UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 09-12212
	)	
ROBERT D. COON and MARY D. COON,	)	Chapter 7
	)	
Debtors.	)	Judge Pat E. Morgenstern-Clarren
	)	
RICHARD A. BAUMGART, TRUSTEE,	)	Adversary Proceeding No. 09-1202
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE, ON BEHALF OF CIT MORTGAGE LOAN TRUST, 2007-1, et al.,	)	**MEMORANDUM OF OPINION**[1]
	)	
Defendants.	)	

The chapter 7 trustee filed this adversary proceeding to determine the rights in real property owned by the debtors at the time they filed this case. The defendants are The Bank of New York Mellon fka The Bank of New York on behalf of CIT Mortgage Loan Trust, 2007-1 (the bank),[2] the debtors Robert and Mary Coon, and John Donofrio, the Summit County Fiscal Officer. Count one of the complaint requests a determination that the trustee may avoid the

[1] This opinion is not intended for commercial publication.

[2] By stipulation, the parties substituted the bank as a defendant in place of The Bank of New York Mellon fka The Bank of New York, as Trustee, on behalf of CIT Mortgage Loan Trust, 2007-1, the difference being removing the words "as Trustee." Stipulations at ¶ 20, docket 52.

mortgage held by the bank based on a defective certificate of acknowledgment. Count two requests a determination of the parties' interests in the property.

This opinion addresses cross motions for summary judgment filed by the trustee and the bank,[3] both of which have been submitted on stipulated facts.[4] The rights of the other defendants in the property have already been determined.[5] For the reasons stated below, the trustee's motion is granted and the bank's motion is denied.[6]

I. JURISDICTION

The court has jurisdiction under 28 U.S.C. § 1334 and General Order No. 84 entered 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)(F),(H) and (K).

II. FACTS

The debtors Robert and Mary Coon jointly owned real property located at 996 Chalker Street, Akron, Ohio (the property) when they filed their chapter 7 case on March 19, 2009.

On June 22, 2007, Robert Coon signed a promissory note payable to The CIT Group/Consumer Finance, Inc. (CIT), evidencing a loan from CIT to Robert Coon in the amount

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[3] Although the bank did not file a separate motion, it has adopted the motion and reply brief filed by its predecessor defendant The Bank of New York Mellon fka The Bank of New York, as Trustee, on behalf of CIT Mortgage Loan Trust, 2007-1, as well as the revised stipulations of fact filed on January 12, 2010. *See* bank's supplemental brief, docket 53 at 2 n.1.

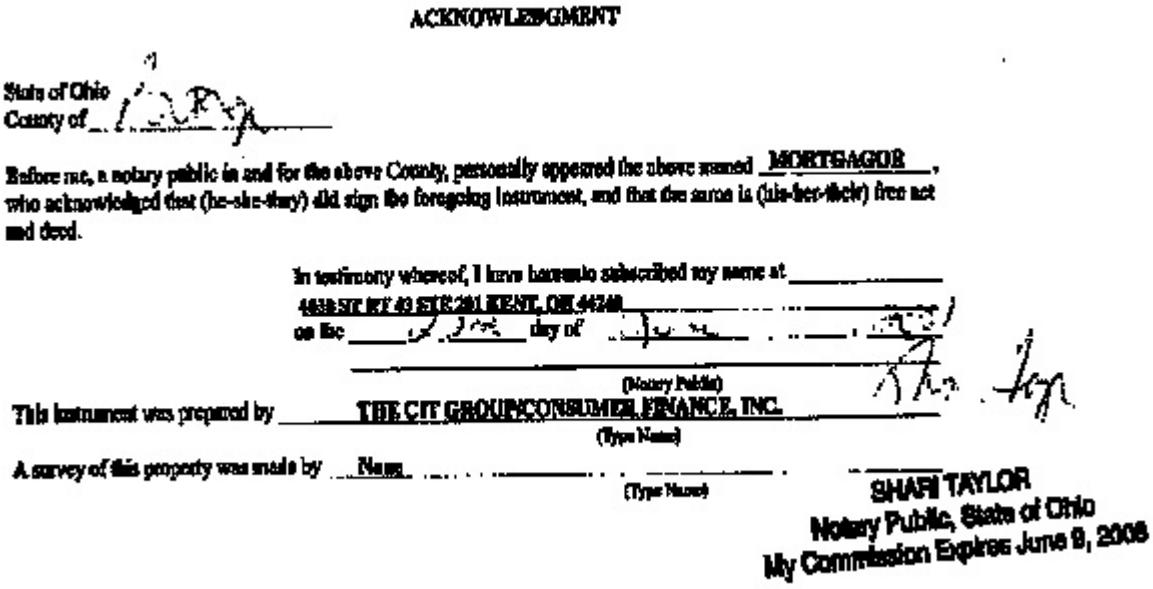
[4] Docket 52.

