

IT IS SO ORDERED.

Dated: 04:44 PM June 26 2009


MARILYN SHEA-STONUM *ESP*
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:)	
)	CASE NO. 08-52789
EUGENE R. SWARTZ and)	
ESTHER B. SWARTZ,)	CHAPTER 7
)	
DEBTORS)	
)	
)	
HAROLD A. CORZIN, TRUSTEE)	ADVERSARY NO. 09-5026
)	
PLAINTIFF,)	JUDGE MARILYN SHEA-STONUM
)	
vs.)	
)	
BANK OF NEW YORK, ET AL.,)	MEMORANDUM OPINION
)	
DEFENDANTS)	

I. PROCEDURAL BACKGROUND

Plaintiff-Trustee, Harold A. Corzin (“Trustee”), through counsel, initiated this adversary proceeding against, Defendant-Bank of New York (“BNY”), Defendant-Debtors, Eugene and Esther Swartz (“Debtors”) Defendant-Citifinancial, Inc. (“Citi”), and Defendant-Summit County seeking an order: (1) allowing the Trustee to avoid the mortgage granted on

the Debtors' real property, 55 Flowerdale Dr. Akron, OH 44319 (the "Real Property") to the CIT Group and assigned to BNY (the "Mortgage"); and (2) requiring each named defendant to assert whatever interests they may have in the Real Property. This matter is before the Court on the following documents: Motion for Summary Judgment filed by the Trustee (the "Motion") [docket # 23], and Response of BNY to the Trustee's Motion (the "Response") [docket #30].

This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (F), (K) and (O) over which this Court has jurisdiction under 28 U.S.C. § 1334 and the Standing Order of Reference entered in this District on July 16, 1984.

II. STIPULATED FACTS

The following facts are not in dispute and are the subject of Joint Stipulations filed by the Trustee, BNY, and the Debtors [docket #21]:

1. The plaintiff's claims in this adversary proceeding are within the core matter jurisdiction of the Bankruptcy Court.
2. On July 31, 2008, the Debtors filed a petition in the United States Bankruptcy Court for the Northern District of Ohio seeking relief under chapter 7 of title 11 of the United States Code and relief was ordered on that date.
3. The plaintiff is the Trustee in the Debtors' chapter 7 case.
4. At the time of the commencement of the Debtors' case, the Debtors were the joint owners of the Real Property, located at 55 Flowerdale Drive, Akron, Ohio 44319, which is more fully described as follows:

Situated in the Township of Coventry, County of Summit and State of Ohio: known as being Lots Two Hundred Twenty-Nine (229) and Two-Hundred Thirty (230) in Long Lake Estates Subdivision Number Two, as recorded in Plat Book 41, Pages 1 to

7, inclusive, Summit County Records, be the same more or less, but subject to all legal highways.

Permanent Parcel Nos. 19-06764 and 19-06765.

5. The Mortgage on the Real Property was granted to the CIT Group/ Consumer Finance, Inc. on October 17, 2002, and filed with the Recorder of Summit County, Ohio on October 25, 2002.
6. The copy of the Mortgage submitted as Exhibit "A" is authentic and admissible in this adversary proceeding.
7. The Mortgage was assigned to Defendant, BNY, on or about October 10, 2008. BNY presently holds the Mortgage.
8. The copy of the Assignment submitted as Exhibit "B" is authentic and admissible in this adversary proceeding.
9. The Debtors signed the Mortgage and a member of the notary public was present when the Debtors signed the Mortgage.
10. Summit County, Ohio has an undisputed first and best lien on the Real Property for real estate taxes and assessments, the exact amount of which will be determined at the time of sale of the Real Property, if necessary.
11. The Mortgage, if determined to be a valid mortgage on the Real Property, is junior in priority to the lien of Summit County.
12. The Debtors have claims of exemption in and to the Real Property, although the proper amount of their claims of exemption are disputed by the Trustee. The Debtors' claims of exemption are junior in priority to the lien of Summit County, and junior in priority to the Mortgage if it is determined to be a valid mortgage on the

Real Property.

