

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Trumble v. GMAC Mortgage & Key Home Equity Services, 213 W. Va. 780

584 S.E.2d 327 (2003) · Decided July 7, 2003

SUMMARY

The Supreme Court of Appeals of West Virginia answered a certified question concerning whether a bankruptcy trustee, possessing bona fide purchaser status under 11 U.S.C. § 544(a)(3), prevails over the holder of a recorded deed of trust that was improperly acknowledged. The court held that priority depends on whether an improper benefit was obtained or harm resulted from the defective acknowledgment. If neither occurred, the deed of trust provides constructive notice under West Virginia law; otherwise, the trustee prevails.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	July 7, 2003
DISPOSITION	other
PROCEDURAL POSTURE	The United States Bankruptcy Court for the Northern District of West Virginia certified to the Supreme Court of Appeals of West Virginia a question concerning the priority of a recorded but improperly acknowledged deed of trust against a bankruptcy trustee asserting strong-arm powers under 11 U.S.C. § 544(a)(3).
STANDARD OF REVIEW	De novo review of legal issues presented by a certified question.
PRECEDENTIAL VALUE	Published opinion; binding authority of the Supreme Court of Appeals of West Virginia on the certified question addressed.
PARTIES	Robert W. Trumble, trustee for the Chapter 7 bankruptcy estate of Russell Morgan Williams and Wendy Wilkins Kilmer Williams v. GMAC Mortgage, Key Home Equity Services

TOPICS

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PRACTICE AREAS

Bankruptcy

Real estate recording and priority

Mortgage and deed of trust law

QUESTIONS PRESENTED

1. Whether a bankruptcy trustee possessing the status of a bona fide purchaser without notice under 11 U.S.C. § 544(a)(3) prevails over the holder of a deed of trust that was recorded but improperly acknowledged.
2. Whether an improperly acknowledged deed of trust provides constructive notice under West Virginia law when no improper benefit was obtained and no harm flowed from the transaction.

HOLDINGS

1. A bankruptcy trustee's priority over the holder of a recorded but improperly acknowledged deed of trust depends on whether an improper benefit was obtained by the notary or any party to the instrument and whether any harm flowed from the transaction. If neither an improper benefit nor harm resulted, the imperfectly acknowledged deed of trust provides constructive notice under West Virginia law and the trustee does not prevail; if either occurred, the acknowledgment is invalid, the deed of trust provides no constructive notice, and the trustee prevails.
2. Certified legal questions are reviewed de novo.

KEY QUOTATIONS

“In answer to the Bankruptcy Court’s question, we find that whether the bankruptcy trustee, given the status of a bona fide purchaser without notice by federal bankruptcy law, prevails over the holder of a deed of trust recorded but improperly acknowledged, depends upon whether an improper benefit was obtained by the notary or any party to the instrument, as well as whether any harm flowed from the transaction.” (786)

“If neither improper benefit nor any harm flowed from the transaction, then the imperfectly acknowledged deed of trust provides constructive notice under West Virginia law for the purpose of discerning priority in a bankruptcy action.” (786)

FACTUAL BACKGROUND

Russell and Wendy Williams refinanced their Berkeley County, West Virginia home on November 2, 1999, and executed a deed of trust securing a \$119,000 loan. A Maryland notary acknowledged the signatures in West Virginia and altered the acknowledgment to make it appear that the Williams had signed in Maryland, although the notary lacked authority to acknowledge signatures in West Virginia. The deed of trust was recorded, the Williams later filed Chapter 7 bankruptcy, and the bankruptcy trustee challenged the lender's secured priority under the Bankruptcy Code's bona fide-purchaser powers.

PROCEDURAL HISTORY

Russell and Wendy Williams filed a voluntary Chapter 7 bankruptcy petition after refinancing their home and granting deeds of trust that were acknowledged in West Virginia by a Maryland notary who lacked authority to perform the acknowledgments there. The bankruptcy trustee commenced an adversary proceeding and sought

summary judgment, contending that the defective acknowledgment prevented the deeds of trust from securing priority against the bankruptcy estate. The Bankruptcy Court certified the priority question to the West Virginia Supreme Court of Appeals, which accepted the question and answered it conditionally.

DISPOSITION

other

REMAND INSTRUCTIONS

The certified question was answered conditionally. The Bankruptcy Court was to determine whether an improper benefit was obtained by the notary or any party and whether harm flowed from the transaction; if either occurred, the trustee prevails, and if neither occurred, the deed of trust provides constructive notice.

CASES CITED

- Light v. Allstate Insurance Co., 203 W. Va. 27, 506 S.E.2d 64 (1998)
- Bower v. Westinghouse Electric Corp., 206 W. Va. 133, 522 S.E.2d 424 (1999)
- Galloway v. Cinello, 188 W. Va. 266, 423 S.E.2d 875 (1992)
- In re Morgan, 96 B.R. 615 (Bankr. N.D. W. Va. 1989)
- In re Smith, 155 B.R. 145 (Bankr. S.D. W. Va. 1993)
- Cox v. Wayt, 26 W. Va. 807 (1885)
- Zolsman v. Totz, 74 W. Va. 604, 82 S.E. 511 (1914)
- South Penn Oil Co. v. Blue Creek Development Co., 77 W. Va. 682, 88 S.E. 1029 (1916)
- Clarksburg Casket Co. v. Valley Undertaking Co., 81 W. Va. 212, 94 S.E. 549 (1917)
- Tavenner v. Barrett, 21 W. Va. 656 (1883)
- Atkinson v. Miller, 34 W. Va. 115, 11 S.E. 1007 (1890)
- McElwain v. Wells, 174 W. Va. 61, 322 S.E.2d 482 (1984)

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