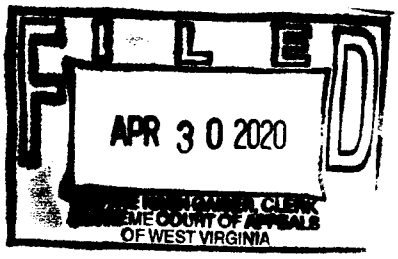
DO NOT REMOVE FROM FILE

FILE COPY

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



Martin P. Sheehan, Trustee,
Petitioner

vs.) Docket No. 19-1082

Mortgage Electronic Registration Systems, Inc.,
WEI Mortgage Corporation, and
Seneca Trustees, Inc.,
Respondents

BRIEF OF RESPONDENTS, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AND WEI MORTGAGE CORPORATION

A Certified Question from the United States Bankruptcy Court
for the Northern Division of West Virginia

Filed by:

Christopher A. Dawson, Esq.
WV Bar No. 10633
Reisenfeld & Associates LLC
Counsel for Respondents, Mortgage Electronic
Registration Systems, Inc. and WEI Mortgage Corporation
3962 Red Bank Road
Cincinnati, OH 45227
Voice: (304) 853-3338
Fax: (513) 322-7007
Christopher.Dawson@rslegal.com

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

QUESTION PRESENTED 1

COUNTERSTATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 5

STATEMENT REGARDING ORAL ARGUMENT 7

ARGUMENT 8

I. NEITHER CHAPTER 17A NOR CHAPTER 46 OF THE WEST VIRGINIA CODE PROVIDE THE SOLE MEANS OF PERFECTION OF A SECURITY INTEREST IN AN AFFIXED MANUFACTURED HOME. 8

II. COMPLIANCE WITH WV CODE §17A-3-12b IS NOT REQUIRED FOR A MANUFACTURED HOME TO BE CONSIDERED AFFIXED TO REAL ESTATE. 11

III. CASE LAW RELEVANT TO THE QUESTION BEFORE THE COURT SUPPORTS RESPONDENTS' READING OF THE STATUTES RELIED UPON BY PETITIONER. 12

IV. THE POLICY CONSIDERATIONS PRESENTED BY PETITIONER ARE NOT PERSUASIVE AND DO NOT JUSTIFY A RESULT CONTRARY TO WEST VIRGINIA LAW. 15

CONCLUSION 17

CERTIFICATE OF SERVICE 18

TABLE OF AUTHORITIES

CASES

Dodson v. One Valley Bank, (In re Johnson),
105 B.R. 352 (Bankr. S. D. W.Va. 1989), aff'd 4 F.3d 985 (4th Cir.1993) 13, 14

Ennis v. Green Tree Servicing, LLC, 558 F.3d 343 (4th Cir.2009) 14

Hiers v. Bank One, West Virginia, Williamson, N.A., 946 S.W.2d 196 (Ky.App. 1997) 10

In re Weikle, Case No. 17-10001, 2017 WL 4127994
(Bankr. S. D. W. Va., September 13, 2017)(unpublished). 13-14

Meadows v. Wal-Mart Stores, Inc., 207 W.Va. 203, 530 S.E.2d 676 (1999) 10-11

Russell v. Town of Granville, 237 W.Va. 9, 784 S.E.2d 336 (2016) 8

Sanders v. Brown, No. 18-0017, 2018 WL 6119215
(W.Va. Supreme Court, November 21, 2018)(memorandum decision) 12, 14

Snuffer v. Spangler, 79 W.Va. 628, 92 S.E.2d 106 (1917) 1, 5, 12-13

State v. General Daniel Morgan Post No. 548, V.F.W.,
144 W.Va. 137, 107 S.E.2d 353 (1959) 10-11