[5] The trustee obtained a default judgment against the debtors finding that they have no interest in the property. *See* docket 34. Additionally, the trustee and Summit County entered into a judgment which provides that the county has a first lien on the property for real property taxes and assessments. *See* docket 23.

[6] Docket 39, 41, 42, 43, 53, 54, 55, 56.

of $76,500.00. The note was transferred by CIT to the bank on April 20, 2009 by means of an allonge; the outstanding balance on the note exceeds $75,000.00.

A mortgage is recorded in favor of Mortgage Electronic Registration Systems, Inc. as nominee for CIT, to secure the amount due under the note. The mortgage, which has a signature for Robert Coon and one for Mary Coon, was certified by Ohio notary public Shari Taylor. The notary's acknowledgment does not state the name of the person or persons who acknowledged the mortgage. Instead, it states that:



ACKNOWLEDGMENT

State of Ohio
County of

Before me, a notary public in and for the above County, personally appeared the above named MORTGAGOR, 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
on the day of

(Notary Public)

This instrument was prepared by THE CIT GROUP/CONSUMER FINANCE, INC.
(Type Name)

A survey of this property was made by None
(Type Name)

SHARI TAYLOR
Notary Public, State of Ohio
My Commission Expires June 9, 2008

On January 23, 2009, the mortgage was assigned to The Bank of New York Mellon fka The Bank of New York, as Trustee on behalf of CIT Mortgage Loan Trust, 2007-1 and the assignment was recorded on February 4, 2009. The mortgage was then assigned to the bank on April 30, 2009 and the assignment was recorded on May 8, 2009.

On February 25, 2009–before either the note or mortgage was transferred to the bank– the bank filed a state court complaint in foreclosure related to the mortgage. The debtors were insolvent at that time. The foreclosure action was pending when the debtors filed their chapter 7 case.

To date, the trustee has not recovered any assets in the debtors' case and the only asset he is pursuing is this claim. General unsecured creditors will not be paid in full even if the trustee is successful and the mortgage is avoided.

III. SUMMARY JUDGMENT

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); *see also 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). When the material facts of a case are undisputed, one of the parties is entitled to summary judgment. *Miller v. State Farm Mut. Auto. Ins. Co.*, 87 F.3d 822, 824 (6th Cir. 1996). The material facts in this proceeding are not disputed based on the stipulations. The issues before the court are questions of law and the court must, therefore, determine which party is entitled to summary judgment.

IV. DISCUSSION

A. The Positions of the Parties

The trustee argues that the mortgage's certificate of acknowledgment is defective under Ohio law and that he may avoid the mortgage based on that defect under bankruptcy code

§ 544(a)(3). The trustee also contends that the mortgage may be avoided as a preference under § 547(b).

The bank argues that the notary's certification substantially complies with Ohio law, thus protecting the mortgage from being avoided under § 544(a)(3). The bank argues further that the mortgage may not be avoided as a preference under § 547(b) because the trustee has not shown either that the transfer occurred in the 90-day preference period or that the transfer improved the bank's position, as required by that section.