III. FINDINGS OF FACT

In addition to the foregoing stipulations the Court makes the following findings of fact:

1. The Mortgage was executed on, what appears to be, a pre-printed or typed form. See attached Exhibit A.
2. On the top left side of page 1 of the Mortgage, in the first box is the phrase “Names and Address of Mortgagors.” *Id.* Below that phrase appears the names of the Debtors. *Id.*
3. On the signature lines, about three quarters of the way down page 1, the Debtors signatures are above their type written names. *Id.* Below the Debtors type written names appears the phrase “Type name of Mortgagor.” *Id.* This phrase is under the names of both of the Debtors. *Id.*
4. The only other names that appear on page 1 are those of the mortgagee and the notary. Trustee’s Exhibit A.
5. There are handwritten asterisks placed next to the phrase “Husband and Wife,” the handwritten address of the title company on the middle of the page, and next to the term Mortgagors in the acknowledgment. *Id.*
6. The acknowledgment is as follows: “[b]efore me, a notary public in and for the above County, personally appeared the above named Mortgagors, who acknowledged that (he-she-they) did sign the forgoing instrument, and that the same is (his-her-their) free act and deed.” *Id.*
7. On Schedule C of Debtors’ bankruptcy petition, Debtors claimed an exemption in the

amount of \$10,000.00 on the Real Property.

8. Debtors filed an answer to this adversary proceeding on February 23, 2009 [docket #14]. In their answer to this adversary proceeding, Debtors claimed an exemption on the Real Property in the amount of \$40,400.00.

IV. DISCUSSION

A. Summary Judgment Standard

The Court shall grant a movant's motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56 (c); Fed. R. Bankr. P. 7056. The party seeking summary judgment bears the initial burden of production by demonstrating the absence of any genuine issue of material fact, but the ultimate burden of demonstrating that an issue of fact remains for trial lies with the non-moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). Once the moving party satisfies its burden, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(e); Fed. R. Bankr. P. 7056(e). When considering a motion for summary judgment the Court should "construe all reasonable inferences in favor of the non-moving party." *Hamilton v. Starcom Mediavest Group*, 522 F.3d 623, 627 (6th Cir. 2008). The Court may also "enter summary judgment *sua sponte*, so long as the losing party was on notice that she had to come forward with all of her evidence." *Celotex*, 477 at 326. The material facts in this case are not disputed. The issues before the Court are solely questions of law. Therefore, the Court may appropriately address whether or not summary judgment should be granted.

B. Law and Argument

1. Mortgage Execution and Validity of Acknowledgment

The principal issue before the Court is whether or not the Trustee may avoid the Mortgage for the benefit of the bankruptcy estate. The Trustee maintains that the Mortgage was not properly notarized, according to Ohio law, and is therefore avoidable pursuant to the Trustee's rights as a bona fide purchaser under 11 U.S.C. § 544(a)(3). BNY maintains that the notarization of the Mortgage substantially complies with Ohio law and that the execution of the Mortgage is valid. In Ohio, a bona fide purchaser takes priority over a defectively executed mortgage if the bona fide purchaser does not have actual or constructive knowledge of the mortgage. *Zaptocky v. Chase Manhattan Bank (In re Zaptocky)* 250 F.3d 1020, 1027 (6th Cir. 2001). A recorded, but defectively executed mortgage does not give a bona fide purchaser constructive notice of the mortgage. *Thames v. Asia's Janitorial Serv.*, 611 N.E.2d 948, 954 (Ohio App. 1992). In bankruptcy, the trustee has the rights of a bona fide purchaser "without regard to any knowledge of the trustee." 11 U.S.C. § 544(a)(3). Accordingly, the Trustee may avoid a mortgage that was defectively executed, regardless of his actual knowledge of the mortgage. *Zaptocky*, 250 F.3d at 1027.

A mortgage is properly executed in Ohio, if its signing is acknowledged by the mortgagor, "before a judge or clerk of court of record . . . or a county auditor, county engineer, notary public, or mayor, who shall certify the acknowledgment and subscribe the official's name to the certificate of the acknowledgment." O.R.C. § 5301.01. A certificate of acknowledgment will be recognized if it contains the words "acknowledged before me" or their substantial equivalent. O.R.C. § 147.541. The term "acknowledged before me" means that:

- (A) The person acknowledging appeared before the person taking the acknowledgment;
- (B) He acknowledged he executed the instrument;
- (C) In the case of: (1) A natural person, he executed the instrument for the purposes

therein.

O.R.C. § 147.541. Ohio recognizes the following form of acknowledgment for “an individual acting in his own right,”

State of.....

