

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

U. S. BANKRUPTCY COURT SOUTHERN DISTRICT OF MISSISSIPPI FILED	
SEP 13 1993	
BY	MOLLIE C. JONES- CLERK DEPUTY

IN RE: A.R.C. OF JACKSON, INC.

CASE NO. 91-02129EEJ

CITATION MORTGAGE, LTD. AND
CITATION-CHATEAU RIDGELAND, LTD.

PLAINTIFFS

VS.

ADVERSARY NO. 91-0094JC

FIRST NATIONAL BANK OF LOUISVILLE

DEFENDANT

Richard A. Montague, Jr.
P.O. Box 23040
Jackson, MS 39225

Attorney for Plaintiffs

Frank R. Nicotera
6055 Primacy Parkway, Suite 360
Memphis, TN 38119

Attorney for Defendant

Edward Ellington, Bankruptcy Judge

MEMORANDUM OPINION

This adversary proceeding came on for hearing upon the Plaintiffs' Motion for Summary Judgment, and upon the motion of First National Bank of Louisville (FNBL) to dismiss or continue the motion for summary judgment.

The Plaintiffs' motion seeks summary judgment that Citation Mortgage, Ltd. is the first lienholder on a certain parcel of real property and building located thereon, known as Chateau Ridgeland. The Plaintiffs also seek summary judgment that upon a valid foreclosure of the property by Citation all other liens would be extinguished. After considering the evidence presented to the Court along with the arguments of counsel, the Court finds that the

Plaintiffs' Motion for Summary Judgment is well taken and should be granted.

Citation Mortgage, Ltd. commenced this adversary proceeding against numerous defendants seeking an adjudication of the priority of its lien on a certain parcel of real property and a building located on the property. The property is located in Ridgeland, Madison County, Mississippi and is known as Chateau Ridgeland. Citation-Chateau Ridgeland, Ltd., the present title holder, was subsequently added as a Plaintiff by amendment to the complaint. The Plaintiffs' claims against all Defendants, except First National Bank of Louisville (FNBL), have been disposed of by either an order of dismissal, default judgment or consent judgment.

FNBL responded to the complaint asserting as affirmative defenses that FNBL holds an interest in the property based on the theories of constructive trust, resulting trust or equitable lien.

After FNBL filed its answer to the complaint, Citation Mortgage, Ltd. filed the present Motion for Summary Judgment, stating that there exists no genuine issue of material fact that Citation is the first lienholder on the Chateau Ridgeland property, and that Citation is entitled to judgment as a matter of law.

In support of its motion, Citation attached the affidavit of an officer of the general partner of Citation Mortgage, Ltd. as an exhibit to the motion. The affidavit states that Citation Mortgage obtained a deed of trust on the Chateau Ridgeland property by assignment from the Resolution Trust Corporation, as receiver for City Federal Savings Bank. Attached to and incorporated in the

affidavit is a copy of a deed of trust on the Chateau Ridgeland property in favor of City Federal Savings Bank. The deed of trust was filed in the Office of the Chancery Clerk of Madison County, Mississippi on December 14, 1987, and was duly recorded in the Madison County land records in Book 638 at Page 466. Also attached to and incorporated in the affidavit is a copy of the assignment of the above described deed of trust from the RTC as receiver for City Federal Savings Bank to Citation Mortgage, Ltd.. The assignment was filed in the Office of the Chancery Clerk of Madison County, Mississippi on January 14, 1992 and was duly recorded in the Madison County land records in Book 764 at Page 27.

Although in its motion to dismiss or continue the motion for summary judgment FNBL opposes the Motion for Summary Judgment, no affidavits or documentary evidence have been offered in support of FNBL's position.

Rule 7056(e) of the Federal Rules of Bankruptcy Procedure provides in relevant part as follows:

Rule 7056. Summary Judgment.

(e) **Form of Affidavits; Further Testimony; Defense Required.** When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

FNBL has offered no proof by affidavit or otherwise to show that Plaintiffs' Motion for Summary Judgment should be denied. While the Plaintiffs bear the burden of proof regarding the priority of Citation's lien, it is the opinion of this Court that Citation has met that burden by submission of the affidavit, deed of trust and assignment of deed of trust. FNBL has offered no evidence to rebut the proof offered by the Plaintiffs. Furthermore, FNBL bears the burden of proof regarding its affirmative defenses of constructive trust, resulting trust and equitable lien, but has offered no supporting affidavits or documentary proof pertaining to these affirmative defenses.

Based on the foregoing, this Court holds that the Plaintiffs' Motion for Summary Judgment will be granted, and that the motion of First National Bank of Louisville to dismiss or continue the motion for summary judgment will be denied.

A separate final judgment consistent with this opinion will be entered in accordance with Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

This the 13th day of September, 1993.


UNITED STATES BANKRUPTCY JUDGE

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CITATION-CHATEAU RIDGELAND, LTD.

VS. ADVERSARY NO. 91-0094JC

FIRST NATIONAL BANK OF LOUISVILLE DEFENDANT

FINAL JUDGMENT

Consistent with the opinion dated contemporaneously herewith, this Court finds that the Plaintiffs' Motion for Summary Judgment is well taken and should be granted, and that the Defendant's motion to dismiss or continue the motion for summary judgment is not well taken and should be denied. It is therefore ordered and adjudged as follows:

1. By virtue of the deed of trust recorded in Book 638 at Page 466 in the Office of the Chancery Clerk of Madison County, Mississippi, and by virtue of the assignment recorded in Book 764 at Page 27 in the Office of the Chancery Clerk of Madison County, Mississippi, Citation Mortgage, Ltd. is the holder of a first lien on a certain parcel of real property and building located thereon, known as Chateau Ridgeland, said property being more fully described in the instruments listed above;

2. A valid foreclosure of said property by Citation Mortgage, Ltd. would extinguish all subordinate liens on the property;

3. A certified copy of this judgment may be filed in the Office of the Chancery Clerk of Madison County, Mississippi and recorded in the land records of that county. The clerk is authorized to charge his fees for his services as authorized by state law; and

4. This is a final judgment for the purposes of Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

ORDERED AND ADJUDGED this the 13th day of September, 1993.


UNITED STATES BANKRUPTCY JUDGE