B. 11 U.S.C. § 544(a)(3)[7]

Bankruptcy code § 544(a) gives the trustee the power to avoid certain transfers. 11 U.S.C. § 544(a). The trustee here relies on § 544(a)(3), which provides that:

> (a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by–
>
> * * *
>
> (3) a bona fide purchaser of real property . . . from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

11 U.S.C. § 544(a)(3). This provision, often called the "strong arm" clause, gives the trustee "the rights and powers of a bona fide purchaser of real property from the debtor if, at the time the bankruptcy is commenced, a hypothetical buyer could have obtained bona fide purchaser status."

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[7] This opinion draws heavily on the court's opinion in *Simon, Trustee v. Citimortgage, Inc., successor by merger to ABN AMRO Mortgage Group, Inc., et al. (In re Doubov)*, Adv. No. 09-1200, docket 68, – B.R. – ,which addressed similar issues.

Owen-Ames-Kimball Co. v. Mich. Lithographing Co. (In re Mich. Lithographing Co.), 997 F.2d 1158, 1159 (6th Cir. 1993). The rights of a bona fide purchaser of real property are determined under the law of the state in which the property is located, which in this case is Ohio. *Rogan v. Bank One, Nat'l Assoc. (In re Cook)*, 457 F.3d 561, 566 (6th Cir. 2006). Any transfer avoided under § 544(a)(3) is preserved for the benefit of the estate. 11 U.S.C. § 551.

C. Ohio Law

1.

In Ohio, a bona fide purchaser of real property "is bound by an encumbrance upon land only if he has constructive or actual knowledge of the encumbrance." *Tiller v. Hinton*, 482 N.E.2d 946, 949 (Ohio 1985). Section 544(a)(3) goes further and provides that the trustee may avoid a transfer even if the trustee had actual knowledge of it. The critical question, then, is whether under Ohio law, the recorded mortgage provided the trustee with constructive knowledge of the bank's interest in the property at the time the case was filed. *Simon v. Chase Manhattan Bank* (*In re Zaptocky)*, 250 F.3d 1020, 1027 (6th Cir. 2001). This requires determining whether the mortgage was properly executed because "[a] defectively executed mortgage is not entitled to record, and even if it is recorded, the defective mortgage is treated as though it has not been recorded." *Mortgage Electronic Registration Sys. v. Odita*, 822 N.E.2d 821, 825 (Ohio Ct. App. 2004). An improperly executed mortgage does not, therefore, put a bona fide purchaser on constructive notice that it exists. *In re Zaptocky*, 250 F.3d at 1028. This concept extends to mortgages which are defective based on improper notarization. *Odita*, 822 N.E.2d at 825. In sum, if the mortgage was improperly executed it was not entitled to be

recorded, it would not give the trustee constructive notice of the claimed lien, and the trustee may avoid the mortgage and preserve it for the benefit of the estate.

2.

Ohio's requirements for executing a mortgage are set out in Ohio Revised Code § 5301.01(A), which states in relevant part:

> (A) A . . . mortgage . . . shall be signed by the . . . mortgagor[.] The signing shall be acknowledged by the . . . mortgagor . . . before a . . . notary public . . . who shall certify the acknowledgment and subscribe the official's name to the certificate of the acknowledgment.

OHIO REV. CODE § 5301.01(A). A notary's certificate of acknowledgment is required because it provides proof of due execution and authority for recording the mortgage. *Read v. Toledo Loan Co.*, 67 N.E. 729, 730 (Ohio 1903); *Seabrooke v. Garcia*, 454 N.E.2d 961, 964 (Ohio Ct. App. 1982).

