

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 12-10374

JESSE LEON BARTRUM

Debtor

PNC BANK NA

Plaintiff

vs.

JESSE LEON BARTRUM

Defendant

Not for Publication

PROC. NO. 14-1146

DECISION

On September 1, 2015.

By this adversary proceeding, the plaintiff seeks a determination as to whether it holds an enforceable mortgage upon debtor's real property and, therefore, a secured claim in this proceeding. The matter has been submitted to the court on the parties' joint stipulations of fact and briefs of counsel.

The legal description in the mortgage is not completely accurate, apparently due to a typographical error. The typographical error at issue is in the description of the east line of the property. The actual description for the east line is "North 01 degree 01 minute 54 seconds West," whereas the mortgage describes it as "North 01 degree 01 minute 34 seconds West." The difference between the two is a 20 second westward cant of the east line.

For a mortgage to be effective, it must contain a description of the land sufficient to be able to identify it. Keybank Nat. Ass'n v. NBD Bank, 699 N.E.2d 322, 326 (Ind. Ct. App. 1998) (citing In re Dunn, 109 B.R. 865, 873 (Bankr. N.D. Ind. 1988)). A description is sufficient so long as it

gives a definite starting point and distances which close. DeLong v. Starkey, 92 N.E.2d 228, 230 (Ind. 1950). This one does both and there is no dispute that it does not. At a minimum, the mortgage is sufficient to give the bank a lien on the property described in the mortgage.

The debtor does not dispute the facts or the bank's argument regarding the description. Instead, the debtor argues that some form of estoppel applies, based on the bank's allegation in a state court foreclosure complaint "that the defendant, Jesse L. Bartrum, has no title or interest in the real estate described by error in said mortgage." While the allegation itself is contained in the parties' stipulations, there are no facts regarding the debtor's reliance on it or how he has been harmed by it.

Contrary to the debtor's position, no form of estoppel applies. Judicial estoppel prevents a party from successfully taking a position in litigation and then later reversing that position when it is in the party's interest to do so. Levinson v. United States, 969 F.2d 260 (7th Cir. 1992); In re Cassidy, 892 F.2d 637 (7th Cir. 1990). There is no indication that the state court litigation was ever concluded much less that it was successfully concluded with a determination that the debtor had no interest in the property. Similarly, there is no basis for collateral estoppel, as the state court made no decision and has found no facts regarding ownership. Finally, as for equitable estoppel, none of the facts on which the debtor bases for its argument of detrimental reliance appear in the parties' stipulations and so cannot be considered.

PNC Bank NA holds a valid mortgage on the debtor's property and is a secured creditor of the debtor. Judgment will be entered accordingly.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court