

FILE COPY

OCT 12 2019

Order Entered.

Patrick M. Flatley
Patrick M. Flatley
United States Bankruptcy Judge

DO NOT REMOVE
FROM FILE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

In re:)	
)	
RONALD L. LANCASTER and)	
JAMIE L. LANCASTER,)	Case No. 18-bk-712
)	
Debtors.)	Chapter 7
_____)	
MARTIN P. SHEEHAN, as Chapter 7)	
Trustee,)	
)	
Plaintiff,)	
v.)	Adversary No. 18-ap-51
)	
WEI MORTGAGE CORP., MORTGAGE)	
ELECTRONIC REGISTRATION)	
SYSTEMS, INC., and SENECA)	
TRUSTEES, INC.,)	
)	
Defendants.)	
_____)	

ORDER

On September 17, 2019, the court convened a telephonic hearing regarding the Plaintiff's request to certify a question from this adversary proceeding to the Supreme Court of Appeals of West Virginia ("Supreme Court"). At the hearing, the court addressed both the form of the question to be certified and additional requirements under the Uniform Certification of Questions of Law Act, W. Va. Code § 51-1A-1, *et. seq.*, including whether the parties agreed on the facts relevant to the question. On October 2, 2019, the parties submitted a joint statement of facts to be incorporated into the court's order of certification.

Based upon the foregoing and the discussion upon the record during the September 17 telephonic hearing, the court does hereby

ORDER that the following question be certified to the Supreme Court:

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?

Based upon the parties' joint statement of facts, and consistent with W. Va. Code § 51-1A-6(a)(2), the court does hereby

FURTHER ORDER that the following facts are relevant to the question:

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 MY0457930ABK. 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.

Finally, the court does hereby

FURTHER ORDER that it and the parties acknowledge, consistent with W. Va. Code § 51-1A-6(a)(3), that the Supreme Court may reformulate the question. Counsel of record are, for the Plaintiff, Martin P. Sheehan, Suite 200, 1 Community St., Wheeling, West Virginia 26003, and for the Defendants, Christopher A. Dawson, Reisenfeld & Associates, 3962 Red Bank Rd., Cincinnati, OH 45227.