U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 06-01888

ADVERSARY PROCEEDING NO: 08-80012

ORDER

The relief set forth on the following pages, for a total of 16 pages including this page, is hereby ORDERED.

FILED BY THE COURT
08/06/2009

US Bankruptcy Court Judge
District of South Carolina

Entered: 08/07/2009

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

In re, Lee Holt Judd, Debtor(s).	C/A No. 06-01888 Adv. Pro. No. 08-80012 Chapter 7 **ORDER**
Robert F. Anderson, Trustee, Plaintiff(s), v. John T. Holt, SunTrust Mortgage, Inc., and EMC Mortgage Corporation, as Servicer for Citibank, N.A., as Trustee for Certificateholders of Bear Stearns Asset Backed Securities Trust 2007-SD-3, Asset Backed Certificates Series 2007 SD3, Defendant(s).	

THIS MATTER came before the Court on cross motions for summary judgment pursuant to Fed. R. Civ. P. 56, made applicable to this adversary proceeding by Fed. R. Bankr. P. 7056. Stipulated facts and facts gleaned from the documents submitted to the Court are as follows:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(b)(1).

2. Plaintiff Robert F. Anderson ("Trustee") is the duly appointed, qualified and acting Trustee for the Chapter 7 estate of Lee Holt Judd ("Debtor").

3. This lawsuit began with the Trustee's efforts to recover real estate and the proceeds thereof. The real estate in question was acquired by Debtor by Warranty Deed dated February 1, 2005. The realty is described as Unit 603 of Mariner's Club, Lot 3, Block

6, Key Largo North, 97501 Overseas Highway, Key Largo, FL 33037 ("Unit 603"). The deed was recorded on or about March 3, 2005, in the Official Records of Monroe County, Florida in Book 2090 at Page 957. [1]

4. Defendants SunTrust Mortgage, Inc. and EMC Mortgage Corporation claim an interest in Unit 603 and/or its proceeds. At the time this Adversary Proceeding was filed Defendant John T. Holt ("Debtor's father") claimed an interest in that property.

5. On or about February 10, 2005, to finance the acquisition of Unit 603, the Debtor and Sarepta P. Wilson borrowed $744,800.00 from American Home Mortgage Acceptance, Inc., evidenced by a note and mortgage granting a lien on Unit 603. The mortgage was recorded on March 3, 2005 at Book 2090 at Page 959.

6. On or about February 10, 2005, to finance the acquisition of Unit 603 the Debtor and Wilson borrowed an additional $93,100.00 from American Home Mortgage, evidenced by a note and mortgage granting a lien on Unit 603. That obligation was expressly subordinate to the mortgage described in (5) above and it was recorded on March 3, 2005, in the Book 2090 at page 983.

7. On or about March 24, 2005, the Debtor executed a Mortgage on Unit 603 to secure a note in the amount of $200,000 in favor of Lillian S. Maresch and a separate mortgage on Unit 603 to secure a note of $198,000.00 in favor of Van and Sarepta P. Wilson. Both the Maresch and Wilson mortgages describe the collateral as "Unit 603 of MARINER'S CLUB as shown on the site plan attached as Exhibit 'B' to the Declaration of Covenants, Conditions and Restrictions for Mariner's Club recorded in Official Record Book 1659, Page 1981, more particularly described as *Lot 4, Block 7,* Key Largo North."

[1] All further references to the recording of documents shall indicate recordation in the Official Records of Monroe County, Florida.

Unit 603 is actually *Lot 3, Block 6*, Key Largo North. Both were recorded on November 2, 2005, in Book 2162 at Page 636 and Book 2162 at Page 640 respectively.

8. On or about March 22, 2006, a Judgment in the amount of $475,962.18 was entered in favor of Marin Reed and Mary Reed against the Debtor. The Judgment was recorded on March 30, 2006, in Book 2197 at Page 539 and on April 20, 2006, in Book 2202 at Page 1083.