STATUTES

11 U.S.C. §1322 13

KRS 186A.190 10

WV Code Chapter 17A 5, 8

WV Code §17A-1-1 8-12

WV Code §17A-3-12 . . . . . 1, 5, 11-13

WV Code §17A-4A-3 . . . . . 9-12, 15

WV Code Chapter 46 . . . . . 5, 8

WV Code §46-9-303 . . . . . 1, 8

WV Code §51A-1-1 2

QUESTION PRESENTED

The United States Bankruptcy Court for the Northern District of West Virginia certified the following question to the West Virginia Supreme Court of Appeals by Order entered on November 27, 2019, *see* Joint App., p. 226, which this Court accepted by Order entered on January 30, 2020:

Does a creditor have a perfected security interest in a manufactured home that has been affixed to real estate based on the factors in *Snuffer v. Spangler*, 79 W.Va. 628, 92 S.E.2d 106 (1917) when it properly records a deed of trust that describes both the real estate and the manufactured home, even though the manufactured home has an active certificate of title issued by the West Virginia Department of Motor Vehicles pursuant to W. Va. Code §17A-3-12, which certificate of title 1) has not been cancelled pursuant to W. Va. Code §17A-3-12b and 2) does not show the creditor's lien on its face, particularly in light of W. Va. Code §46-9-303(b) to cause the manufactured home to be treated as a fixture?

COUNTERSTATEMENT OF THE CASE

The matter before this Court comes from a Chapter 7 bankruptcy case currently pending in the United States Bankruptcy Court for the Northern District of West Virginia, Case No. 18-bk-712, involving Debtors, Ronald L. Lancaster and Jamie L. Lancaster. The Debtors are not parties to the matter before this Court because the certified question presented to the Court specifically arose in an adversary proceeding filed within the Chapter 7 case by the Chapter 7 Trustee, Petitioner herein, against Embrace Home Loans, Inc., Mortgage Electronic Registration Systems, Inc. and Seneca Trustees, Inc.. *See* Joint App. p. 74. By Agreed Order, WEI Mortgage Corporation was substituted as a defendant in place of Embrace Home Loans, Inc.. *See id.* at 121. Seneca Trustees, Inc. is merely the trustee named in the deed of trust at issue and has not actively participated in the litigation of this dispute.

Petitioner filed his Complaint to obtain an order from the bankruptcy court confirming that Respondents' security interest in the Debtor's manufactured home was not perfected because their lien was not shown on the manufactured home's certificates of title. Respondents filed an answer that did not necessarily deny the factual allegations of the Complaint but, did contest Petitioner's entitlement to the relief sought. Respondents asserted that they did have a valid security interest in the manufactured home as it was affixed to the real estate and specifically described in the recorded Deed of Trust. After the Respondents responded to Petitioner's very limited and specific discovery requests, Petitioner moved for summary judgment, *see id.* at 129, to which Respondents filed a response, *see id.* at 138. While the summary judgment motion was pending, Petitioner filed a motion to certify the legal question at issue to this Court pursuant to WV Code §51A-1-1, *et seq.*. *See id.* at 199.

The bankruptcy court determined that certification of the question of law was appropriate and directed the parties to submit a joint statement of facts. *See id.* at 223. Those facts were adopted by the bankruptcy court as the relevant facts to the question being certified in its Order certifying the question to this Court. *See id.* at 226. The joint facts submitted by the parties and adopted by the bankruptcy court are as follows:

> This case arises out of the Bankruptcy Trustee's challenge to whether there is a perfected lien applicable to a manufactured home. Originally, Debtors' mortgage loan was obtained from Embrace Home Loans, Inc., on or about June 4, 2015. The loan is secured by a Deed of Trust held by MERS, with WEI as the nominee/beneficiary, encumbering the real estate commonly known as 2307 St. Johns Road, Colliers, West Virginia 26035, together with all improvements erected on the property and fixtures that are a part of the property. A true and correct copy of that document is attached to the Complaint in this matter as Exhibit B. The legal description attached to the Deed of Trust contains a proper metes and bounds description and also makes reference to a 2003 Fairmont 8028 mobile home with HUD certification 1388320 1388321 and VIN Y0457930ABK. Said Deed of Trust was recorded on June 23, 2015, in Book 542, at Page 626, in the office of the Clerk of the Brooke County Commission. There is no dispute that the recording of the Deed of Trust perfected a security interest in the real estate. The dispute is whether the manufactured home is part of the real estate and so whether the Deed of Trust perfects the lien on that component of property.
>
> The West Virginia Division of Motor Vehicles issued two titles for the 2004 double wide bearing VINs MY04579320AK and MY04579320BK, respectively. No lien is on record on the titles according to the records of the West Virginia Division of Motor Vehicles. The titles remain active and have not been cancelled pursuant to the procedure set forth in WV Code §17A-3-12B. The DMV-2-TR form, used to implement the aforesaid section of the West Virginia Code, has not been filed with the West Virginia Division of Motor Vehicles nor recorded in the office of the Clerk of the Brooke County Commission.
>
> For purpose of the Certification of Legal Question and the pending Motion for Summary Judgment, MERS and WEI contend the manufactured home is physically affixed to the real estate for all intents and purposes. The Trustee does not contest that contention at this time.

Respondents assert that when West Virginia law is applied to these facts, the certified question must be answered in their favor, specifically, that Respondents do have

a perfected security interest in the manufactured home by virtue of their recorded Deed of Trust that specifically describes the manufactured home.

SUMMARY OF THE ARGUMENT

Respondents contend that their security interest in both the real estate (which is not in dispute) and the manufactured home was perfected upon the recording of the Deed of Trust in the office of the Clerk of the Brooke County Commission. The Deed of Trust specifically describes both the real estate and the manufactured home. Neither Chapter 17A nor Chapter 46 of the West Virginia Code prohibit perfection of a security interest in a manufactured home by the recording of a deed of trust describing the manufactured home that has been affixed to the real estate. Stated alternatively, neither of those statutory provisions provide the sole means of perfection of a security interest in an affixed manufactured home.

Just as West Virginia law does not dictate only one means for perfection of a security interest in a manufactured home, West Virginia law, Chapter 17A in particular, does not dictate only one means for a manufactured home to become affixed to the real estate. In addition to the procedure for affixing a manufactured home by cancellation of its certificate of title in WV Code §17A-3-12b, a manufactured home may also be considered affixed through application of West Virginia common law as set forth in *Snuffer v. Spangler*, 79 W.Va. 628, 92 S.E. 106 (1917).

While it appears that there are no published West Virginia decisions addressing the specific question before this Court, the limited number of cases relevant to the question support Respondents' position as opposed to the Petitioner's overly strict reading of Chapters 17A and 46 of the West Virginia Code.

Finally, the policy considerations presented by Petitioner to support his position are not persuasive and certainly do not justify a result that is contrary to the application of the relevant statutes and case law.

STATEMENT REGARDING ORAL ARGUMENT

The Court scheduled an oral argument on this matter in its January 30, 2020, Order accepting the certified question. Respondents are in full agreement with the Court and Petitioner that oral argument would be beneficial to the Court in its ruling on the legal question that has not previously been addressed in a published decision.

ARGUMENT

I. NEITHER CHAPTER 17A NOR CHAPTER 46 OF THE WEST VIRGINIA CODE PROVIDE THE SOLE MEANS OF PERFECTION OF A SECURITY INTEREST IN AN AFFIXED MANUFACTURED HOME.

Petitioner's Complaint seeks a finding that Respondents failed to perfect their security interest in the manufactured home[1] because they did not perfect their security interest pursuant to Chapter 17A of the West Virginia Code, in conjunction with Chapter 46, specifically, WV Code §46-9-303. Petitioner's argument is that compliance with Chapter 17A, along with WV Code §46-9-303, is the sole means by which a secured creditor may perfect a security interest in a manufactured home. However, there is no statute or case law that supports Petitioner's argument for such a strict reading of Chapter 17A or West Virginia's security interest perfection rules in general.

