UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

In re Crane

742 F.3d 702 (7th Cir. 2014) · No. Nos. 13-1518, 13-1277 · Decided December 23, 2013

SUMMARY

The Seventh Circuit held that, under the pre-2013 version of Illinois mortgage-recording statute 765 ILCS 5/11, the omission of a mortgage's maturity date or interest rate did not prevent the mortgage from providing constructive record notice. Accordingly, bankruptcy trustees could not avoid the recorded mortgages under the strong-arm powers of 11 U.S.C. § 544(a)(3), and the judgments in the consolidated Crane and Klasi Properties appeals were affirmed.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	David F. Hamilton; Richard D. Cudahy; Kenneth F. Ripple
JURISDICTION	Federal
DECIDED	December 23, 2013
DOCKET	Nos. 13-1518, 13-1277
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals involving bankruptcy trustees' adversary proceedings under 11 U.S.C. § 544(a)(3) seeking to avoid recorded Illinois mortgages that omitted the underlying loans' maturity dates and interest rates.
STANDARD OF REVIEW	De novo review of the conclusions of law reached by the district court and bankruptcy court.
PRECEDENTIAL VALUE	Published, precedential opinion of the United States Court of Appeals for the Seventh Circuit.
PARTIES	Trustees in the Crane and Klasi Properties bankruptcy cases v. Mortgage lenders in the Crane and Klasi Properties cases

TOPICS

adversary proceedings · chapter 7 · automatic stay · statutory interpretation · real estate

PRACTICE AREAS

Bankruptcy | Real estate | Mortgage recording and priority | Statutory interpretation

QUESTIONS PRESENTED

1. Whether, under the pre-2013 version of 765 ILCS 5/11, omission of a mortgage loan's maturity date or interest rate from a recorded Illinois mortgage made the mortgage avoidable by a bankruptcy trustee under 11 U.S.C. § 544(a)(3).
2. Whether the trustee in the Klasi Properties case waived the right to challenge the mortgage by agreeing to an order granting relief from the automatic stay.

HOLDINGS

1. Under the pre-2013 version of 765 ILCS 5/11, the statutory mortgage form was permissive rather than mandatory. A recorded mortgage containing the indispensable common-law elements of a mortgage was sufficient to provide constructive record notice even if it omitted the underlying debt's maturity date and interest rate, and the bankruptcy trustees therefore could not avoid the mortgages under § 544(a)(3).
2. An order granting relief from the automatic stay is not a preclusive adjudication of the parties' substantive rights, and the trustee's participation in an agreed order lifting the stay did not constitute a concession or waiver of the right to challenge the mortgage under § 544(a)(3).

KEY QUOTATIONS

> *"We believe the better view, and the one most likely to be adopted by the Illinois Supreme Court, is that the form set forth in section 5/11 has always been a permissive safe harbor, that the mortgages recorded in these cases supplied the indispensable elements of a mortgage under Illinois common law, and that the recorded mortgages were effective to give constructive record notice of the mortgages to potential buyers."* (742 F.3d at 708)

> *"We hold that the trustees had constructive record notice of the mortgages in both the Crane and Klasi Properties cases and were not entitled to avoid the mortgages."* (742 F.3d at 710)

FACTUAL BACKGROUND

Gary and Marsa Crane and Klasi Properties, LLC borrowed money secured by mortgages on Illinois real estate. The lenders recorded mortgages that identified the parties, indebtedness amounts, properties, and promissory notes, but did not state the maturity dates or interest rates; those terms appeared in incorporated promissory notes. The bankruptcy trustees sought to avoid the mortgages under the Bankruptcy Code's strong-arm provision, 11 U.S.C. § 544(a)(3).

PROCEDURAL HISTORY

In the Crane case, the bankruptcy court granted summary judgment to the trustee, and the Central District of Illinois reversed and entered judgment for the mortgage lender. In the Klasi Properties case, the bankruptcy court granted summary judgment to the mortgage lender. The Seventh Circuit accepted direct review under 28 U.S.C. § 158(d)(2)(B) and affirmed both judgments.