9. On April 27, 2006, the Debtor executed a Warranty Deed conveying Unit 603 to Debtor's father. Debtor's father financed the acquisition by, among other things, borrowing $910,000.00 from Defendant SunTrust, evidenced by a note and mortgage dated April 27, 2006, subsequently assigned to Defendant EMC (the "EMC Mortgage"). Debtor's father also borrowed an additional $260,000.00 from Defendant SunTrust, evidenced by a note and mortgage dated April 27, 2006 (the "SunTrust Mortgage").

10. Before the Debtor filed bankruptcy, Comprehensive Title Company collected the proceeds of the loans to Debtor's father from SunTrust Mortgage and EMC Mortgage that he used to finance the purchase of Unit 603 from the Debtor.

11. On May 4, 2006, at 3:55 p.m. per the Court's records, the Debtor filed for relief under Chapter 11 of the United States Bankruptcy Code in this Court.

12. The Deed from the Debtor to Debtor's father, his EMC Mortgage and SunTrust Mortgage had not been recorded at that time the case was filed. Further, the proceeds of the sale of Unit 603 had not yet been fully disbursed to satisfy perfected encumbrances on the title and no releases or satisfactions had been filed.

13. On May 4, 2006, at 3:55 p.m., a review of the public property records in Florida would reveal that the Debtor owned Unit 603, and that the following appeared in the

chain of title: the $744,800.00 Mortgage, the $93,100.00 Mortgage and the $475,962.18 Judgment. The public records would also reflect the mortgages to Wilson and Maresch, although they included a property description that was not completely accurate.

14. Also on May 4, 2006,[2] Comprehensive Title forwarded to Regent Bank's Wire Department a request to transfer funds from the loan to the Debtor's father (secured by the EMC Mortgage and the SunTrust Mortgage granted on Unit 603) to an account at BB&T, Greenville, South Carolina, on account of the Maresch Mortgage and the Wilson Mortgage and the funds were wired on that day as requested.

15. On May 5, 2006, Comprehensive Title forwarded to Regent's Banks Wire Department a request to transfer funds in the amount of $788,607.52 to an account at JP Morgan Chase to satisfy the $744,800.00 Mortgage given by the Debtor and the funds were wired on that day as a result.

16. On May 5, 2006, Comprehensive Title Company forwarded to Regent Bank's Wire Department a request to transfer funds in the amount of $97,088.65 to an account at Chase Bank of Texas, N.A. to satisfy the $93,100.00 Mortgage given by the Debtor and the funds were wired on that day as a result.

17. On June 8, 2006, documents were recorded on the public record in the following order at 1:06 p.m.: (a) 2006 Deed from Debtor to Debtor's father in Book 2215 at Page 203; (b) EMC Mortgage in Book 2215 at Page 205; (c)SunTrust Mortgage in Book 2215 at Page 229.

[2] From this record the Court cannot determine the time of any of the wire transfers.

18. Also on June 8, 2006, the following documents were recorded, all also indicating that the time of recordation was 1:06 p.m:[3] (a) a Partial Release of Mortgage dated April 27, 2006 in Book 2215 at Page 253, releasing Unit 603 from the Maresch mortgage; (b) a Partial Release of Mortgage dated May 3, 2006 in Book 2215 at Page 254, releasing Unit 603 from the Wilson mortgage; (c) a Partial Release of Lien dated May 2, 2006 in Book 2215 at Page 202, releasing Unit 603 from the judgment.

19. On June 12, 2006, in Book 2215 at Page 2212, the Mortgage Release, Satisfaction and Discharge dated June 5, 2006, satisfying the $744,800.00 Mortgage was recorded.

20. On June 21, 2006, in Book 2218 at Page 394, the Satisfaction of Mortgage dated June 8, 2006, satisfying the $93,100.00 Mortgage was recorded.

21. It is stipulated that neither EMC nor SunTrust had actual knowledge of the Debtor's bankruptcy petition before the foregoing transactions occurred.

