

**IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF ARKANSAS  
BATESVILLE DIVISION**

**IN RE: ANTHONY LYNN ALLEN and  
HEATHER MICHELLE ALLEN, Debtors**

**1:03-bk-22525E  
Chapter 7**

**ANTHONY LYNN ALLEN and  
HEATHER MICHELLE ALLEN**

**PLAINTIFFS**

**v.**

**AP NO 1:04-ap-01021**

**U.S. BANK, N.A., as Successor by Merger to  
THE LEADER MORTGAGE COMPANY, LLC;  
ARKANSAS DEVELOPMENT FINANCE AUTHORITY; and  
UNITED STATES OF AMERICA, DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT**

**DEFENDANTS**

**MEMORANDUM OPINION**

Now before the Court are the Complaint and Amended Complaint to Determine Validity of Alleged Mortgage Liens, filed by Anthony Lynn Allen and Heather Michelle Allen (“**Debtors**”) and the Answer to Complaint and the Answer to the Amended Complaint, filed by the Leader Mortgage Company, LLC (“**Creditor**”) <sup>1</sup> and the Arkansas Development Finance Authority (“**ADFA**”). The Court heard these matters on February 9, 2005. The Court also received evidence on the Motion for Relief from Stay and for Abandonment, filed by Creditor.<sup>2</sup> Michael Ptak appeared on behalf of the Creditor, and Joseph Philip James

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<sup>1</sup> U.S. Bank is successor by merger to the Leader Mortgage Company, LLC. The Court will refer to this entity throughout this Opinion as “Creditor.”

<sup>2</sup> Additionally, Debtors’ Counsel stated that if the Court found Creditor’s lien to be valid, Debtors would have no objection to the granting of the Motion for Relief from Stay and for Abandonment.

appeared on behalf of Debtors. Since the ADFA did not appear,<sup>3</sup> the Court granted Debtors' request to void ADFA's lien on the property at issue in this matter.

At the February 9, 2005 hearing, the parties requested the opportunity to file post-trial briefs, and the Court granted that request. These briefs have now been filed, and the Court has had an opportunity to review them. This is a core proceeding under 28 U.S.C. § 157(b) and the Court has jurisdiction to enter a final judgment in this case. The following constitutes the Court's findings of fact and conclusions of law.

### **FACTS**

The facts are, for the most part, uncontested. On November 20, 2001, Debtors executed and initialed a Note in the original principal amount of \$40,092. Concurrently with the execution of the Note and in order to secure payment of the indebtedness as evidenced by the Note, Debtors executed a Deed of Trust ("**Deed**"). The Note and Deed are currently held by Creditor. The Deed conveyed certain real property located in Jackson County, Arkansas, with a street address of 6922 Gamble Street, Tuckerman, Arkansas 72473 ("**Gamble Street Property**" or "**the Property**") to Creditor's predecessor in interest. In consideration for that transfer, Debtors received \$40,092 as a loan for the purchase of the Gamble Street Property.

The body of the Deed of Trust does not contain a legal description of the Gamble Street Property. One or both of Debtors initialed or signed each page of the Deed of Trust,

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<sup>3</sup> Although the U.S. Department of Housing and Urban Development ("**HUD**") did not appear, HUD filed an Answer requesting that it be dismissed as a defendant, since it is not a necessary party. This request will be granted by separate order.

except an unnumbered page, titled "Schedule C." This page contains a legal description of the Gamble Street Property, as follows:

Lot Six of Harry Gamble Addition to the City of Gamble Station, described as: Beginning 497 feet South of the Northeast Corner of the Southeast Quarter of the Southeast Quarter of Section Thirteen, Township 12 North, Range 3 West, and run thence South 21 degrees East along Gamble Road 100 feet, thence North 72½ degrees East 200 feet, thence North 21 degrees West 100 feet, thence South 72½ degrees West 200 feet to the point of beginning.

This legal description states that the Gamble Street Property is located in the city of "Gamble Station," not Tuckerman. The Deed was filed of record in the Office of the Circuit Clerk and Ex-Officio Recorder of Jackson County on November 26, 2001, and appears of record there as Instrument Number 2001-1213. It is unclear whether Schedule C was recorded simultaneously with the Deed of Trust or whether it was filed at some later date.

Contemporaneously with the Note and Deed of Trust referenced above, on November 20, 2001, the previous owners of the Gamble Street Property executed a Warranty Deed transferring that property to Debtors. In the Warranty Deed, the address of Gamble Street Property is listed differently in two places. The block designated "Grantee's address" contains a handwritten entry listing the Property as being located in Tuckerman, Arkansas, while the legal description states that the Property is located in the City of Campbell Station.

