

to the plaintiffs in the full amounts of their "investments." The court even found that no hearing was required to determine the amount of the judgments to be entered against all defendants, jointly and severally. It entered judgment

in the amounts invested by each plaintiff. The court tagged on an award of post-judgment interest.

Perhaps the court should have considered the doctrine of *in pari delicto*. In *In re Taneja*, 2010 WL 4882826

(Bankr.E.D.Va.) (unpublished), the bankruptcy trustee for a mortgage banker whose president had convinced title agents not to record the insured mortgages or make payoffs of the existing loans tried pursuing claims on closing

protection letters issued to the lender. In rejecting the trustee's claims, the court described the doctrine of *in pari delicto* as "an affirmative defense that bars a wrongdoer from recovering against his alleged coconspirators."

Conveyance News

Incomplete Mortgage Legal Description Was Adequate to Impart Notice

Williams v. Schneider, ___ N.E.3d ___, 2018 -Ohio- 968, 2018 WL 1353291 (Ohio App. 8 Dist. 2018) (permanent citation not yet available).

An Ohio court has held that a metes and bounds description, though incomplete, was nonetheless adequate to impart notice; the mortgage thus had priority over later mechanic's liens.

In 2003, Joanne and Alan Schneider proposed a mixed-use project in Parma Heights to be called Cornerstone. The project covered five parcels. In 2003, the Home Savings & Loan Company of Youngstown, Ohio lent about \$10 million for the project, about \$2.8 million of which paid off two prior mortgage loans on several of the parcels. Cleveland Construction Inc., the construction manager for the project, made a bridge loan of \$2.5 million. The City of Parma Heights also agreed to provide improvements with tax incremental financing.

The project failed because, the court says, the Schneiders were running a Ponzi scheme. Investors, contractors, Home Savings, the city and others all made claims to the assets. Cleveland Construction filed mechanic's liens totaling about \$1.5 million and took a judgment in the amount of its \$2.5 million bridge loan.

The court appointed a receiver. It issued an order calling for a sale free and clear of liens, very similar to a bankruptcy Section 363 sale.

The sale was held and the property was sold. Then the court began to make rulings on the complicated claims about liens and their priority. Unfortunately, those issues have dragged on from late 2007 to the present.

In this decision, the main issue addressed by the court was the City of Parma Heights' claim to a superpriority special assessment lien in the amount of its TIF improvements. The court held that the city had priority over all other liens, reversing a lower court decision on that issue. However, the court said the city's lien was extinguished by the sale free and clear, and attached to the proceeds of sale.

The central issue of interest to title people was the court's ruling that the Home Savings mortgage was a valid and prior lien on the parcel known as the Pearl Property, ahead of Cleveland Construction's mechanic's liens on that parcel. The Home Savings mortgage encumbered several parcels. The legal descriptions were fine for all but the Pearl Property. That metes and bounds description, however, just stopped at a semi-colon about halfway through the description. Cleveland Construction sought to exploit this problem, asserting that the Pearl description was so defective that the mortgage

did not provide constructive notice to "innocent third party mechanic's lien holders such as CCI."

The court gave an erudite explanation of the principles used by Ohio courts to determine if a legal description is sufficient to cause a mortgage to impart constructive notice. The recording statutes require that a mortgage contain a "description of land," and say that a mortgage is valid when it is in the form required by law "in substance." *Fifth Third Mtge. Co. v. Brown*, 2012-Ohio-2205, 970 N.E.2d 1183 (8th Dist.) said that the law does not require a formal metes and bounds description. Rather, a description of the property "is sufficient if it is such as to indicate the land intended to be conveyed, so as to enable a person to locate it." In *ABN AMRO Mtge. Group, Inc. v. Jackson*, 159 Ohio App.3d 551, 558-559, 2005-Ohio-297, 824 N.E.2d 600 (2d Dist.), the court held that a mortgage imparted notice despite a deficient description because it recited the correct tax parcel number and street address. In *Acacia on the Green Condominium Assn. v. Jefferson*, 2016-Ohio-386, 47 N.E.3d 207 (8th Dist.), the court said that a mortgage that contained no description at all still imparted notice because a title examiner was able to locate the

mortgage in the records "with ease."

In line with *Acacia*, Home Savings' counsel presented the testimony of title examiner Robert Gutin. He said that the missing portion of the description was calls along several dedicated public roads, "the boundaries of which could be determined by other instruments of record." Gutin then referred back to the source deed for the parcel to confirm the complete description of the parcel. Thus, the description was sufficient to impart notice.

Cleveland Construction's argument in rebuttal was that there is "no legal requirement for a mechanic's lien claimant to perform a title exam prior to filing a mechanic's lien." The court said this posed the wrong issue. It said that the law concerning constructive notice "does not distinguish between" types of claimants. The recording laws give notice to all subsequent parties of the matters that already affect a parcel's title. Thus, whether or not the contractor elected to search title before recording its lien, the mortgage imparted constructive notice and thus had priority over the mechanic's liens.

Home Savings was very ably represented by Michael J. Sikora and Charles Richley Raley Jr. of Sikora Law LLC.