When a notary certifies a mortgagor's acknowledgment of a mortgage, the notary is certifying: (1) that the "person acknowledging appeared before him and acknowledged he executed the instrument;" and (2) that the "person acknowledging was known to [the notary], or that the [notary] had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument." OHIO REV. CODE § 147.53. Although Ohio law provides statutory short forms of acknowledgment, the use of a specific form is not required. OHIO REV. CODE § 147.55. Instead, a certificate of acknowledgment is sufficient if it: (1) is in a form prescribed by Ohio law; (2) is in a form prescribed by the laws of the place where the acknowledgment is taken; or (3) it contains the words "acknowledged before me, or their substantial equivalent." OHIO REV. CODE § 147.54. In the case of a natural person, the phrase

"acknowledged before me" means that the person signing his name appeared before the person taking the acknowledgment, acknowledged that he signed the instrument for the purpose stated in it, and that the person taking the acknowledgment either knew, or had satisfactory proof, that the person signing was the person named in the instrument. OHIO REV. CODE § 147.541.

A defect in the certificate of acknowledgment does not necessarily make a mortgage invalid under Ohio law. Courts have upheld the validity of mortgages where there has been substantial compliance with the legal requirements. *See Dodd v. Bartholomew*, 5 N.E. 866 (Ohio 1886) (upholding the validity of a mortgage's certification of acknowledgment which included a scrivener's error in its description of the mortgagors); *Citifinancial, Inc. v. Howard*, No. 6-08-08, 2008 WL 4193051, at *5 (Ohio Ct. App. Sept. 15, 2008) (upholding a certificate of acknowledgment which included a corporate acknowledgment rather than an individual acknowledgment, and noting that the acknowledgment "is consistent with the terms set forth on the face of the mortgage itself which show that an individual [Howard] is the mortgagor and not the corporation . . ."); *Mid-American Nat'l Bank & Trust Co. v. Gymnastics Int'l, Inc.*, 451 N.E.2d 1243,1245 (Ohio Ct. App. 1982) (holding that a certificate of acknowledgment which included an incomplete description of the grantor substantially complied with § 5301.01); *see also Menninger v. First Franklin Fin. Corp. (In re Fryman)*, 314 B.R. 137, 138-39 (Bankr. S.D. Ohio 2004) (discussing Ohio case law on this issue and concluding that a certificate of acknowledgment which included the name of only one mortgagor but used the handwritten plural pronouns "they" and "their" for the balance of the acknowledgment substantially complied).

3.

The dispute here hinges on whether the mortgage's certificate of acknowledgment substantially complies with § 5301.01. The trustee contends that the certificate is insufficient because it does not identify anyone and merely refers to the capacity of the individual who signed the document. The bank argues that the certificate fits within the line of cases under which mortgages with errors in the certificate of acknowledgment have been found to substantially comply with Ohio law. To determine this issue, "the court must review 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.'" *In re Fryman*, 314 B.R. at 138 (quoting *Dodd v. Bartholomew*, 5 N.E. 866, 867 (Ohio 1886)).

The certificate of acknowledgment in this case does not substantially comply with Ohio law because it fails to identify the individual or individuals who acknowledged the mortgage and the mortgage does not otherwise supply that information. The notary's certificate does not identify either of the debtors by name and merely refers to "the above named MORTGAGOR." As each of the debtors signed the mortgage above the certificate and each is designated as a mortgagor on the first page of the mortgage, this reference to a single mortgagor creates doubt as to who actually acknowledged the mortgage. In other words, does the term "mortgagor" as used in the certificate refer to both debtors or does it refer to one of the debtors, and if so, which one? With that significant uncertainty, the acknowledgment does not substantially comply with Ohio law.

The bank cites *Corzin v. Bank of New York (In re Swartz)*, Adv. No. 09-5026 (Bank. N.D. Ohio June 26, 2009) to support a contrary conclusion. The facts in that case are, however,

significantly different. There, the notary's certificate of acknowledgment referred to the "above named mortgagors," which indicated that both individuals had acknowledged the mortgage. It also included hand written notations which provided additional information as to the meaning of the term "mortgagors." The certificate in this case does not have that information.

