



IT IS ORDERED as set forth below:

Date: April 03, 2007

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CHAPTER 7
	:	
SANTRICE HUNT,	:	CASE NO. 04-77191-PWB
	:	
Debtor.	:	
	:	
JANET G. WATTS, Chapter 7 Trustee	:	
for the Estate of Santrice Hunt,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	ADVERSARY NO. 06-6235
	:	
ARGENT MORTGAGE COMPANY, LLC,	:	
	:	
Defendant.	:	

**ORDER ON MOTION OF TRUSTEE/PLAINTIFF TO
ALTER OR AMEND THE JUDGMENT UNDER RULE 9023**

On February 23, 2007, the Court entered its Order Including Findings of Fact and

Conclusions of Law [29] and Final Judgment [30] in favor of defendant Argent Mortgage Company, LLC (“Argent”) and against plaintiff Janet G. Watts, the chapter 7 trustee (the “Trustee”) for the estate of Santrice Hunt (the “Debtor”). On March 5, 2007, the Trustee filed a motion to alter or amend the judgment under FED. R. BANKR. P. 9023 [33] (the “Motion”).

The Court concluded that the security deeds held by Argent on the Debtor’s property were perfected within the meaning of § 547(e)(1)(A) at the time they were executed and delivered because, under Georgia law, a bona fide purchaser would have had inquiry notice of them at all times prior to their recordation based on the Debtor’s absence of record title and the existence of a cancelled security deed on the property in favor of another lender. The Motion seeks reconsideration of this ruling.

The Court understands the Trustee’s argument as follows. First, the proper time for determining perfection of Argent’s interest is the end of the relation back period defined by § 547(e)(2) (including § 547(c)(3), if applicable), which begins on the date a transfer takes effect between the debtor and a creditor and ends at the statutorily specified time (whether 10 or 20 days¹ is immaterial here). The Trustee refers to this period as the “safe harbor” period.

Second, the status of a bankruptcy trustee as a hypothetical bona fide purchaser means that perfection does not occur at the end of the safe harbor period if a hypothetical set of facts could exist that would defeat the rights of a bona fide purchaser at or after that time. As an example of such a set of facts, the Trustee posits the later recordation of the Debtor’s warranty deed and the later cancellation of the previous lender’s security deed. Under this assumption,

¹Because the amendments made by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 do not apply in this bankruptcy case filed prior to its effective date, the relevant times are 10 days under § 547(e)(2) and 20 days under § 547(c)(3).

inquiry notice as discussed in the court's Order would not occur, and Argent's interest would not be perfected until recordation of its security deeds.

The Court ruled that Argent's security interests had been perfected due to inquiry notice *at all times* prior to recordation of its security deeds. (Order, at p. 14). The absence of record title in the Debtor, coupled with the consequences to a bona fide purchaser of inquiry notice under Georgia law, established perfection until the Debtor's title was recorded; the recordation of Defendant's security interest prior to, or contemporaneously with, recordation of the Debtor's interest established perfection of the Defendant's interest thereafter. The Court's ruling necessarily determines that Argent was perfected at the end of the safe harbor period.

The Trustee's notion is that, between the end of the safe harbor period and the recordation of Argent's security deeds, the Debtor could have recorded a warranty deed and the previous security deed could have been cancelled; that, unencumbered record title thus being in the Debtor, there would be no inquiry notice; and that a bona fide purchaser acquiring the Debtor's interest after recordation by the Debtor would therefore take the property free of Argent's unrecorded security deeds.

Perhaps so. But the problem for the Trustee is that the bona fide purchaser test does not permit the assumption of new facts concerning the state of the title that did not actually occur. When established by reference to a bona fide purchaser standard, the rights of a bankruptcy trustee are determined on a hypothetical basis and without regard to what an actual purchaser actually did or did not know *about the facts as they actually existed*. It is in this sense that the Court wrote in its Order (at p. 13) that statements in *Corn Exchange National Bank & Trust Co. v. Klauder*, 318 U.S. 434, 436-37 (1943), were "generally declarative of the principle that the

avoidance powers of a bankruptcy trustee, when determined by reference to a hypothetical bona fide purchaser standard, are not burdened by what actually did or did not occur.”

To clarify, the Court did not mean for its statement of its interpretation of *Klauder* to encompass the potential creation of additional hypothetical events in determining the position of a hypothetical bona fide purchaser, but only that a bankruptcy trustee’s rights based on a hypothetical bona fide purchaser’s rights are neither diminished nor augmented by attributing actual knowledge or its absence to the trustee. In other words, the facts cannot be changed, and the bankruptcy trustee’s rights, *i.e.*, the legal consequences of those facts, are determined on the basis of those actual facts.

Based on, and in accordance with, the foregoing, it is hereby **ORDERED and ADJUDGED** that the Motion is granted in part and denied in part. The Court amends its findings of fact and conclusions of law as set forth herein. The motion is denied to the extent that it seeks further amendment of findings of fact and conclusions of law, amendment of the judgment, or a new trial.

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