County of

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged)

(Signature of person taking acknowledgment)

(Title or rank)

(Serial number, if any)

O.R.C. § 147.55(A). Other forms of acknowledgment are not precluded by the recognition of the above form. *Taylor v. Kemp*, 2005 Ohio 6787, P38 (Ohio Ct. App. 2005).

The Trustee maintains that the mortgage at issue in this adversary proceeding was not properly executed because in the space that calls for the name of the person acknowledged, the term “Mortgagors” was used. The Trustee asserts that the term “Mortgagors” was not adequately defined to mean the Debtors and therefore the acknowledgment is not effective. The Court disagrees.

The Trustee also argues that in order to comply with the mortgage execution requirements in Ohio, the names of the Debtors should have been used in the acknowledgment. The form acknowledgment recognized under Ohio law does include a space for the “name of the person acknowledging,” but it is not necessary for an acknowledgment to be in that form to be properly executed. The use of the term “Mortgagors” in this instance is not fatal to the execution of the mortgage. The acknowledgment substantially complies with the requirements for a valid mortgage execution in Ohio.

A mortgage execution is valid if it substantially complies with O.R.C. § 5301.01. In order to determine whether or not a mortgage execution substantially complies with the Ohio code, a reviewing court should look at “the nature of the error and the balance of the document to determine whether or not the ‘instrument supplies within itself the means of making the correction.’” *Menninger v. First Franklin Fin. Corp. (In re Fryman)*, 314 B.R. 137, (Bankr. S.D. Ohio 2004) (quoting *Dodd v. Bartholomew*, 44 Ohio St. 171, 5 N.E. 866 (1886)). There are several cases where the incorrect name was used in the acknowledgment space and the courts still determined that the acknowledgment substantially complied with the law.¹ Evaluating the acknowledgment that appears on page 1 of Exhibit A, there is no question as to the identity of the Mortgagors. The Debtors’ names appear in two places where they are described as the Mortgagor or Mortgagors. There are no other individuals listed on the Mortgage as mortgagors and there is no dispute between the parties as to whether or not the Debtors actually signed the Mortgage.

The Trustee further argues that the execution is defective because the location listed in the acknowledgment is inconsistent. The first part of the acknowledgment says that the signing took place in Summit County, but below that the acknowledgment lists a Cincinnati address. Cincinnati is located in Hamilton County. The Trustee cites no case law that would indicate that the location inconsistency would invalidate the execution of the mortgage. The parties

¹ See, e.g., *Dodd v. Bartholomew*, 44 Ohio St. 171 (1886) (holding that the acknowledgment in question was not defective where the acknowledgment contained the names Charles B. Clark and Mary Clark, when the grantors were actually Charles A. Clark and Mary Clark); *Mid-American Nat’l Bank & Trust Co. v. Gymnastics Internat’l*, 6 Ohio App. 3d 11 (Ohio Ct. App. 1982) (holding that the acknowledgment substantially complied even though a corporation’s name was listed in acknowledgment instead of those of the individuals acknowledging on behalf of the corporation); *Administrator of Veterans Affairs v. City Loan Co.*, 1985 Ohio App. LEXIS 6607 (Ohio App. Dist. 1985) (finding that acknowledgment that incorrectly contained name of mortgagee instead of mortgagor did not make the mortgage execution defective).

stipulated that the notary was present when the mortgage was executed. The acknowledgment otherwise performs its main function of indicating that the Debtors acknowledged their signatures to the notary. The Court concludes that the acknowledgment substantially complies despite the location inconsistency.

The Trustee further maintains that the term Mortgagors is not specific and that the purpose of acknowledgment, to wit identifying the signor, is frustrated by the use of the term Mortgagor. The Trustee cites several cases where a mortgage execution was determined to be invalid because the acknowledgment was left blank.² The Trustee did not cite any cases where the use of a defined term was deemed to be insufficient to meet Ohio's acknowledgment requirement. The term Mortgagors is sufficiently defined in the Mortgage document. This situation is distinguishable from those cases where the name of the person acknowledging was left blank, and it is a distinction with a material difference.