The bank next argues that the trustee had constructive knowledge of the mortgage because it was recorded. As discussed above, however, a defectively acknowledged mortgage is not entitled to be recorded and even if it is recorded, it cannot serve as constructive notice to the trustee under Ohio law. *See Argent Mortgage Co. v. Drown (In re Bunn)*, 578 F.3d 487, 490 (6th Cir. 2009) (noting that "Ohio courts have refused to allow a recorded mortgage to give constructive notice when the mortgage had been executed in violation of a statute.").

The bank asks the court to impose an equitable lien in its favor to prevent the trustee from being unjustly enriched. That argument is, however, too late; the bankruptcy has already been filed and the trustee's avoiding powers are in place. Even if a defectively executed mortgage can serve as a basis to impose an equitable lien under Ohio law under some circumstances, "that interest is insufficient to negate the avoiding powers of a trustee under 11 U.S.C. § 544(a)(3)." *DiGirolamo v. Countrywide Home Loans, Inc. (In re Roberts)*, Adv. No. 08-6103, 2009 WL 2169049, at *2 (Bankr. N.D. Ohio July 20, 2009) (citing *Hunter v. Bank of New York (In re Anderson)*, 266 B.R. 128, 136-37 (Bankr. N.D. Ohio 2001)).

Finally, the bank contends that the doctrine of lis pendens bars the trustee from avoiding the mortgage under § 544(a)(3) because the bank filed its foreclosure action before the debtors filed their bankruptcy case. "Lis pendens is a legal doctrine - literally 'a pending lawsuit.' It means that the filing of a lawsuit concerning specific property gives notice to others of the claim

alleged in the lawsuit and that a purchaser of the property may take the property subject to the outcome of the lawsuit." *City of Cincinnati ex rel. Ritter v. Cincinnati Reds, L.L.C.*, 782 N.E.2d 1225, 1235 (Ohio Ct. App. 2002). Ohio's statute governing lis pendens provides that:

> When a complaint is filed, the action is pending so as to charge a third person with notice of its pendency. While pending, no interest can be acquired by third persons in the subject of the action, as against the plaintiff's title.

OHIO REV. CODE § 2703.26. The elements required for lis pendens are: (1) the property must be the type subject to the rule; (2) the court must have jurisdiction over the person and the res; (3) the property must be sufficiently described in the pleadings; and (4) the litigation must be about some specific thing that must necessarily be affected by termination of the suit. *Beneficial Ohio, Inc. v. Ellis*, 902 N.E.2d 452, 455 (Ohio 2009); *Cook v. Mozer*, 140 N.E. 590, 592 (Ohio 1923). The trustee does not dispute that each of these elements is present in the foreclosure action.

"Lis pendens is not a substantive right. It does not create a lien, but charges the purchaser with notice of the pending action." *City of Cincinnati ex rel. Ritter*, 782 N.E.2d at 1235 (internal quotation marks and citation omitted). In a foreclosure action, "[l]is pendens prevents third parties who claim to have 'acquired an interest' in the property [after the complaint has been filed], from challenging the trial court's judgment." *Bates v. Postulate Invs., L.L.C.*, 892 N.E.2d 937, 940 (Ohio Ct. App. 2008). "The doctrine places any such conveyed interest at risk and notifies the parties that they are bound by the decree and sale thereunder." *Id.* Under Ohio law, lis pendens applies to all parties, including bona fide purchasers. *Treinish v. Norwest Bank Minnesota, N.A. (In re Periandri)*, 266 B.R. 651, 657 (B.A.P. 6th Cir. 2001). Consequently, lis pendens gave the trustee constructive notice of the bank's interest in the property and limits the trustee's § 544(a)(3) avoidance powers. *Id.*