After setting forth the manner in which security interests in real estate are perfected, Petitioner implies that WV Code §46-9-303 requires compliance with Chapter 17A in order to perfect a security interest in a manufactured home. On the contrary, the statute makes no reference to Chapter 17A and is silent as to perfection of security interests. WV Code §46-9-303 is simply a choice of law provision. Subsection (a) provides that the statute applies to goods covered by a certificate of title and subsection (b) explains when goods are considered to be covered by a certificate of title. Finally, subsection (c) is the choice of law section and provides that the law of the jurisdiction that issued the certificate of title governs perfection. The only

[1] Petitioner's brief refers to the manufactured home as a doublewide and the facts stipulated by the parties makes reference to both manufactured home and doublewide. Additionally, the certificates of title for the manufactured home refer to it as a fabricated home. All of these terms are acceptable descriptions of the property at issue and use of one term or another makes no substantive difference as to application of the relevant law in this case. *See* WV Code §17A-1-1(pp), (qq), and (rr) defining factory built home, manufactured home and mobile home; *see also Russell v. Town of Granville*, n. 3, 237 W.Va. 9, 784 S.E.2d 336 (2016)(discussing the various terms and lack of distinctions between them).

result from applying this statute to the facts of this case is confirmation that West Virginia law governs perfection of the security interest. That is not in dispute.

Petitioner next relies upon WV Code §17A-4A-3 for the proposition that a lien on a manufactured home can only be perfected by notation on the certificate of title. WV Code §17A-4A-3(b) provides:

> Notwithstanding any other provision of this code to the contrary, and subject to the provisions of subsection (c) of this section, any lien or encumbrance placed on a vehicle by the voluntary act of the owner shall be void as against: (i) Any lien creditor who, without knowledge of the lien, acquires by attachment, levy or otherwise a lien thereupon, unless the lien or encumbrance is noted on the certificate of title, a filed application for certificate of title or the notice of lien authorized in section four of this article; and (ii) any purchaser who, without knowledge of the lien or encumbrance, purchases the vehicle, unless the lien or encumbrance is noted on the certificate of title, a filed application for certificate of title or the notice of lien authorized in section four of this article: Provided, That a purchaser under this subsection who purchases the vehicle without knowledge of the lien or encumbrance and contemporaneously obtains actual physical possession of the vehicle and the certificate of title for the vehicle without the lien or encumbrance noted on the certificate of title, receives the vehicle free and clear of the lien or encumbrance.

Thus, if a lien is voluntarily "placed on a **vehicle**," the lien only has priority over other lien creditors or purchasers, without notice, if the lien is properly noted. Significantly for the question before the Court, the statute makes no reference to manufactured homes, only vehicles. WV Code §17A-1-1(a) defines a vehicle as, "every device in, upon or by which any person or property is or may be transported or drawn upon a highway, ..." The West Virginia Legislature specifically defined "vehicle" using this fact-based definition rather than a blanket statement defining a vehicle as any device for which a certificate of title has been issued.

Petitioner does not address the plain statutory language of WV Code §17A-4A-3 that makes it applicable to only a "vehicle" which is defined by §17A-1-1(a) and assumes that a manufactured home is necessarily a vehicle for lien perfection purposes. However, if a

manufactured home is not a vehicle, as defined by §17A-1-1(a), WV Code §17A-4A-3 is not controlling as to the perfection of a security interest in the home. For purposes of the question before this Court, Petitioner is not contesting that the manufactured home is physically affixed to the real estate for all intents and purposes. *See* Joint App., p. 223 and 226. Obviously, a manufactured home that is physically affixed to real estate cannot be transported or drawn upon a highway and is, therefore, not a vehicle as defined by WV Code §17A-1-1(a).