The Trustee also argues that handwritten asterisks create confusion. The Court does not find the handwritten asterisks confusing. The asterisks appear to be an attempt to link the phrase "Husband and Wife" to the term Mortgagors, which strengthens the argument that Mortgagors is sufficiently defined to mean the Debtors. Additionally, the Debtors' names appear on the document wherever the labels Mortgagor or Mortgagors are applied, which removes any possible confusion the asterisks might create. It is not clear if the asterisk in the middle of the page next to the title company's address is supposed to link it to any of the other asterisked

² See, e.g., *Smith's Lessee v. Hunt*, 13 Ohio 260 (1844) (holding that mortgage was invalid because the name of the person who acknowledged his signature was not included in the acknowledgment); *Bozman v. Universal 1 Credit Union, Inc. (In re Bozman)*, 365 B.R. 824 (Bankr. S.D. Ohio 2007) (allowing trustee to avoid mortgage where there mortgage document did not contain an acknowledgment); *Helbling v. Mortg. Elec. Registration Sys., Inc. et al (In re Cala)*, 2008 Bankr. LEXIS 1451 (Bankr. N.D. Ohio 2008) (finding that acknowledgment invalid because it was missing the name of one of the mortgagors).

items. This seems to be an anomaly and does not change the meaning of the term Mortgagors.

In this matter, it is clear from the face of the Mortgage document that the Mortgagors acknowledging their signatures to the notary are the Debtors. The execution of the Mortgage substantially complies with Ohio law and the Trustee may not avoid the Mortgage.

2. Debtors' Exemptions

The Trustee is also seeking judgment as a matter of law with respect to the Debtors' amended exemptions. The Debtors did not respond to the Trustee's Motion for Summary Judgment. Debtors commenced their bankruptcy case on July 31, 2008. On Schedule C of the Debtors' bankruptcy filing, Debtors claimed an exemption of \$10,000.00 on the Real Property. In their Answer to this adversary proceeding, the Debtors' asserted an exemption of \$40,400.00 on the Real Property. The Ohio homestead exemption was amended effective September 30, 2008 and was increased to \$20,200 per individual. O.R.C. § 2329.66. Prior to September 30, 2008, the Ohio homestead exemption was \$5,000 per individual. Pursuant to 11 U.S.C. § 522(b)(3), the Debtors may claim those exemptions that are applicable on the date of filing. *See In re Street*, 395 B.R. 637, 646 (Bankr. S.D. Ohio 2008). Accordingly, the Debtors are entitled only to those exemptions in place on July 31, 2008 and may claim a total exemption of only \$10,000.00 on the Real Property.

IV. CONCLUSION

The Trustee has not met his burden of proving that he may avoid the Mortgage. Based upon the foregoing the Court **DENIES** the Motion for Summary Judgment with respect to the

mortgage avoidance issue and **GRANTS** the Motion for Summary Judgment with respect to the Debtors' exemptions. The Court **GRANTS** summary judgment against the Trustee and in favor of Bank of New York with respect to the Trustee's mortgage avoidance claims. A separate final judgment will be entered in accordance with the foregoing. The Court believes that once a judgment is entered that is consistent with this opinion that all matters in this adversary proceeding will be resolved. Therefore, the pre-trial conference scheduled for July 1, 2009 will not go forward.

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cc:

(via electronic mail)

Robert Barr, Counsel for the Trustee

Harold Corzin, Trustee

Amelia Bower, Counsel for the Bank of New York

Jerome Reidy, Counsel for the Debtors

Marvin Evans, Counsel for Summit County

(via U.S. Mail)

Eugene and Esther Swartz

Bank of New York

TRI STATE TITLE

Fax: 513-563-2005

Oct 17 2002 12:06

P. 38

REAL ESTATE MORTGAGE

This Mortgage is made pursuant to the provisions of Chapter 1343 of the Ohio Revised Code, except that it is also subject to the Depository Institutions Deregulation and Monetary Control Act of 1980 with respect to the interest rate and any points charged.

Name and Address of Mortgagor(s): EUGENE R SWARTZ ESTHER B SWARTZ 55 FLOWERDALE DR AKRON, OH 44319		Mortgagee: THE CIT GROUP/CONSUMER FINANCE, INC. 8044 MONTGOMERY ROAD SUITE 225 CINCINNATI, OH 45236	
Marital Status: HUSBAND AND WIFE *		Prepared By	
Loan Number	Date	Date Final Payment Due	Principal Balance
	10/17/02	10/22/32	\$ 106,250.00

The words "I," "me" and "my" refer to all Mortgagors indebted on the Note secured by this Mortgage. The words "you" and "your" refer to Mortgagee and Mortgagee's assignee if this Mortgage is assigned.