The trustee argues that lis pendens does not apply here because (1) the bank did not hold the note and mortgage when it filed the state court action; and (2) the purpose of lis pendens is to protect the plaintiff's interest in the property, and applying it here would not serve that purpose. The trustee is correct that, on the record presented here, the bank did not own the note or hold the mortgage when it filed the foreclosure action based on those documents. While that might raise issues regarding state court standing or whether the bank had a basis for filing the complaint that satisfied Ohio Rule of Civil Procedure 11, those issues do not control here. The situation here is that, for whatever reason, the bank filed the lawsuit, which triggered the lis pendens doctrine. While one purpose of the doctrine is to protect a plaintiff's interest in the property, another is to protect the public interest in maintaining the status quo in disputed property until the litigation has been resolved. *Cook v. Mozer*, 140 N.E. 590, syllabus (Ohio 1923). That purpose is achieved by providing that the outcome of the lawsuit determines the priority of rights in the property, with any third party who acquires an interest in the property while the action is pending taking that interest subject to the final outcome of the lawsuit. *Katz v. Banning*, 617 N.E.2d 729, 733 (Ohio Ct. App. 1992) (citing *Levin v. George Framm & Sons, Inc.*, 585 N.E.2d 527, 529 and 531 (Ohio Ct. App. 1990)). Regardless of whether the bank had a factual and/or legal basis for filing the state court complaint, having done so before the bankruptcy case was filed gave the trustee constructive notice that the bank claimed an interest in the property. As a result, the trustee may not avoid the bank's mortgage under § 544(a)(3).

D. 11 U.S.C. § 547

Alternatively, the trustee seeks to avoid the mortgage under bankruptcy code § 547 which provides that:

> (b) Except as provided in subsections (c) and (i) of this section, the trustee may avoid any transfer of an interest of the debtor in property–
>
> (1) to or for the benefit of a creditor;
>
> (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
>
> (3) made while the debtor was insolvent;
>
> (4) made –
>
> > (A) on or within 90 days before the date of the filing of the petition; or
> >
> > (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
>
> (5) that enables such creditor to receive more than such creditor would receive if–
>
> > (A) the case were a case under chapter 7 of this title;
> >
> > (B) the transfer had not been made; and
> >
> > (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b). This section serves to discourage "secret liens upon the debtor's collateral which are not perfected until just before the debtor files for bankruptcy." *Chase Manhattan Mortgage Corp. v. Shapiro (In re Lee),* 530 F.3d 458, 463 (6th Cir. 2008) (internal quotation marks and citation omitted). All five elements are required to find a voidable preference. *Ray v. Sec. Mut. Fin. Corp. (In re Arnett)*, 731 F.2d 358 (6th Cir. 1984). The trustee has the burden of proof. 11 U.S.C. § 547(g).

The bank argues that the trustee failed to establish two of the elements. First, the bank argues that the mortgage was recorded in June of 2007–almost two years before the debtors filed the bankruptcy and well outside the 90-day preference period. 11 U.S.C. § 547(b)(4)(A). Second, the bank contends that the trustee has not shown that the transfer enabled the bank to receive more than it would have received in the debtors' case had the transfer not been made and had it received payment as provided under the bankruptcy code. 11 U.S.C. § 547(b)(5).

The term "transfer" includes the creation of a lien, which encompasses a mortgage. 11 U.S.C. § 101(54)(A). "Section 547(e) . . . supplements the Bankruptcy Code's general definition of transfer . . . [as] codified at § 101(54)." *In re Lee*, 530 F.3d at 465. For purposes of § 547, a transfer by mortgage is made at the time the mortgage takes effect between the mortgagor and mortgagee "if such transfer is perfected at, or within 30 days after, such time[.]" 11 U.S.C. § 547(e)(2)(A). If the transfer is not perfected within 30 days, then the transfer is made at the time it is perfected. 11 U.S.C. § 547(e)(2)(B). If the transfer is not perfected at the later of the commencement of the debtor's case or 30 days after it takes effect between the transferor and the transferee, then the transfer is made immediately before the filing of the petition. 11 U.S.C. § 547(e)(2)(C).