Petitioner's view that a secured creditor can only perfect its secured interest in a manufactured home by complying with WV Code §17A-4A-3 is not supported by the plain language of the statute. Nowhere in that statute or in any other statute cited by Petitioner does its state that a lien in a manufactured home with a certificate of title can only be perfected by notation of the lien on the certificate of title.

The legislature could easily have provided such a requirement had it expressly so stated. For example, in Kentucky, KRS 186A.190(1) provides in pertinent part that, "the perfection and discharge of a security interest **in any property for which has been issued a Kentucky certificate of title** shall be by notation on the certificate of title." (Emphasis supplied). *See Hiers v. Bank One, West Virginia, Williamson, N.A.*, 946 S.W.2d 196 (Ky.App. 1997)(holding that statute provided sole means for perfecting lien even if mobile home had been affixed). If West Virginia's statutes included the same language as the Kentucky statute, Respondents would not have any grounds to assert the perfection of their lien. But, WV Code §17A-4A-3 does not use that same language. In contrast, West Virginia's statute provides for perfection of a security interest in a **vehicle** by notation on the certificate of title, not any property that is covered by a certificate of title. It is a well-settled rule of statutory construction, "that significance and effect must, if possible, be given to every section, clause, word or part of the statute." *Meadows v. Wal-*

Mart Stores, Inc., 207 W.Va. 203, 214, 530 S.E.2d 676, 687 (1999) quoting *State v. General Daniel Morgan Post No. 548, V.F.W.*, 144 W.Va. 137, 147, 107 S.E.2d 353, 359 (1959)(citations omitted). If the reference to "vehicle" in WV Code §17-A-4A-3 and its definition in WV Code §17A-1-1(a) are to be given "significance and effect," then Respondents' reading of the statutes must be prevail.

WV Code §17A-4A-3 does not provide the sole means by which a security interest may be perfected in a manufactured home affixed to real estate. Likewise, WV Code §17A-3-12b is not the sole means by which a manufactured home can be considered affixed to real estate.

II. COMPLIANCE WITH WV CODE §17A-3-12b IS NOT REQUIRED FOR A MANUFACTURED HOME TO BE CONSIDERED AFFIXED TO REAL ESTATE.

Petitioner recognizes, as he must, that a manufactured home can become affixed to real estate under certain circumstances and, once affixed, a security interest in that home is perfected by the recording of a deed of trust. However, Petitioner again relies on an unreasonably narrow reading of a statute in arguing that compliance with WV Code §17A-3-12b is required in order to affix a manufactured home to real estate.

The first sentence of the statute makes clear that it is not the sole means by which a manufactured home may be affixed to real estate, "[t]he commissioner **may** cancel a certificate of title for a mobile or manufactured home **affixed** to the real property of the owner of the mobile or manufactured home." WV Code §17A-3-12b(a)(emphasis supplied). The use of "may" indicates the process is optional while the reference to a manufactured home already "affixed" to real estate indicates that cancellation of the title is not necessary for affixing a manufactured home to real estate. The remainder of WV Code §17A-3-12b(a) sets forth the process for cancellation of a certificate of title and the effect of cancellation. Nowhere in the statute does it

expressly state or even imply that it provides the sole means for affixing a manufactured home to real estate so that it is treated as a fixture.

Respondents' reading of WV Code §17A-3-12b(a) is entirely consistent with their reading of WV Code §17A-4A-3. If notation of a lien on a certificate of title is not required for perfection of a security interest in a manufactured home that is not a vehicle as defined by WV Code §17A-1-1(a), it follows that cancellation of the certificate of title under WV Code §17A-3-12b(a) is not required for the manufactured home to be affixed.

Respondents have demonstrated that the plain language of the relevant statutes does not support Petitioner's position that the statutes provide the sole means either to perfect a security interest in a manufactured home or to affix a manufactured home to real estate. Additionally, the few court decisions that have addressed issues related to the question before the Court support Respondents' position.

