

THIS OPINION IS NOT INTENDED
FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
JAN 28 PM 1:40
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 01-17379
)
LARRY HUGHLEY and) Chapter 7
SAUNDRA HUGHLEY,)
) Judge Pat E. Morgenstern-Clarren
Debtors.)
_____)
)
MARVIN SICHERMAN, TRUSTEE,) Adversary Proceeding No. 03-1119
)
Plaintiff,)
)
v.) **MEMORANDUM OF OPINION**
)
LARRY HUGHLEY, et al.,)
)
Defendants.)

The chapter 7 trustee filed a complaint, an amended complaint, and a second amended complaint concerning the debtors' residence at 23651 Brookton Road, Warrensville Heights, Ohio. (Docket 1, 2, 23). All versions of the complaint state as a claim for relief that the defendants may have an interest in this property and should be required to come forward with any such interest or be barred from asserting any claim against it. The second amended complaint adds Ameriquest Mortgage Company as a defendant. The trustee entered into agreed orders with all defendants, except for Ameriquest and the debtors Sandra and Larry Hughley. He now moves for summary judgment against Ameriquest. (Docket 47). Ameriquest has not filed anything in opposition and the time for doing so has elapsed. (Docket 43).

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JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered in this district by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (O).

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* FED. R. CIV. P. 56(c) (made applicable by FED. R. BANKR. P. 7056); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). The movant must initially demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. at 323. The burden is then on the nonmoving party to show the existence of a material fact which must be tried. *Id.* The nonmoving party must oppose a proper summary judgment motion “by any of the kinds of evidentiary material listed in Rule 56(c), except the mere pleadings themselves” *Celotex Corp. v. Catrett*, 477 U.S. at 324. All reasonable inferences drawn from the evidence must be viewed in the light most favorable to the party opposing the motion. *Hanover Ins. Co. v. Am. Eng’g Co.*, 33 F.3d 727, 730 (6th Cir. 1994). The issue at this stage is whether there is evidence on which a trier of fact could reasonably find for the nonmoving party. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1477 (6th Cir. 1989).

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FACTS

The trustee's second amended complaint required Ameriquest to state its interest in the real property at 23651 Brockton Road, Warrensville Heights, Ohio (the property). In Ameriquest's answer, it states that it holds a mortgage on the property. (Docket 32 ¶4).

The trustee argues that he is entitled to summary judgment because he acquired his interest in the property before Ameriquest did, thus supporting his position that his interest in the property is superior to that of Ameriquest.

The docket and the certified documents attached to the trustee's motion establish these facts:

1. The debtors filed their chapter 7 petition on July 30, 2001.
2. The trustee filed this adversary proceeding on April 10, 2003.
3. On May 20, 2003, Ameriquest entered into a loan transaction with the debtors at which time the debtors gave Ameriquest a note and mortgage on the property. Ameriquest filed those documents with the Cuyahoga County recorder that same date.
4. At the time of the Ameriquest transaction, the chapter 7 case was still open and the trustee had not abandoned his interest in the property.

DISCUSSION

The filing of a chapter 7 case creates an estate consisting of all of the debtor's legal and equitable interests in property, with exceptions not at issue here. 11 U.S.C. § 541(a). The debtors' rights and interests in this property became part of the chapter 7 estate on the filing date, July 30, 2001. Ameriquest did not hold any interest in the property on the filing date. The trustee's interest in the property is, therefore, prior in time and superior to any interest obtained

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by Ameriquest two years later. Ameriquest does not contend to the contrary, either in its answer or in opposition to the summary judgment motion. There is, therefore, no genuine issue of material fact with regard to whether the trustee's interest is superior to that of Ameriquest and the trustee is entitled to judgment as a matter of law on that point.

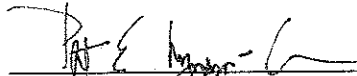
The trustee's motion cites bankruptcy code §§ 544 and 549 dealing with the trustee's avoiding powers. The second amended complaint does not, however, state as a cause of action that the trustee is seeking to avoid the transfer.¹ There is no need, therefore, to analyze that issue.

CONCLUSION

The trustee's interest in the property located at 23651 Brockton Road, Warrensville Heights, Ohio is superior to any interest held by Ameriquest Mortgage Company.

A separate order will be entered reflecting this decision. The March 30, 2004 trial date will go forward with the only parties being the trustee and Larry and Sandra Hughley.

Date: 28 July 2004



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Marc Melamed, Esq.
John McGinnis, Esq.
David Freeburg, Esq.

By: Joyce L. Gordon, Secretary

Date: 1/28/04

¹ The same is true for the original complaint and the first amended complaint.

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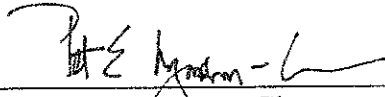
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Debtors.)	
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MARVIN SICHERMAN, TRUSTEE,)	Adversary Proceeding No. 03-1119
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
LARRY HUGHLEY, et al.,)	
)	
Defendants.)	

For the reasons stated in the memorandum of opinion filed this same date, the chapter 7 trustee's unopposed motion for summary judgment against defendant Ameriquest Mortgage Company is granted. (Docket 47).

IT IS SO ORDERED.

Date: 28 Jan 2004



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Marc Melamed, Esq.
John McGinnis, Esq.
David Freeburg, Esq.

By: Joyce L. Gordon Secretary
Date: 1/28/04