MORTGAGE OF REAL ESTATE

To secure payment of a Note I signed today promising to pay you the Principal Balance as shown above together with interest at the rate set forth in the Note secured by this Mortgage, each of the persons signing this Mortgage mortgages, and confirms to you the real estate described below, and all present and future improvements on the real estate, which is located in Ohio, County of **SUMMIT**, (the "Premises").

SEE ATTACHED LEGAL DESCRIPTION 'EXHIBIT A'

Parcel 190-6764

These Premises are improved by a **S** family dwelling only.Property Address: **55 FLOWERDALE DR, AKRON, OH 443192314**Prior Instrument reference: Vol. **4990**, Page **66****TERMS AND CONDITIONS:**

STATUTORY CONDITION - This Mortgage is given upon the Statutory Condition. "Statutory Condition" is defined in Section 5302.14 of the Revised Code and provides generally that if I pay the indebtedness and perform the other obligations secured by this Mortgage and do not commit or permit waste, then this Mortgage will become null and void.

SEE OTHER SIDE FOR ADDITIONAL IMPORTANT TERMS

Eugene R Swartz (Seal)
EUGENE R SWARTZ
(Type name of Mortgagor)

Esther B Swartz (Seal)
ESTHER B SWARTZ
(Type name of Mortgagor)

(Seal)
(Type name of Mortgagor)

(Seal)
(Type name of Mortgagor)

ACKNOWLEDGMENT

State of Ohio
County of **Summit**

Before me, a notary public in and for the above County, personally appeared the above named **MORTGAGORS ***, who acknowledged that (he/she/they) did sign the foregoing instrument, and that the same is (his/her-their) free act and deed.

In testimony whereof, I have hereunto subscribed my name at
4015 EXECUTIVE PARK DR CINCINNATI, OH 45241

on the **17** day of **OCT**, **2002**
RONALD H. BARRY (Notary Public)
This instrument was prepared by **THE CIT GROUP/CONSUMER FINANCE, INC.**
A survey of this property was made by **None** (Type Name)

EUGENE R SWARTZ
1550434 10/16/02 15:46
2-1182A (7/02) Ohio First
Mortgage



54770768
Pg: 1 of 3
10/25/2002 01:24P
MO 18.00

Exhibit "A"

TRI STATE TITLE

Fax: 513-563-2005

Oct 17 2002 11:58

P. 21

File No.: 20020819

EXHIBIT A

Situated in the Township of Coventry, County of Summit and State of Ohio:
And known as being Lots Two Hundred Twenty-nine (229) and Two Hundred Thirty (230) in Long Lake Estates
Subdivision Number Two, as recorded in Plat Book 41, Pages 1 to 7, inclusive, Summit County Records, be the
same more or less.

Parcel No.: 1906764

54770768
Pg: 2 of 3
10/25/2002 01:24P
John A Donofrio, Summit Fiscal Officer MO 18.00

TAXES - LIENS - INSURANCE - MAINTENANCE - I will pay, when they are due and payable, all taxes, liens, assessments, obligations, water rates and any other charges against the Premises, whether superior or inferior to the lien of this Mortgage, maintain hazard insurance on the Premises in your favor in a form and amount satisfactory to you and maintain and keep the Premises in good repair at all times during the term of this Mortgage. You may pay any such tax, lien, assessment, obligation, water rates, premium or other charge (including charges to repair the Premises) or purchase such insurance in your own name, if I fail to do so. The amount you pay will be due and payable to you on demand, will bear interest at the interest rate set forth in the Note secured by this Mortgage if permitted by law or, if not, at the highest lawful interest rate, will be an additional lien on the Premises and may be enforced and collected in the same manner as the other obligations secured by this Mortgage. The insurance carrier providing the insurance referred to above will be chosen by me subject to your approval which will not be unreasonably withheld. All insurance policies and renewals must be acceptable to you and must include a standard mortgagee clause. You will have the right to hold the policies and renewals. If you require, I will promptly give to you all receipts of paid premiums and renewal notices. In the event of a loss, I will give prompt notice to the insurance carrier and you. You may file a proof of loss if not made promptly by me. Insurance proceeds will be applied to the restoration or repair of the Premises damaged or, at your option, the insurance proceeds will be applied to the sums, secured by this Mortgage, whether or not then due, with any excess paid to me. If I abandon the Premises, or do not answer within ten (10) days, a notice from you that the insurance carrier has offered to settle a claim, then you may collect the insurance proceeds. The ten (10)-day period will begin when the notice is given.