III. CASE LAW RELEVANT TO THE QUESTION BEFORE THE COURT SUPPORTS RESPONDENTS' READING OF THE STATUTES RELIED UPON BY PETITIONER.

Respondents are not aware of any published decisions in West Virginia that directly address the question before the Court. However, a memorandum opinion issued by this Court in 2018 held that a manufactured home could be affixed to real estate without cancellation of the certificate of title. *See Sanders v. Brown*, No. 18-0017, 2018 WL 6119215 (W.Va. Supreme Court, November 21, 2018)(memorandum decision). The appellant in *Sanders* argued that the circuit court erred in finding that her conveyance of real estate to her son included the manufactured home for which she held a certificate of title in her name. This Court specifically rejected the argument that WV Code §17A-3-12b was dispositive of whether a manufactured was affixed and upheld the circuit court's application of the "long-standing" common law

standard for determining whether property is a fixture set forth in *Snuffer v. Spangler*, 79 W.Va. 628, 92 S.E. 106, 110 (1917). *Id.* at *5. The Court went on to affirm the circuit court's ruling that the manufactured home had been transferred as a fixture along with the real estate. *Id.* Reaching the result in *Sanders* necessarily requires the same reading of WV Code §17A-3-12b that Respondents present in Section II., *supra*,-- the statute does not provide the sole means by which a manufactured home can be affixed to real estate.

The U.S. Bankruptcy Court for the Southern District of West Virginia also agreed with Respondents' reading of the statute in its decision in *In re Weikle*, Case No. 17-10001, 2017 WL 4127994 (Bankr. S. D. W. Va., September 13, 2017)(unpublished decision). The case involved a dispute between the debtors and creditor as to whether creditor's secured claim could be modified under the anti-modification provisions of 11 U.S.C. §1322(b)(2). The dispute turned on whether the manufactured home was personal or real property. Rather than decide the issue based on any particular statute, the bankruptcy court, just as this Court did in *Sanders*, applied the standards for determining whether property is a fixture set forth in *Snuffer, supra. Id.* at *3. In footnote 3, the bankruptcy court specifically rejected the argument that WV Code §17A-3-12b(a) provides the sole means by which a manufactured home could become a fixture, "[h]ad the Legislature intended such a far-reaching result, it would have unquestionably used more sweeping language." *Id.* at n.3.

While neither of the decisions cited are binding precedence, they do illustrate that two different courts applying West Virginia law came to the same conclusion as Respondents; namely, that compliance with WV Code §17A-3-12b(a) is not required to affix a manufactured home to real estate. In contrast, none of the decisions cited by Petitioner support his overly strict

reading of the statues governing perfection of security interests and affixing of a manufactured home.

The issue in *Dodson v. One Valley Bank, (In re Johnson)*, 105 B.R. 352 (Bankr.S.D. W.Va. 1989), aff'd 4 F.3d 985 (4th Cir.1993), cited by Petitioner, was whether a lien in a manufactured home could be perfected by a UCC filing rather than a lien notated on the certificate title. The Court determined that the UCC filing was not sufficient and that the lien must be notated on the certificate of title. Whether or not a deed of trust encumbering real estate on which the manufactured home is affixed is sufficient to perfect a lien was not at issue in the case. Significantly, the Court stated that, [e]vidence suggesting placement of the mobile home upon the land **would be relevant if the defendant were asserting that the vehicle had become a fixture** which would be governed by different perfection requirements, ..." *Id.* at 355 (emphasis supplied). *Dodson* simply has no relevance to the question before the Court since the affixing of a manufactured home to real estate was not at issue.

Petitioner next cites *Ennis v. Green Tree Servicing, LLC*, 558 F.3d 343 (4th Cir.2009), a United States Court of Appeals for the Fourth Circuit case involving the same bankruptcy issue considered in *In re Weikle*, *supra*. *Ennis* provides no guidance on the question before the Court since it was decided based on application of Virginia statutory law and the homeowners did not even own the lot on which the manufactured home sat. For these reasons, the bankruptcy court for the Southern District of West Virginia in *In re Weikle* easily distinguished *Ennis* and refused to rely upon it.

