

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:	:	Case No. 07-58047
	:	
Amelia F. Bridgeforth,	:	Chapter 7
Debtor.	:	Judge Caldwell
	:	
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William T. Drown,	:	
Plaintiff.	:	
v.	:	Adv. Pro. No. 07-2915
Colony Mortgage Corp.,	:	
Defendant.	:	

**ORDER DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT
(DOC. NO. 82) AND GRANTING SUMMARY JUDGMENT FOR DEFENDANT**

William T. Drown, Plaintiff and Trustee in Debtor Amelia Bridgeforth’s Chapter 7 bankruptcy, filed suit seeking to avoid the mortgages between Debtor and mortgagors CitiMortgage, Inc. and Mortgage Electronic Registration Systems, Incorporated. Debtor originally signed the mortgages with Colony Mortgage Corporation, which were taken over by the current defendants after a series of assignments and transfers. Plaintiff claims that his “strong arm” powers under 11 U.S.C. § 544(a)(3) allows him to set aside the mortgage for lack of constructive notice.

The Court renders summary judgment when the moving party demonstrates that there is “no genuine issue as to any material fact” and that party is entitled to “judgment as a matter of law.” Fed. R. Civ. P. 56(c). Material facts are those facts upon which a “reasonable jury could return a verdict for the nonmoving party.” *Travelers Property Cas. Co. of America v. Hillerich & Bradsby Co., Inc.*, 598 F.3d 257, 264 (6th Cir. 2010). If the moving party satisfies its burden, the nonmoving party must then either present “significant probative evidence” to demonstrate doubt regarding these material facts, or present evidence that would “permit a reasonable jury to find in its favor. *Vereecke v. Huron Valley School District*, 609 F.3d 392, 399 (6th Cir. 2010). And, if the Court finds it appropriate, summary judgment may be entered for the nonmoving party. *K.E. Resources, LTD. v. BMO Fin., Inc. (In re Century Offshore Mgmt. Corp.)*, 119 F.3d 409, 412 (6th Cir. 1997).

Debtor purchased the property at issue on May 19, 2006, receiving a deed that contained a correct street address and tax identification number, but the legal description identified the wrong lot number. On May 16, Debtor executed a mortgage (the “first mortgage”) with Colony Mortgage Corporation for the same property, again with a correct street address, correct tax identification number, and the same incorrect legal description. The first mortgage was executed in conformance with Ohio law, and was then recorded on May 25, 2006. Three months later, on August 7, 2006, the same mortgage was recorded again, but bore the handwritten notation, “Re-recorded to correct Lot Number in Legal.” However, it was not properly executed prior to recordation.

Plaintiff claims the effect of these recorded mortgages are either: (1) both mortgages are invalid, the first due to conflicting information, and the second because it was not executed properly; or (2) the second mortgage replaced the first, but the second was invalid because it was

materially altered. Defendants counter that despite the incorrect legal description, the correct property address in the first mortgage provides constructive notice, and the rerecorded second mortgage has no legal effect because it only corrected the legal description.

Constructive notice occurs when an individual has “knowledge of facts which would induce a prudent person to make an inquiry by which he would have or could have obtained knowledge of the prior encumbrance.” *Thames v. Asia’s Janitorial Serv., Inc.*, 611 N.E.2d 948 (Ohio Ct. App. 1992). The Sixth Circuit, encountering a similar situation, held that a trustee has constructive notice when a mortgage, although lacking any legal description, provided a street address and tax identification number. *Argent Mortgage Co. v. Drown (In re Bunn)*, 578 F.3d 487 (6th Cir. 2009). The deed in *Bunn* had a precise legal description, a parcel number, and a street address, and while the mortgage contained an identical parcel number and street address, it did not contain any legal description. *Id* at 488-89.

The Court in the *Bunn* case held that despite the differences between the deed and the mortgage, “discovering that a residential lot has a mortgage that describes the lot by address but not by plat number when both address and plat number are on the granting deed and the seller owns no other real estate in the county,” is sufficient to place a reasonable, prudent purchaser on notice that the property was encumbered. *Id.* at 490. Moreover, an incorrect legal description, alone, is not fatal to a mortgage, as an encumbered property can be identified through the contents of the mortgage and other available information. *Hardesty v. Equity One Credit Corp. (In re Farrell)*, 269 B.R. 181 (Bankr. S.D. Ohio 2001).

Although Plaintiff claims this case requires choosing whether the legal description or street address controls when there is conflicting information; the actual issue is whether the total

contents of the first mortgage provide constructive notice to a hypothetical creditor based upon a reasonable search of related real estate records. *See Terlecky v. Beneficial Ohio, Inc. (In re Little Key)*, 292 B.R. 879 (Bankr. S.D. Ohio 2003).

The Court find and concludes that the Plaintiff had constructive notice of the first mortgage, and that the second mortgage and its validity is irrelevant. First, the legal description in the first mortgage and deed were in agreement. Second, the property address in the schedules matches the first mortgage and deed. Third, the same tax identification number is used in the first mortgage and the deed. All these factors demonstrate that the Plaintiff, as a trustee seeking to recover assets for the benefit of creditors, had sufficient notice that there was a lien on the property. Before or during the creditors' meeting, all the Plaintiff had to do is review the schedules and match them to the first mortgage and deed.

Accordingly, the Plaintiff's Motion for Summary Judgment is **DENIED**. Further, as there are no material facts at issue, the Court **GRANTS** summary judgment in favor of the Defendant.

IT IS SO ORDERED.

Copies to:

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