22. Proof of the Debtor's filing of a bankruptcy petition was not filed in Florida until March 6, 2007, in Book 2277 at Page 388.

23. The bankruptcy case was converted to Chapter 7 on or about May 3, 2007. On January 29, 2008, the Trustee filed this adversary proceeding which seeks recovery of money and/or property under two separate theories of recovery from three different Defendants. The Complaint alleges that the deed to Debtor's father was a transfer made less than one year prior to the filing of the petition with the intent to hinder, delay and defraud creditors, and is thus a voidable and fraudulent transfer pursuant to 11 U.S.C. § 548 (labeled in the Complaint as Trustee's "First Cause of Action (John T. Holt)"). The Complaint

[3] The parties did not stipulate to the order that these documents were filed in relation to each other or to the deed to Debtor's father, the EMC Mortgage or the SunTrust Mortgage.

further seeks recovery against all Defendants separately under § 544(a)(3) (labeled in the Complaint as Trustee's "Second Cause of Action (John T. Holt and SunTrust Mortgage, Inc."), alleging that the deed to Debtor's father, and the EMC Mortgage and the SunTrust Mortgage given by Debtor's father, were unrecorded at the time the bankruptcy was filed. Therefore, the Complaint asks for Judgment against Debtor's father and separately against Defendants EMC and SunTrust by finding that their interests in Unit 603 are voidable by the Trustee pursuant to 11 U.S.C.§ 544(a)(3) because at the time of the commencement of the case, the unrecorded deed to the Debtor's father and his mortgages granted to EMC and SunTrust would be subordinate to the rights of a hypothetical bona fide purchaser of Unit 603.

24. On March 13, 2008, this Court entered a default judgment in this adversary proceeding in favor of the Trustee against Debtor's father on the first and second causes of action. That judgment provided that "the Deed to John T. Holt as described in the Complaint is hereby declared void." The only remaining matter for the Court to consider is the Second Cause of Action against Defendants EMC and SunTrust brought pursuant to 11 U.S.C. § 544(a)(3).[4]

25. The EMC Mortgage and the SunTrust Mortgage granted by Debtor's father relating to Unit 603 have not been satisfied and remain of record as filed.

26. On or about August 29, 2008, the Trustee as owner of the Property, after entry of that default judgment, sold the Property for $417,500.00. This Court's order approving the sale of Unit 603 free and clear of liens provided that "The liens of SunTrust and EMC shall attach to the net proceeds of the sale in the same manner as they were

[4] This is the only theory of recovery stated by the Trustee. The Trustee did not seek to avoid the mortgages as a hypothetical lien creditor under §544(a)(1) or (2).

attached to the real property sold. The net proceeds of the sale shall be placed in a separate interest-bearing certificate of deposit and held by the Trustee pending resolution of Adversary Proceeding: 08-80012, Anderson v. Holt, et.al. The Trustee shall not make any disbursements from the net proceeds without a further order from this Court."

27. The Trustee is currently holding $391,336.78 and Defendant EMC and/or SunTrust claim that they are entitled to these funds as a result of the notes and mortgages granted by Debtor's father pre-petition and recorded, along with the deed from Debtor to Debtor's father, post-petition. The amount owed by Debtor's father as a result of the loans evidenced by the EMC and/or SunTrust Mortgages exceeds the amount held by the Trustee. The Trustee asserts that any interests these Defendants claim in the sale proceeds of Unit 603 are voidable under 11 U.S.C. § 544(a)(3) and requests summary judgment on these facts. EMC and SunTrust argue that as a matter of law summary judgment in favor of the Trustee pursuant to § 544(a)(3) is not warranted, and they instead ask the Court for summary judgment on their defenses to the Trustee's § 544(a)(3) action, which include defenses founded in § 550 and applicable law.

