19).

B. R.C. § 1301.401 applies to all recorded documents

R.C. § 1301.401 applies to all recorded documents including instruments that affect real estate:

> "[P]ublic record" means: (1) all documents recorded under R.C. § 317.08; and (2) "Any document the filing or recording of which is required or allowed under any provision of Chapter 1309. of the Revised Code." R.C. § 1301.401(A)."

Chapter 1309 is titled "Secured Transactions" and encompasses Uniform Commercial Code §§ 9-101 *et seq.*

Ohio mortgages are part of Chapter 1309. In fact, R.C. § 1309.502(C) states that a mortgage functions as a financing statement in order to eliminate the need for separate filings in the land and personal property records. *See Mason v. Szerwinski (In re Szerwinski),* 467 B. R.

893, 901 (B.A.P. 6th Cir. 2012). Moreover, R.C. § 1301.102 specifically states that the Uniform Commercial Code in Ohio includes Chapter 1309. Thus, the argument that R.C. §1301.401 does not apply to mortgages is incorrect.

C. The placement of the new statute in Chapter 13 does not define how the statute is applied

The placement of R.C. § 1301.401 in Chapter 13 and not Chapter 53 of the Revised Code does not mean the law applies only to personal property. *In the Matter of Edward Kline,* 3 Ohio C.D. 422 (Cir. 1892). In addition, the statute specifically identifies land as being within its scope.

D. Ohio's recording statutes prevent fraud, protect third parties and establish priorities

The purpose of Ohio's recording statutes is to protect third parties who might acquire a legal interest in property. *Bloom v. Noggle*, 4 Ohio St. 45, 53–56 (1854). The purpose of R.C. § 5301.23(A) is to establish priorities between recorded mortgages. The purpose of R.C. §5301.25(A) is to protect bona fide purchasers for transfers of real property interests. *Basil v. Vincello*, 50 Ohio St.3d 185, 190, 553 N.E.2d 602 (1990).

A bona fide purchaser is one who takes an interest in property without notice of outstanding equities. *Shaker Corlett Land Co. v. Cleveland,* 139 Ohio St. 536, 541, 41 N.E. 2d 243 (1942). A mortgagee qualifies as a bona fide purchaser. *Shorten v. Drake,* 38 Ohio St. 76, 85 (1882). An involuntary creditor such as a judgment lienholder is not a bona fide purchaser. *Basil, infra*; *Sinclair Refining Co. v. Chaney,* 114 Ohio App. 538, 184 N.E. 2d 214 (3rd Dist. 1961); *Deutsche Bank Natl. Trust v. Boswell,* 192 Ohio App. 3d 374, 949 N.E. 2d 96 (1st Dist. 2011). A bankrutpcy trustee is a hypothetical *bona fide* purchaser for value. 11 U.S.C. § 544.

The purpose of recording mortgages is to protect against fraud and secret liens. *City Loan & Sav. Co. v. Morrow,* 96 Ohio App. 476, 122 N.E. 2d 635 (4th Dist. 1954).

The rule in Ohio has always been that a mortgage, voluntarily executed, is valid between the parties thereto absent fraud. *Williamson v. Carskadden,* 36 Ohio St. 664 (1881).

Therefore, the recording statutes protect purchasers against unrecorded instruments and secret liens and provide notice of interests in property so that a purchaser is fully aware of any outstanding liens, encumbrances and claims to property. The notice created by R.C. § 1301.401(B) does not alter the purpose for, or application of, the recording statutes to mortgages.

E. All mortgages are recorded, not just those that executed perfectly

Proper execution and acknowledgment of mortgages has, at least theoretically, always been a prerequisite to recording. *See Citizens Nat. Bank in Zanesville v. Denison,* 165 Ohio St. 89, 94, 133 N.E. 2d 329 (1956); R.C. § 317.08(B). This is true even though the purpose of acknowledgments is to prove execution, not to establish the validity of the mortgage. *Id.* Thus, if recorded, there is a presumption that the mortgage is valid. *Id.*

In practice, county recorders do not reject mortgages that are facially defective. The presumption of validity created by recording fails, therefore, when a competing mortgagee, for instance, acting as a *bona fide* purchaser, deploys the recording statutes to claim a lack of notice. *See Amick v. Woodworth,* 58 Ohio St. 86 (1898); *Mortgage Electronic Registration Systems v. Odita,* 159 Ohio App. 3d 1, 822 N.E. 2d 821 (10th Dist. 2004).

R.C. §1301.401 eliminates those attacks by providing that a recorded mortgage provides constructive notice. And, constructive notice defeats claims of certain *bona fide* purchasers that a mortgage is a nullity if not perfectly executed. Execution, being separate from notice, is not affected by this change in the law.

F. Constructive notice is that which imparts information to a purchaser as a substitute for actual notice

Constructive notice is that which the law regards as sufficient to give notice as a substitute for actual notice. *In re Estate of Fahle,* 90 Ohio App. 195, 198, 105 N.E. 2d 429 (6th Dist. 1950). The recording of instruments in a chain of title creates constructive notice. *Yountz v. Julliard,* 10 Ohio Dec. Reprint 298 (CP 1899). The rule in Ohio is that if a document is recorded, a person reading that document is deemed to have actual notice of the record. *Yountz, infra.* The law presumes that a purchaser knows what he might have learned by examining records in his chain of title. *Reeder v. Barr,* 4 Ohio 446, 458 (1831).

Constructive notice is a function of the law. Without a statute providing for constructive notice, the doctrine would not exist. *Stanton v. Schmidt,* 45 Ohio App. 203, 207, 186 N.E. 851 (10th Dist. 1931).

In Ohio, constructive notice is created under the conveyancing and recording statues, R.C. § 5301.01 [mortgages shall be signed, acknowledged and certified], R.C. § 5301.23(A) ["all properly executed mortgages shall be recorded. . . and shall take effect at the time they are delivered to the recorder for record"] and R.C. § 5301.25(A) [All instruments of conveyance shall be properly executed and recorded. "Until so recorded . . . they are fraudulent . . as they relate to a subsequent bona fide purchaser"].

The recording statutes would, if strictly followed, not permit defectively executed mortgages to be filed. If not actually recorded, there would be no constructive notice. The fact of recording, therefore, has historically created the fiction that a faulty document does not exist although it can be read, reviewed and inspected in the public record. R.C. §1301.401 fixes the vacuum created between the theory of the recording statutes (that improperly executed mortgage are not recorded) and the reality that defective mortgages are filed every day in every county in

this State. A very few of those mortgages become the subject of litigation in bankrutpcy courts while even fewer are challenged for lien position in state courts.

When R.C. § 1301.401 was enacted, the legislature was presumed to know the law. *Wachendorf v. Shaver,* 149 Ohio St. 231, 248, 78 N.E. 370 (1948). Statutes concerning the same subject matter must be read *in pari materia. State v. Cook,* 128 Ohio St. 3d 120 (2010). The statutes must be harmonized to give full application to each of the statutes. *United Tel. Co. of Ohio v. Limbach,* 71 Ohio St. 3d 369, 372, 643 N.E. 2d 1129 (1994).

If the legislature did not intend all mortgages, including those which are defectively executed, to create constructive notice when filed, there would be no need for R.C. § 1301.401(B) because R.C. §5301.23(A) and 5301.25(A), if strictly enforced, would prevent the results created when recorded documents are facially defective.

G. R.C. § 1301.401 and R.C. § 5301.01 co-exist to provide stability to Ohio's land records

Challenges to recorded mortgages are based on R.C. § 5301.01(A):

> (A) A . . . mortgage. . . shall be signed by the . . . mortgagor. . . The signing shall be acknowledged by the . . . mortgagor,. . . before a . . . notary public. . . who shall certify the acknowledgement and subscribe the official's name to the certificate of the acknowledgement.

The theory behind these challenges is that a mortgage that is said to be defectively executed is not entitled to be recorded. Thus, in the realm of bankrutpcy jurisprudence, there is no constructive notice created by such a filing. *Rhiel v. The Huntington National Bank (In re Phalen),* 446 B.R. 830 (Bankr. S.D. Ohio 2011). This rationale defeats the proposition that a recorded mortgage creates notice regardless of alleged errors in execution. *Yountz, infra.* It also creates a windfall for certain hypothetical purchasers, such as bankruptcy trustees and competing mortgage creditors seeking to gain an unintended advantage.

R.C. §1301.401 complements R.C. § 5301.01 to resolve this issue.

In 1999, R.C. § 5301.234 become law in Ohio. The object of that statute, like R.C. § 1301.401, was to create constructive notice:

> "The recording of a mortgage is constructive notice of the mortgage to all persons, including without limitation, a subsequent bona fide purchaser or any other subsequent holder of an interest in the property. An actual or alleged defect in the witnessing or acknowledgment on the recorded mortgage does not render the mortgage ineffective for purposes of constructive notice."

R.C. § 5301.234 co-existed with R.C. § 5301.01 from its enactment (June 30, 1999) until this court found the statute to be unconstitutional. *In re Nowak*, 104 Ohio St. 3d 466, 469, 820 N.E. 2d 335 (2004). In the same vein, R.C. § 1301.401 co-exists with R.C. §5301.01 today. And R.C. § 5301.234 gave constructive notice to bankruptcy trustees as does R.C. § 1301.401. *Simon v. Chase Manhattan Bank (In re Zaptocky),* 250 F. 3d 1020, 1028 (6th Cir. 2000).

H. Defectively executed, recorded mortgages should not create a windfall for competing mortgage creditors and bankruptcy trustees

(i) The rule of constructive notice is the standard upon which to charge knowledge to a *bona fide* purchaser with the adoption of R.C. § 1301.401

In *Thames v. Asia's Janitorial Serv., Inc.,* 81 Ohio App. 3d 579, 587, 611 N. E. 2d 948 (6th Dist. 1992), the court discussed the difference between the common law rule of constructive notice and the statutory version of that rule which was adopted by Ohio's recording statutes.

Under the common law rule, a prudent purchaser is charged with constructive notice "when he has knowledge of facts which would induce [him] to make an inquiry by which he would have or could have obtained knowledge of the prior encumbrance." *Id.*

Under the statutory rule, constructive notice results from a purchaser having "notice of the record whether he reviewed it or not." *Id.* citing *Morris v. Daniels,* 35 Ohio St. 406, 416 (1880). The reason for these rules is the public policy view that land records must be reliable

and stable so that anyone inspecting those records can be fully informed as to the status of title to real estate. R.C. § 1301.401 eliminates the fiction that a recorded document does not create notice and adopts the approach that a purchaser has notice of that which is in the record. Thus the common law rule for constructive notice is conjoined with the statutory rule under R.C. § 1301.401.

In *Amick, infra*, this court held that a mortgage with only one witness that was notarized by the mortgagee did not provide constructive notice. The theory behind that result was the need to "prevent the perpetration of frauds on grantors, and afford reasonable assurance to those who deal with or on the faith of such instruments that they are genuine and represent bona fide transactions." *Id.*

The "mischief" that *Amick* sought to prevent or guard against has been replaced by technical attacks from strangers to title, cloaked as purchasers, taking advantage of unsuspecting land owners and their lenders. Mortgages that are being challenged today (for lack of notice) are indeed "genuine documents" coming out of "bona fide transactions". Even without fraud, however, they are attacked as being non-existent.

While it is true that certain mortgages are the product of fraud, the notice provisions of R.C. § 1301.401 do not affect the rights of land owners or mortgagees to prove that fraud occurred in a transaction. In fact, the presumption of validity of a recorded mortgage is rebuttable. *Ford v. Osborne,* 45 Ohio St. 1 (1887); *Baldwin v. Snowden,* 11 Ohio St. 203 (1860).

The execution issue was also raised in *Citizens, infra.* where a competing mortgage creditor challenged a defectively executed mortgage. It was admitted there that no fraud occurred between the mortgagors and their budget company creditor. However, the husband admitted that he did not sign the mortgage in the presence of a notary. Under GC § 8543 (the predecessor to

R.C. § 5301.25), this court found that other recorded mortgages, without defects, had priority. In so doing this Court said:

> "Until the General Assembly removes the requirement of the acknowledgment of signatures to instruments which must be recorded for the protection of liens, such acknowledgments must be executed lawfully, and the situation which developed in this case is a good example of the injury and loss which result from the failure of a notary public to recognize the seriousness and importance of his duties."

With the passage of R.C. §1301.401, the legislature has not removed the acknowledgement requirement but restated the rule that, in the absence of fraud, a competing mortgagee does not get a windfall.

(ii) The people affected by the adoption of R.C. §1301.401(B) are those seeking to take advantage of the recording system

The result in *Citizens* is cited frequently to undo mortgages voluntarily entered into by Ohio property owners. Undoubtedly there will be instances when a notary fails to properly take an acknowledgment. That failure could be the result of a fraud intended to dupe the notary as easily as it could be the result of a notary's incompetence as was the case in *Citizens.*

The vast majority of challenged mortgages, in Ohio, are for faulty notarizations which afford strangers an unforeseen benefit. *See Fifth Third Bank v. Farrell,* No. 09 CAE 11 0095, 2010-Ohio-4839, 2010 WL 3852223 (5th Dist. 2010) [mortgage with missing names in the acknowledgement did not have priority over subsequently recorded mortgage]; *Phalen, infra.* [outlining the history of bankruptcy cases challenging defective acknowledgements].