DISPOSITION

affirmed

CASES CITED

- Sandy Ridge Oil Co. v. Centerre Bank N.A. (In re Sandy Ridge Oil Co.), 807 F.2d 1332, 1336 (7th Cir. 1986)
- Brown v. Job (In re Polo Builders, Inc.), 433 B.R. 700, 707 (Bankr. N.D. Ill. 2010)
- Sandy Ridge Oil Co. v. Centerre Bank N.A. (In re Sandy Ridge Oil Co.), 832 F.2d 75 (7th Cir. 1987)
- LaSalle Bank v. Ferone, 384 Ill. App. 3d 239, 322 Ill. Dec. 948, 892 N.E.2d 585, 590 (2008)
- Goldberg v. Ehrlich (In re Ehrlich), 59 B.R. 646, 650 (Bankr. N.D. Ill. 1986)
- Illinois v. Chiplease, Inc. (In re Resource Technology Corp.), 721 F.3d 796, 799-800 (7th Cir. 2013)
- Ojeda v. Goldberg, 599 F.3d 712, 716 (7th Cir. 2010)
- Pippen v. NBCUniversal Media, LLC, 734 F.3d 610, 615 (7th Cir. 2013)
- Bogie v. Rosenberg, 705 F.3d 603, 609 (7th Cir. 2013)
- Greenfield Mills, Inc. v. Macklin, 361 F.3d 934, 954 (7th Cir. 2004)
- Unzicker v. Kraft Food Ingredients Corp., 203 Ill. 2d 64, 270 Ill. Dec. 724, 783 N.E.2d 1024, 1031 (2002)
- Caraway v. Sly, 222 Ill. 203, 78 N.E. 588, 589 (1906)
- Bullock v. Battenhousen, 108 Ill. 28, 37 (1883)
- Flexter v. Woomer, 46 Ill. App. 2d 456, 197 N.E.2d 161, 163 (1964)
- Bergman v. Bogda, 46 Ill. App. 351, 357 (1892)
- Gardner v. Cohn, 191 Ill. 553, 61 N.E. 492, 493 (1901)
- Skach v. Gee, 137 Ill. App. 3d 216, 91 Ill. Dec. 882, 484 N.E.2d 441, 443 (1985)
- Peterson v. Berg (In re Berg), 387 B.R. 524, 561 (Bankr. N.D. Ill. 2008)
- In re Vitreous Steel Products Co., 911 F.2d 1223, 1234 (7th Cir. 1990)
- Bruegge v. WBCMT 2007-C33 Mid America Lodging, LLC (In re HIE of Effingham, LLC), 490 B.R. 800, 818-820 (Bankr. S.D. Ill. 2013)
- Banbury Metrolofts, LLC v. BMO Harris Bank, N.A. (In re Banbury Metrolofts, LLC), 2013 WL 1191230, at *4 (Bankr. N.D. Ill. Mar. 25, 2013)
- Bank of Ill. v. Covey (In re Shara Manning Props., Inc.), 475 B.R. 898, 910 (Bankr. C.D. Ill. 2010)
- Richardson v. Good (In re Good), 2006 WL 2458817, at *2 (Bankr. C.D. Ill. Aug. 23, 2006)
- Citizens Sav. Bank v. Covey (In re Pak Builders), 284 B.R. 650, 654-660, 662-663 (Bankr. C.D. Ill. 2002)
- People's Nat'l Bank N.A. v. Jones, 482 B.R. 257, 263 (S.D. Ill. 2012), rev'd on other grounds, Peoples Nat'l Bank N.A. v. Banterra Bank, 719 F.3d 608 (7th Cir. 2013)
- Miller v. LaSalle Bank N.A., 595 F.3d 782, 788 (7th Cir. 2010)