TITLE - The Premises were conveyed to me by a deed which is to be, or has been, recorded before this Mortgage, and I warrant the title to the Premises. I further warrant that the lien created by this Mortgage is a valid and enforceable first lien, subordinate only to easements and restrictions of record on the date of this Mortgage, and that during the entire term of the indebtedness secured by this Mortgage, such lien will not become subordinate to anything else.

CONDEMNATION - The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation (the taking of my property for a public use) or other taking of any part of the Premises, or for conveyance in lieu of condemnation, are hereby assigned and will be paid to you and are subject to the lien of and secured by this Mortgage. In the event of a taking of the Premises, the proceeds will be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to me. If the Premises are abandoned by me, or if, after notice by you to me that the condemnor offers to make an award or settle a claim for damages, I fail to respond to you within ten (10) days after the date the notice is given, you are authorized to collect and apply the proceeds, at your option, either to the restoration or repair of the Premises, or to the sums secured by this Mortgage, whether or not then due.

DUE ON SALE OR ALTERATION - Except in those circumstances in which Federal law otherwise provides, I will not, without your consent, sell or transfer the Premises or alter, remove or demolish the buildings on the Premises, allow the Premises to deteriorate or commit waste.

DEFAULT - If I default in paying any part of the indebtedness secured by this Mortgage or if I default in any other way under this Mortgage or under the Note which it secures, or if I default under the terms of any other mortgage covering the Premises, the entire unpaid principal balance and accrued and unpaid interest and any other amounts I then owe to you under this loan will become immediately due if you desire, without your advising me. If I am required to pay immediately in full as described above, I promise to pay your costs and disbursements to which you may become entitled by law in connection with any suit to collect the Note or to realize on your security interest under this Mortgage. If any money is left over after you foreclose on this Mortgage and deduct such reasonable costs and disbursements incurred if legally permitted, it will be paid to the persons legally entitled to it, but if any money is still owing, I agree to pay you the balance.

APPOINTMENT OF RECEIVER AND ASSIGNMENT OF RENTS - I agree that you are entitled to the appointment of a receiver in any action to foreclose on this Mortgage and you may also enter the Premises and take possession of them, rent them if the Premises are not already rented, receive all rents and apply them to the obligations secured by this Mortgage. Except as required by law, you shall not be obligated to perform or discharge any obligation under any lease by reason of this assignment. I assign all rents to you but you agree that I may continue to collect the rents unless I am in default under this Mortgage or the Note.

RIGHTS CUMULATIVE - Your rights under this Mortgage will be separate, distinct and cumulative and none of them will be in exclusion of any other nor will any act of yours be considered as an election to proceed under any one provision of this Mortgage to the exclusion of any other provision.

NOTICES - I agree that any notice and demand may be given to me either in person or by mail.

RELEASE - Upon payment of all sums secured by this Mortgage, you shall release the Premises from the lien of this instrument. I shall pay recording costs to the extent permitted by applicable law.

WAIVER OF EXEMPTIONS - Each person signing this Mortgage waives all rights of dower in the real estate, all marital rights, homestead exemptions, and all other exemptions relating to the Premises.

EXTENSIONS AND MODIFICATIONS - Each of the persons signing this Mortgage agrees that no extension of time or other variation of any obligation secured by this Mortgage will affect any other obligation under this Mortgage.

APPLICABLE LAW - This Mortgage is made in accordance with, and will be governed by, the laws of the State of Ohio, including Chapter 1343 of the Ohio Revised Code, except that with respect to the maximum interest rate and number of points permitted, this Mortgage is governed by the provisions of the Depository Institutions Deregulation and Monetary Control Act of 1980, and any other applicable Federal law.

RECEIPT OF COPY - Each person signing this Mortgage acknowledges receipt of a completed and signed copy of this Mortgage.

BINDING EFFECT - This Mortgage is binding on and inures to both your and my successors and assigns.

SEE OTHER SIDE FOR ADDITIONAL IMPORTANT TERMS

Upon recording mail to:

THE CIT GROUP/CONSUMER FINANCE, INC.
P.O. BOX 630, MARLTON, NJ 08053-3941

2-1182B 1550434 10/16/02 15:46 EUGENE R SWARTZ

John A Donofrio, Summit Fiscal Officer

54770768
Pg: 3 of 3
10/25/2002 01:24P
MO 18.00