Respondents recognize that the *Sanders* memorandum decision from this Court and the *In re Weikle* bankruptcy decision as unpublished decisions carry limited precedential value, however, the cases cited by Petitioner have zero relevance to the stipulated facts and applicable

statutes cited by the parties. The holdings in both *Sanders* and *In re Weikle* directly reject Petitioner's overly strict interpretation and fully support Respondents' arguments in Section II., *supra*.

IV. THE POLICY CONSIDERATIONS PRESENTED BY PETITIONER ARE NOT PERSUASIVE AND DO NOT JUSTIFY A RESULT CONTRARY TO WEST VIRGINIA LAW.

Petitioner correctly states that perfection of security interests is a matter addressed by the Legislature and the Court's duty is to apply the statutory law as enacted by the Legislature, with the Court only interpreting the law when it is ambiguous. However, in advocating for an overly strict interpretation of unambiguous statutes, Petitioner is contradicting his statement and is actually seeking a re-interpretation of the statutes. No interpretation or changes in wording or addition of words is necessary for Respondents' argument to be consistent with the plain meaning of the relevant statutes.

Respondents are not seeking validation of their security interest in the manufactured home out of "fairness" or to be "excused" from not following the law. Rather they are asking this Court to uphold their security interest based on a reading of the unambiguous statutes which do not require what Petitioner claims they do. In Section I., *supra*, Respondents provided an example from another jurisdiction of a statute that does compel perfection of a security interest in a manufactured home by notating the lien on the certificate of title. That statute is very different from West Virginia's statute, WV Code §17A-4-3, and, therefore, would provide a different result if applied to the facts of this case. However, no policy considerations justify altering or re-interpreting West Virginia law in order to reach the result Petitioner seeks.

Petitioner's concern about increased transactional costs if Respondents' position is adopted by the Court is unfounded. Respondents do not contend that they could have perfected

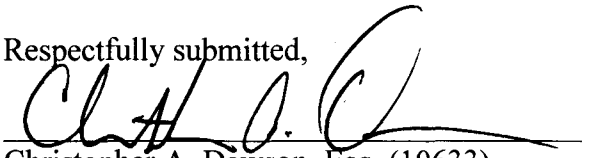
their lien by filing a UCC statement with the West Virginia Secretary of State, nor that any other means of perfection for other types of property would be sufficient. Respondents simply argue that a security interest in a manufactured home that is physically affixed to real estate can be perfected as any other security interest in real estate and fixtures, by the recording of a deed of trust. A bankruptcy trustee has no additional burden for researching liens since he or she would necessarily already be checking for a deed of trust if the debtor owns the real estate on which a manufactured home was located. If the debtor does not own the real estate, then the security interest can only be perfected by notation on the certificate of title and the trustee need look no further than the title to determine whether there is a lien.

Finally, even if Respondents prevail in this case, creditors would still have an incentive to perfect security interests by notation on the certificate of title or seek cancellation of the title to avoid litigation over whether the manufactured home was affixed based on the common law standard. Thus, the statutory scheme enacted by the Legislature remains viable and serves a valuable purpose. The policy considerations discussed by Petitioner do not support an answer to the certified question in Petitioner's favor.

CONCLUSION

For the reasons set forth above, Respondents, WEI Mortgage Corporation and Mortgage Electronic Registration Systems, Inc., respectfully request the Court to answer the certified question in the affirmative and hold that they have a perfected security interest in the manufactured home.

Respectfully submitted,



Christopher A. Dawson, Esq. (10633)
Reisenfeld and Associates, LLC
Counsel for Respondents
3962 Red Bank Road
Cincinnati, OH 45227
Voice: (304)853-3338
Fax: (513)322-7007
Christopher.dawson@rslegal.com