DISCUSSION AND CONCLUSIONS OF LAW

> A court may award summary judgment only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); In re Apex Express Corp., 190 F.3d 624, 633 (4th Cir. 1999); see also Fed. R. Civ. Proc. 56(c) (providing that award of summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"). In evaluating a summary judgment motion, a court "must consider whether a reasonable jury could find in favor of the non-moving party, taking all inferences to be drawn from the underlying facts in the light most favorable to the non-movant." Apex Express Corp., 190 F.3d at 633. In so doing, a court is not entitled to either weigh the evidence or make credibility determinations. See Anderson, 477

> U.S. at 255, 106 S.Ct. 2505 ("Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge. . . ."). If the moving party is unable to demonstrate the absence of any genuine issue of material fact, summary judgment is not proper and must be denied. See Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Honor v. Booz-Allen & Hamilton, Inc., 383 F.3d 180, 185 (4th Cir. 2004).

Mercantile Peninsula Bank v. French (In re French), 499 F.3d 345, 351-52 (4th Cir. 2007). "When faced with cross-motions for summary judgment, the court must review each motion separately on its own merits 'to determine whether either of the parties deserves judgment as a matter of law.'" Rossignol v. Voorhaar, 316 F.3d 516, 523 (4th Cir. 2003) (quoting Philip Morris Inc. v. Harshbarger, 122 F.3d 58, 62 n.4 (1st Cir. 1997)). "When considering each individual motion, the court must take care to 'resolve all factual disputes and any competing, rational inferences in the light most favorable' to the party opposing that motion." Id. (quoting Wightman v. Springfield Terminal Ry. Co., 100 F.3d 228, 230 (1st Cir. 1996)). The fact that both parties have moved for summary judgment does not mean that summary judgment should be granted to one or the other. In re Kugler, 170 B.R. 291, 303 (Bankr. E.D. Va. 1994). Nor does it establish that there are no genuine issues left for trial. McCown v. Humble Oil & Refining Co., 405 F.2d 596, 597 n.1 (4th Cir. 1969).

Plaintiff's Motion for Summary Judgment

Plaintiff/Trustee relies solely on 11 U.S.C. § 544(a)(3):

> (a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by—
>
> > (3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

It is important to note that § 544(a)(3) references "applicable law," meaning that the status of a bona fide purchaser of real property is determined by applying the appropriate authorities, in this case state law. In re Mosello, 193 B.R. 147, 151 (S.D.N.Y. 1996); see also In re Professional Inv. Props. Of Am., 955 F.2d 623 (9th Cir. 1992), cert denied sub nom Miller v. Briggs, 506 U.S. 818, 113 S.Ct. 63, reh'g denied 506 U.S. 1015, 113 S.Ct. 638; see also 5-544 Collier on Bankruptcy-15th Edition Rev. P 544.06 ("State law governs who may be a bona fide purchaser and the rights of such a purchaser for purposes of subsection 544(a)(3)"). "While the Bankruptcy Code gives the trustee the status of a bona fide purchaser, it is state law that defines whether even a hypothetical bona fide purchaser could exist under the facts." LR Partners L.L.C. v. Steiner (In re Steiner), 251 B.R. 137, 142 (Bankr. D. Ariz. 2000) (citing In re Washburn & Roberts, Inc., 795 F.2d 870 (9th Cir. 1986)). "Although the Trustee is given the status of a hypothetical lien creditor under the so-called 'strong-arm' clause of the Bankruptcy Act, he must look to state law for a definition of his rights as such creditor." In re Ludlum Enterprises, 510 F.2d 996, 999 (5th Cir. 1975). Fla. Stat. § 695.01(a) states that:

> (1) No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser.

Florida law further provides that bona fide purchasers must satisfy three conditions: "[t]he purchaser must have (1) acquired the legal title to the property in question, (2) paid value therefore, and (3) been innocent of knowledge of the equity against the property at the

time when consideration was paid and title acquired." DGG Dev. Corp. v. Estate of Capponi, 983 So. 2d 1232, 1234 (Fla. Dist. Ct. App. 5th Dist. 2008). The question for the Court is whether the Trustee can be "innocent of knowledge of the equity against the property" on these undisputed facts, as a matter of law.