As found above, the mortgage was not entitled to be recorded in June 2007 due to the defective acknowledgement. The transfer was not, therefore, perfected as of the date that the debtors filed their bankruptcy case. As a result, the transfer is deemed to have occurred immediately before the petition date and within the 90-day preference period. *Rieser v. Fifth Third Mortgage Co.(In re Wahl)*, 407 B.R. 883, 893 (Bankr. S.D. Ohio 2009).

The bank also contends that the application of lis pendens bars the trustee's preference claim. The foreclosure action which is the basis for lis pendens, however, was filed within the 90-day preference period. If the filing of the lawsuit served to perfect the bank's mortgage under Ohio law, that perfection occurred on February 25, 2009 when the foreclosure action was filed. As February 25, 2009 is more than 30 days after the mortgage took effect between the parties to the mortgage, the transfer is deemed to have been made at the time of perfection under 11 U.S.C. § 547(e)(2)(B). Because the act of perfection took place within the 90-day period prior to the debtors' bankruptcy filing, it is subject to avoidance as a preference. *Kendrick v. CIT Small Bus. Lending Corp. (In re Gruseck & Son, Inc.)*, No. 06-8091, 385 B.R. 799, at *8 (B.A.P. 6th Cir. April 16, 2008), *appeal dismissed*, 558 F.3d 482 (6th Cir. 2009).

Finally, the bank argues that the trustee did not establish that the transfer improved the bank's position as required by § 547(b)(5). The relevant date for this analysis is the petition date. *Neuger v. United States (In re Tenna Corp.)*, 801 F.2d 819 (6th Cir. 1986). The evidence shows that the property and this avoidance action are the only chapter 7 estate assets. If the transfer is not avoided, the bank's mortgage will encumber the property and the bank will receive value which would otherwise be available for distribution to unsecured creditors. On the other hand, if the transfer had not been made and the bank's lien remained unperfected, the bank would share the value of the property with other general unsecured creditors. Based on these facts, the court concludes that the trustee has met his burden under § 547(b)(5). *See In re Lee*, 530 F.3d at 472 ("That is, Chase's security interest in the Property was released and re-perfected, and diminution occurred when Lee's unencumbered, non-exempt equity in the Property once again became subject to a perfected lien when the New Mortgage was recorded.").

The mortgage may, therefore, be avoided under § 547(b). As a result, the bank does not have a valid mortgage on the property.

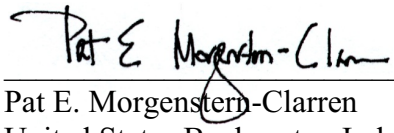
V. CONCLUSION

For the reasons stated, the trustee's motion for summary judgment is granted and the bank's motion for summary judgment is denied. The trustee is granted summary judgment:

(1) On count I of the complaint holding that the bank's mortgage is avoided as a preference under bankruptcy code § 547(b); and

(2) On count II of the complaint holding that the bank does not have a valid mortgage on the property.

A separate judgment will be entered reflecting this decision.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 09-12212
	)	
ROBERT D. COON and MARY D. COON,	)	Chapter 7
	)	
Debtors.	)	Judge Pat E. Morgenstern-Clarren
	)	
RICHARD A. BAUMGART, TRUSTEE,	)	Adversary Proceeding No. 09-1202
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE, ON BEHALF OF CIT MORTGAGE LOAN TRUST, 2007-1, et al.,	)	**JUDGMENT**
	)	
Defendants.	)	

For the reasons stated in the memorandum of opinion entered this same date, the plaintiff-trustee's motion for summary judgment is granted and the motion for summary judgment of The Bank of New York Mellon fka The Bank of New York on behalf of CIT Mortgage Loan Trust, 2007-1 (bank) is denied. (Docket 39, 41). The plaintiff is granted judgment against the bank on count I of the complaint and the bank's mortgage is avoided under 11 U.S.C. § 547(b). The plaintiff is also granted judgment against the bank on count II of the complaint and the bank is determined not to have a valid mortgage interest in the property.

IT IS SO ORDERED.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge