



IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ACACIA ON THE GREEN)
CONDOMINIUM ASSOCIATION, INC.)

Plaintiff,)

v.)

JEVAUN JEFFERSON, et al.,)

Defendants.)

Case No. CV-08-656304

JUDGE CASSANDRA COLLIER-WILLIAMS

Parcel No.: 714-21-931C

OPINION AND ORDER

This cause came on for consideration upon Defendant First Horizon Home Loans' (hereinafter, "First Horizon") Objections to Magistrate's Decision Filed September 18, 2012. Specifically, First Horizon objected to the findings that 1) The TED Properties Mortgage is a valid mortgage as to First Horizon; and 2) the TED Properties Mortgage has priority over First Horizon's Mortgage. The Court, having undertaken an independent review of the record as to the objected matters, sustains Defendant First Horizon's objections. The Court finds that the Magistrate's decision with respect to the issue of lien priority is not supported by the record and is contrary to law. Therefore, the Court adopts the Magistrate's decision, in part, except as modified with respect to the granting and denial of Defendant First Horizon and Defendant TED Properties' cross-motions for summary judgment.

PROCEDURAL HISTORY AND STATEMENT OF THE FACTS

This case was filed on April 9, 2008, by Acacia on the Green Condominium Association, Inc. (Acacia) as a Complaint for Foreclosure as to the prior owner and Defendant Jevaun Jefferson (Jefferson). On September 18, 2012, the Magistrate issued his decision on the Complaint, multiple Defendants' Answers and Cross-Claims, Motions for Default and multiple Cross-Motions for Summary Judgment. Among many findings regarding the premises, described as 2112 Acacia Park Drive, #607, Lyndhurst, OH, P.P.N. 714-21-931C. The relevant facts of the lien priority portion of this case are not in dispute and are summarized herein from the Magistrate's Decision. Sal Culotta purchased the subject property in June of 2005. His deed was recorded by the Cuyahoga county recorder. Mr. Culotta granted two mortgages on the property; the first to Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc., and the second, in the sum of \$66,000.00, to TED Properties. Jevaun Jefferson then purchased the property from Mr. Culotta by Warranty Deed recorded on July 27, 2007. Jefferson granted a mortgage to Mortgage Electronic Registration Systems, Inc., as nominee for First Horizon Home Loans in the sum of \$380,000.00, the proceeds from which were used to satisfy the Culotta mortgage to Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc. The parties are in agreement that the TED Properties mortgage was recorded first in time, and that the TED Properties mortgage lacks any description whatsoever of the property it intends to encumber. The only questions at issue are whether the TED Properties mortgage is invalid as to third parties' subsequently recorded mortgages and if the doctrine of equitable subrogation entitles First Horizon to lien priority over TED Properties. As this Court answers the first question in favor of First Horizon, the equitable subrogation issue is moot and will not be addressed.

LAW AND ANALYSIS

O.R.C. 5302.12 defines generally the substance of the form required for recording mortgages in the State of Ohio. Pursuant to O.R.C. 5301.25, all land contracts properly executed shall be recorded in the office of the county recorder of the county in which the premises are situated. Every conveyance of real property must contain such a convenient and definite description that, by its terms, the land can be located. *Scarberry v. Lawless*, 4th Dist. No. 09CA18, 2010-Ohio-3395.

The Magistrate, in analyzing First Horizon's Cross-Claim, the Answer of TED Properties thereto, the Motion for Summary Judgment of First Horizon, the Motion for Summary Judgment of TED Properties, and the respective briefs and evidence, decided that Defendant TED Properties was entitled to judgment in its favor as a matter of law on the issue of lien priority. (Magistrate's Decision, p. 5). The Magistrate relied upon *Citizens National Bank v. Denison* and *Delfino v. Paul Davies Chevrolet, Inc.* in concluding that the reasoning in those Ohio Supreme Court cases supported TED Properties' contention that the mortgage from Sal Culotta to TED Properties remains valid as between the parties even without a legal description. The issue in contention however is not whether the mortgage is valid as between the parties, but rather with respect to third parties.

It is undisputed that the TED Properties mortgage lacked any description of the land, and a reading of RC 5302.12 requires a description of the land to be encumbered. Therefore, the mortgage in this case is rendered invalid. An invalid instrument, regardless of whether it is physically brought to and stamped in the Recorder's office, is unrecorded as a matter of law. *In re Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777. "Under the provisions of Ohio Rev. Code Ann. § 5301.25, a defectively executed mortgage when recorded does not establish a lien with priority

over subsequently recorded mortgages properly executed.” *Citizens National Bank v. Denison*, 165 Ohio St. 89. Because the Court finds that the TED Properties mortgage was invalid with respect to third parties, the court refrains from discussion regarding whether First Horizon had actual or constructive notice of the prior recorded TED mortgage.

CONCLUSION AND ORDER

The Magistrate’s Decision in this case is affirmed in part and reversed in part. Based on the above findings, the Court hereby sustains First Horizon’s objections to Magistrate’s Decision Filed September 18, 2012. The Court finds the TED Properties mortgage was not recorded properly in accordance with O.R.C. 5302.12 and 5301.25 and is therefore invalid and cannot establish a lien with priority over First Horizon’s subsequent and properly recorded mortgage.

IT IS HEREBY ORDERED THAT:

There are no genuine issues of material fact in this action and that Defendant First Horizon is entitled to judgment in its favor as a matter of law on the issue of lien priority. The Court further finds that reasonable minds can come to but one conclusion, which is adverse to TED Properties, and therefore grants First Horizon’s Motion for Summary Judgment against TED Properties as to the issue of lien priority.

TED Properties’ Motion for Summary Judgment against Defendant First Horizon, is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Magistrate’s Decision of September 18, 2012 is affirmed in all respects except as to the matter of lien priority.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Sheriff and Clerk of Courts are to follow the order of the Magistrate's Decision of September 18, 2012, while making any necessary adjustments accordingly with regard to the sustaining of Defendant First Horizon's objections to said decision.

IT IS SO ORDERED.

8-28-2013
DATE

Cassandra Collier Williams
JUDGE CASSANDRA COLLIER-WILLIAMS

RECEIVED FOR FILING

AUG 29 2013

CUYAHOGA COUNTY
CLERK OF COURTS
By [Signature] Deputy