"The Trustee, as a hypothetical bona fide purchaser, is subject to the duty imposed by Florida's inquiry rule." In re CJW Ltd., Inc., 172 B.R. 675, 685 (Bankr. M.D. Fla. 1994). Florida's inquiry rule "creates a duty to pursue inquiries suggested by facts contained in the documents in the record which would lead to greater inquiry." Id. Florida's case law states that "notice required by the statute may be constructive, actual or implied actual notice." Crown General Stores, Inc. v. Ultra Meat Market, Inc., 843 So.2d 287, 289 (Fla. Dist. Ct. App. 3d Dist. 2003) (citing Sapp v. Warner, 141 So. 124, 105 Fla. 245 (1932)). "[U]nder Florida's recording act, the recordation of an instrument is constructive notice to creditors and subsequent purchasers not only of its own existence and contents, but also of such other facts concerned with the instrument as would have been ascertained from the record if it had been examined and if inquiries suggested by it had been prosecuted." Leffler v. Smith, 388 So.2d 261, 263 (Fla. Dist. Ct. App. 5th Dist. 1980); see also In re CJW Ltd., Inc., 172 B.R. at 682 ("[A]n individual relying on the public record to determine the state of title is charged with notice not only of what is in the record but with that which could be discovered through inquiries suggested by the record."). "Constructive notice is a legal inference, while implied actual notice is an inference of fact, but the same facts may sometimes be such as to prove both constructive and implied actual notice." Sapp, 141 So. at 127.

Under Florida law, a bankruptcy trustee's rights as a hypothetical bona fide purchaser of real property cannot exist when there are matters of record that put a purchaser on

constructive notice that further inquiry is required. In re Raborn, 470 F.3d 1319, 1323-24 (11th Cir. 2006); see also Toranto v. Dzikowski, 380 B.R. 96, 98 (Bankr. S.D. Fla. 2007) (providing that a trustee's avoidance powers under § 544(a) are contingent upon state law); compare with In re Corzo, 406 B.R. 154, 161 (Bankr. S.D. Fla. 2008) (explaining that the absence of any transaction, declaration, or indication on the public record allowed the Trustee to assert his status as a bona fide purchaser in order to defeat an unrecorded interest).

> It is a familiar and thoroughly well-settled principle of realty law that a purchaser has constructive notice of every matter connected with or affecting his estate which appears by recital, reference, or otherwise, upon the face of any deed which forms an essential link in the chain of instruments through which he deraigns his title. The rationale of the rule is that any description, recital of fact, or reference to other documents puts the purchaser upon inquiry, and he is bound to follow up this inquiry, step by step, from one discovery to another and from one instrument to another, until the whole series of title deeds is exhausted and a complete knowledge of all the matters referred to and affecting the estate is obtained. Being thus put upon inquiry, the purchaser is presumed to have prosecuted it until its final result and with ultimate success.

Sapp, 141 So. at 129 (quoting Loomis v. Cobb, 159 S.W. 305 (Tex. Civ. App. 1913). "While a trustee's actual knowledge of an unrecorded interest does not defeat a trustee's ability to set aside such interest under 11 U.S.C. § 544(a), the trustee's constructive notice of such an interest does not insulate the trustee because, in such a case, the interest could not be defeated by a bona fide purchaser." S. Motor Co. v. Carter-Pritchett-Hodges, Inc. (In re MMH Auto. Group, LLC), 385 B.R. 347, 369 (Bankr. S.D. Fla. 2008) (citing Briggs v. Kent (In re Prof'l Inv. Props.), 955 F.2d 623, 627 (9th Cir. Wash. 1992).

After June 8, 2006, the stipulated facts indicate that the public record at all relevant times reflected both the deed to Debtor's father and the Defendants' mortgages that the Trustees seeks to avoid. Therefore, as a matter of law, no purchaser relying on the public record could claim bona fide purchaser status to defeat Defendants' mortgages after that date.

From the date and time this case was filed on May 4, 2006, until June 8, 2006 at 1:06 p.m., per the stipulated facts the public records indicated that Unit 603 was owned by the Debtor and fully encumbered by numerous perfected, unreleased and/or unsatisfied liens. The largest liens of $744,800 and $93,100—although paid on May 5, 2006—were not released until June 12 and June 21, 2006, which was after the deed to Debtor's father and the EMC and SunTrust Mortgages were recorded. Any party wishing to purchase Unit 603 from the Debtor on the date the case was filed and before June 8, 2006, would be placed on notice by the public record that he or she should inquire about the status of the numerous unsatisfied mortgages and the judgment of record. As a matter of law further inquiry is required on these undisputed facts. Any potential purchaser from the Debtor "[b]eing thus put upon inquiry [in this case, of unsatisfied perfected liens] . . . is presumed to have prosecuted it until its final result and with ultimate success." Sapp, 141 So. at 129 (quoting Loomis v. Cobb, 159 S.W. 305 (Tex. Civ. App. 1913).

The Trustee and Defendants called the Court's attention to the Hedrick case (Gordon v. NovaStar Mortg., Inc. (In re Hedrick), 2005 Bankr. LEXIS 1923 (Bankr. N.D. Ga. Aug. 31, 2005)).[5] In that case, to support avoidance of an interest the Plaintiff argued that a hypothetical bona fide purchaser could have investigated the public record and discovered that prior perfected liens of record had been paid in full without discovering the unrecorded interests that the Plaintiff sought to avoid. The Plaintiff argued that in such a case a purchaser could therefore satisfy the duty to inquire and still maintain bona fide purchaser status. Likewise, the Trustee in this case could argue that a hypothetical bona fide purchaser could find the unsatisfied liens of record, investigate and find that they had been paid, and

[5] The Hedrick Court was addressing bona fide purchaser's under § 547(e)(1)(A) to determine when perfection occurred.

still not discover the deed to Debtor's father and the Defendant's mortgages prior to June 8, 2009. The Hedrick court rejected such an argument, noting that "[t]he outcome of any case can be altered by assuming 'facts' that, considered alone, create a claim or undermine a defense." Hedrick, slip op. at 25. The court pointed out that "[t]he only knowledge chargeable or attributable to a hypothetical bona fide purchaser is what the public record shows." Id. at 26. The court therefore pointed out that Plaintiff's approach in altering the facts in such a "what if" manner "would result in endlessly stacking . . . the evidentiary deck as each side assumes a factual circumstance to counter one assumed by the other." Id. The Hedrick case finds that such an approach is not only unnecessary, but it is inappropriate and inefficient.

In this case it is undisputed that at all relevant times the public record indicated that Unit 603 was subject to numerous encumbrances. Therefore, a review of that public record by any party seeking to purchase Unit 603 from the Debtor would put that party on notice that he or she should inquire to the point of finality about the status of the encumbrances of record and any related facts, and that party is placed on constructive notice thereof. Accordingly, judgment in the Trustee's favor as a matter of law is not appropriate.

Defendants' Motion for Summary Judgment

Defendants EMC and SunTrust ask the Court to grant summary judgment in their favor on various defenses raised in their pleadings. As one defense, Defendants argue that the Trustee cannot be a bona fide purchaser on the stipulated facts as a matter of law.[6]

The Court agrees that no issue of genuine fact remains as to the application of § 544(a)(3) to the stipulated facts. The Debtor transferred Unit 603 to Debtor's father

[6] See Defendants' Motion for Summary Judgment and Memorandum in Support of Motion, Part III(D). The Court need not reach the other defenses contained in the Motion for Summary Judgment which include arguments of equitable subrogation, equitable liens and unjust enrichment.