The fact that a notary fails to subscribe her name to an acknowledgment does not mean she did not take her job seriously, it means that she made a mistake. *Logan v. CIT Group/Consumer Finance, Inc. (In re Cooperman),* No. 05-65743, Adv. No. 06-2353 (Bankr. S.D. Ohio 2008). The same is true when the notary fails to write in the names of the mortgagors in an acknowledgment. Even so, such defects have resulted in the voiding of numerous

mortgages in bankruptcy cases. *Hardesty v. Mortgage Electronic Registration Systems, Inc. (In re Boothe),* 510 B.R. 154 (Bankr. S.D. Ohio 2013); *Terlecky v. Crevecor Mortgage Inc. (In re Trahan),* 444 B.R. 865 (Bankr. S.D. Ohio 2011); *Noland v. Burns (In re Burns),* 435 B.R. 503 (Bankr. S.D. Ohio 2010); *Simon v. Citimortgage (In re Doubov),* 423 B.R. 505 (Bankr. N.D. Ohio 2010); *Terlecky v. Chase Home Fin., L.L.C.(In re Sauer),* 417 B. R. 523 (Bankr. S. D. Ohio 2009); *Drown v. Countrywide Home Loans, Inc. (In re Peed),* 403 B.R. 525 (Bankr. S.D. Ohio 2009); *Rieser v. Fifth Third Mortgage Co. (In re Wahl),* 407 B.R. 883 (Bank. S.D. Ohio 2009); *Geygan v. World Sav. Bank FSB (In re Nolan),* 365 B.R. 804 (Bankr. 2007).

Thus the concern expressed by this Court in *Citizens* that when "A notary public who affixes his name and seal to an acknowledgment or affidavit which states that the parties appeared before him when in effect they did not so appear is himself making an untrue statement, which may be followed by both civil and criminal liability" is not upended by R.C. § 1301.401(B). If a notary truly was not present to take an acknowledgment, the mortgage would not survive, constructive notice notwithstanding. *See Danflous v. Citimortgage, Inc. (In re Danflous),* No. 09-61302, Adv. No. 10-02011 (Bankr. S.D. Ohio); *Citizens, infra.*

The purposes of the new law, R.C. § 1301.401, is simply to give the benefit of the doubt on execution errors to the challenged mortgage while placing the burden on those seeking to unwind the mortgage to show that it was procured through fraud.

V. CONCLUSION

The Certified Questions must be answered in the affirmative. R.C. § 1301.401 applies to all Ohio mortgages. The statute does not eliminate the elements of recording that provide for protection against fraud. The law enforces the rule of constructive notice and shifts the burden

to prove fraud in those cases where an error in execution is more than an administrative mistake.

The Certified Questions come to this Court because Petitioners filed a Chapter 13 bankruptcy. Petitioners want to disavow their mortgage. In doing so, they have adopted the fiction that they are hypothetical purchasers for value. The Petitioners are in that position as a result of a policy consideration in Chapter 13 bankrutpcy cases that permit them to act derivatively for a trustee. Thus, the end goal for Petitioners is to treat their mortgage lender as unsecured so that the money that would otherwise be paid to the lender can go to Petitioner's other creditors. The same would be true if the challenge came from a Chapter 7 bankruptcy trustee using his powers under 11 U.S.C. § 544 or another mortgagee hoping to gain lien priority.

With the enactment of R.C. §1301.401, the Ohio legislature has given land owners and their mortgagees protection from these types of challenges. The classes of *bona fide* purchasers that have heretofore used the recording statutes to defeat voluntary mortgages is comparatively small. Under R.C. §1301.401(B), however, Ohio homeowners are not going to lose their property because a notary did not write the homeowner's names in a mortgage acknowledgment or forget to sign her certificate.

Respectfully, therefore, Respondent JP Morgan Chase Bank requests that both Certified Questions be answered "yes".

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2015 a copy of the foregoing Merit Brief was served on the following by regular US Mail:

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APPENDIX

R.C. § 5301.23

11 U.S.C. § 544

R.C. § 5301.23

5301.23 Effective date of mortgage; mailing address of mortgagee

(A) All properly executed mortgages shall be recorded in the office of the county recorder of the county in which the mortgaged premises are situated and shall take effect at the time they are delivered to the recorder for record. If two or more mortgages pertaining to the same premises are presented for record on the same day, they shall take effect in the order of their presentation. The first mortgage presented shall be the first recorded, and the first mortgage recorded shall have preference.

(B) A mortgage that is presented for record shall contain the then current mailing address of the mortgagee. The omission of this address or the inclusion of an incorrect address shall not affect the validity of the instrument or render it ineffective for purposes of constructive notice.

11 U.S.C.A. § 544

§ 544. Trustee as lien creditor and as successor to certain creditors and purchasers

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by--

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

(b)(1) Except as provided in paragraph (2), the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as that term is defined in section 548(d)(3)) that is not covered under section 548(a)(1)(B), by reason of section 548(a)(2). Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.