

SUPREME COURT OF TENNESSEE

In re Edward James Crim, Sr., and Jayne Crim; Eva M. Lemeh,
Trustee v. EMC Mortgage Corporation

81 S.W.3d 764 (Tenn. 2002) · Decided July 18, 2002

SUMMARY

The Tennessee Supreme Court held that a deed of trust was improperly acknowledged because the acknowledgment falsely stated that Edward J. Crim, Sr. personally appeared, even though his wife signed on his behalf under a power of attorney. The defective acknowledgment rendered the deed of trust null and void as to subsequent judicial lien creditors and bona fide purchasers with respect to Edward Crim's interest. The acknowledgment was sufficient as to Jayne Crim's individual signature, so the deed of trust effectively encumbered her right of survivorship in the tenancy-by-the-entirety property.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Frank F. Drowota, III, C.J.; E. Riley Anderson, J.; Adolpho A. Birch, Jr., J.; Janice M. Holder, J.; William M. Barker, J.
JURISDICTION	Tennessee
DECIDED	July 18, 2002
DISPOSITION	other
PROCEDURAL POSTURE	The Tennessee Supreme Court accepted certification under Tennessee Supreme Court Rule 23 from the United States Bankruptcy Court for the Middle District of Tennessee concerning the validity and effect of a defective acknowledgment of a deed of trust.
STANDARD OF REVIEW	De novo resolution of certified questions of state law
PRECEDENTIAL VALUE	Published Tennessee Supreme Court opinion; precedential
PARTIES	Eva M. Lemeh, Trustee v. EMC Mortgage Corporation

TOPICS

- bankruptcy
- mortgages
- recording acts
- title disputes
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the deed of trust was improperly acknowledged under Tennessee law when Jayne Crim signed on behalf of Edward Crim but the acknowledgment stated that Edward personally appeared and acknowledged the instrument.
2. Whether the defective acknowledgment rendered the deed of trust void or voidable as to subsequent judicial lien creditors or bona fide purchasers without notice.
3. What interest in tenancy-by-the-entirety property was effectively encumbered by the deed of trust.

HOLDINGS

1. The deed of trust was improperly acknowledged as to Edward Crim because the certificate falsely stated that he personally appeared and acknowledged his signature, failed to indicate that Jayne Crim acted as his attorney-in-fact, and did not substantially comply with the statutorily prescribed representative-capacity acknowledgment form.
2. The deed of trust was null and void as to subsequent judicial lien creditors and bona fide purchasers without notice with respect to the transfer of Edward Crim's interest in the property.
3. The deed of trust was valid and not voidable by a subsequent judicial lien creditor or bona fide purchaser without notice insofar as it encumbered Jayne Crim's interest.
4. Because the property was held as a tenancy by the entirety, Jayne Crim acting alone could encumber only her right of survivorship; that survivorship interest was effectively conveyed to EMC.

KEY QUOTATIONS

“Because the acknowledgment does not indicate that the wife was signing on behalf of her husband and because the certificate of acknowledgment does not substantially comply with the statutorily prescribed forms, the deed of trust is null and void as to judicial lien creditors and bona fide purchasers with respect to the transfer of the husband's interest in the property.” (766)

“However, because Mr. and Mrs. Crim hold the real property at issue in tenancy by the entirety, the deed of trust effectively conveyed only Jayne Crim's right of survivorship.” (770)

FACTUAL BACKGROUND

Edward and Jayne Crim executed a deed of trust securing a \$103,000 debt. Edward Crim was not present when the deed was signed; Jayne Crim signed both her own name and Edward's name pursuant to a power of attorney. The notary certificate nevertheless stated that both spouses personally appeared and acknowledged the instrument. The property was held by the spouses as tenants by the entirety.

PROCEDURAL HISTORY

Edward and Jayne Crim filed a Chapter 7 bankruptcy petition, and trustee Eva M. Lemeh commenced an adversary proceeding seeking to set aside a 1997 deed of trust. The bankruptcy court certified two Tennessee-

law questions to the Tennessee Supreme Court: whether the deed was improperly acknowledged and, if so, whether the defect made it void or voidable as to judicial lien creditors or bona fide purchasers. The Tennessee Supreme Court answered both certified questions and directed the clerk to transmit the opinion to the certifying court.

DISPOSITION

other

REMAND INSTRUCTIONS

The clerk was directed to transmit a copy of the opinion to the United States Bankruptcy Court for the Middle District of Tennessee under Tennessee Supreme Court Rule 23(8).

CASES CITED

- In re Marsh, 12 S.W.3d 449 (Tenn. 2000)
- Pennington v. Webb-Hammock Coal Co., 182 Tenn. 33, 184 S.W.2d 47, 48 (1944)
- In re Airport-81 Nursing Care, Inc., 29 B.R. 501 (Bankr. E.D. Tenn. 1983)
- Robinson v. Trousdale County, 516 S.W.2d 626, 632 (Tenn. 1974)
- Clark v. Clark, 620 S.W.2d 536, 538 (Tenn. Ct. App. 1981), permission to appeal denied (Tenn. Aug. 31, 1981)
- Manis v. Farmers Bank, 170 Tenn. 656, 98 S.W.2d 313 (1936)
- In re Medlin, 201 B.R. 188, 192 (Bankr. E.D. Tenn. 1996)