shortly before filing.[7] Debtor's father borrowed funds and granted mortgages on Unit 603 to secure the loans from Defendants EMC and SunTrust of $910,000 and $260,000. The loans were funded and funds received by the closing agent. Before the funds could be fully disbursed the bankruptcy was filed. At least $837,900.00 was paid to the holders of liens and encumbrances attaching to Unit 603 perfected by filings on the public record.[8] Some disbursements occurred pre-petition and some post-petition. At the time of filing, Unit 603 was heavily encumbered by unsatisfied liens and a judgment even after considering loans that may have been paid in full on the same date that the bankruptcy was filed. The funds that satisfied the encumbrances placed on Unit 603 by the Debtor came from Debtor' father's loan from Defendants EMC and SunTrust, who agreed to make the loans in exchange for a security interest in Unit 603 prior to the time the Debtor filed bankruptcy and without any knowledge of the filing. As a result of the funds received by the closing agent from Defendants EMC and SunTrust on behalf of Debtor's father, the encumbrances of record that Debtor placed on Unit 603 were eventually removed. However, at least $837,900.00 of those encumbrances were not removed until after the deed to Debtor's father and the EMC and SunTrust mortgages were recorded on the public record.

Trustee argues that the interests held by Defendants EMC and SunTrust in Unit 603 (and now the proceeds thereof) granted by the Debtor's father, a transferee of the Debtor, are

[7] Trustee's Complaint which combined causes of action against these Defendants under § 544(a)(3) and causes of action against Debtor's father pursuant to § 548 (fraudulent conveyance) alleged that the transfer from Debtor to her father was for less than a reasonably equivalent value, that the consideration was "inadequate" and that Debtor's father paid no money down for the property. However, these allegations were not discussed in the parties' briefs on the § 544(a)(3) cause of action and defenses, no stipulated fact directly addressed these allegations and Trustee has not argued any theories involving a lack of adequate consideration or fraud against the remaining Defendants.

[8] The largest liens of $744,800 and $93,100—although paid on May 5, 2006—were not released until June 12 and June 21, 2006, after the deed to Debtor's father and the EMC and SunTrust Mortgages were recorded. The Trustee has not disputed the validity of these liens. Additional funds were paid from the loan to other parties claiming liens challenged by the Trustee.

avoidable by a bona fide purchaser because at the time of filing the deed to Debtor's father and his mortgages were not yet recorded. As discussed above, that applicable law charges a potential purchaser with notice of any matters that appear of record, in this case unsatisfied liens and judgments and a deed to Unit 603 in the Debtor's name. Any party that considered purchasing the property from the Debtor would be charged with record notice that Unit 603 was subject to significant outstanding obligations and after a review of that record, a potential purchaser would be

> . . . bound to follow up this inquiry, step by step, from one discovery to another and from one instrument to another, until the whole series of title deeds is exhausted and a complete knowledge of all the matters referred to and affecting the estate is obtained. Being thus put upon inquiry, the purchaser is presumed to have prosecuted it until its final result and with ultimate success.

Sapp, 141 So. at 129 (quoting Loomis v. Cobb, 159 S.W. 305 (Tex. Civ. App. 1913). This case involves complicated and unusual facts. Applying the law to those undisputed facts, the numerous unsatisfied liens clearly reflected on the public record and the resulting constructive notice would not allow a party to obtain bona fide purchaser status pursuant to § 544(a)(3) to avoid the pre-petition mortgage interests of Defendants EMC and SunTrust granted by Debtor's father shortly before filing for the purpose of satisfying Debtor's encumbrances on that record, some paid before filing and some paid post-petition, when the challenged mortgages were recorded after the filing of the bankruptcy petition but before Debtor's encumbrances were marked satisfied or released on the public record.

IT IS THEREFORE, ORDERED, that the Trustee/Plaintiff's Motion for Summary Judgment in his favor on the causes of action set forth in the Complaint is **DENIED;** the Motion of Defendants EMC and SunTrust for Summary Judgment in their favor are hereby **GRANTED**. Judgment will be entered accordingly in favor of Defendants.