Debtors made payments on the Note from January 2002 until October of 2003. In October of 2003, Debtors filed a petition under Chapter 7 of the Bankruptcy Code. In that petition, Debtors list the address of their residence as "6922 Gamble Road, Tuckerman, AR 72473." Debtors filed amended schedules which listed the Gamble Street Property as being

located in Newport, Arkansas, as opposed to Campbell Station or Tuckerman.

Separate Debtor Anthony Lynn Allen testified at this trial. He stated that the Gamble Street Property is physically located in Campbell Station, Arkansas. Mr. Allen explained that the reason the Gamble Street Property was listed on his petition as being located in Tuckerman was because, even though that property is physically located in Campbell Station, the Tuckerman address is the Gamble Street Property's mailing address. Mr. Allen testified that he initialed all pages of the documents that were presented to him at closing, but that he did not initial Schedule C.<sup>4</sup> Mr. Allen admits that he received the benefits of the Note and Deed of Trust and that he understood, at the time he executed those documents, that he was placing a lien on his residence to secure payment of the Note.

J. Mark Spradley also testified at this trial, as Creditor's expert in Arkansas real estate law and practice in Arkansas.<sup>5</sup> Mr. Spradley testified that he investigated the facts surrounding the situs of the Gamble Street Property. During the course of his investigation, Mr. Spradley reviewed the Jackson County Urban Property Record Card and a land survey including the Gamble Street Property, physically visited that Property, and contacted various government agencies providing services to the area covering the Gamble Street Property, including the 911 emergency system, the water department and the post office. Mr.

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<sup>4</sup> The inference that Debtors' Counsel wishes the Court to draw from the lack of Mr. Allens' initials on Schedule C is that Mr. Allen did not see this document at the time of closing. However, as explained below, the Court finds Creditor's lien on the Gamble Street Property to be valid, without considering Schedule C.

<sup>5</sup> Debtors' Counsel stipulated to Mr. Spradley's qualifications as an expert in this field.

Spradley's investigation lead him to conclude that there is only one Gamble Street in Jackson County, Arkansas, that the Debtors live in the Gamble Street Property, and that the property description in the Deed of Trust is sufficient to create a valid lien, under the Arkansas law, on that Property in favor of Creditor.<sup>6</sup>

### **LAW AND DISCUSSION**

Before analyzing Arkansas law on liens and the arguments of the parties, it is important to note that Creditor's expert testified, without objection, that in his opinion, Creditor had a valid lien on the Gamble Street Property. However, a determination of the validity of a lien, if any, on the Gamble Street Property is solely within the province of the Court. Federal Rule of Evidence 702 provides that the court may admit expert testimony if it will "assist the trier of fact to understand the evidence or to determine a fact in issue." As one court explained in applying this evidentiary rule "[w]hen expert testimony embodies legal conclusions . . . it exceeds the permissible scope of opinion testimony." *United Phosphorus, Ltd. v. Midland Fumigant, Inc.*, 173 F.R.D. 675, 688 (D.Kan. 1997) (citation omitted); *see also In re Husting Land & Development, Inc.*, 274 B.R. 906, 908 (D.Utah 2002) ("Furthermore, even if the court did consider [appellant's expert as] a legal expert, it is neither common, nor proper, for the court to accept expert legal testimony in its proceedings . . ."). Thus, the Court will disregard the testimony of Creditor's expert solely to the extent of his legal conclusion that Creditor's lien on the Gamble Street Property was

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<sup>6</sup> Ms. Margaret Susan Beets, an employee of Creditor, also testified as to facts related to the Motion for Relief from Stay.

valid. *See Husting Land & Development*, 274 B.R. at 908 (“The legal conclusions of a proffered expert are neither useful or appropriate for a trier of fact . . . and it is within the bankruptcy court’s discretion to not admit the proffered expert testimony . . .”).

### **Validity of the Deed**

Turning to the arguments of the parties in this case, it is clear that they vigorously contest the validity of Creditor’s lien on the Gamble Street Property. Debtors argue that the mortgage on the Gamble Street Property is invalid because it lacked a legal description of that property at the time Debtors executed the Note and Deed of Trust. Creditor denies this assertion, arguing that the Note and Deed of Trust constitute a first, prior, and perfected lien against the Gamble Street Property. Creditor contends that the Note and Deed of Trust are valid under Arkansas law because they contain a sufficient description of the Gamble Street Property. Creditor also argues that, if the Deed of Trust were to be held invalid, Debtors would be unjustly enriched, since they received a loan in consideration for providing a lien on that Property. Additionally, Creditor asserts the affirmative defenses of estoppel, laches, and waiver, and requests that the Court find Creditor has an equitable lien on the Property.

In determining the validity of this Deed, the Court applies Arkansas law. *See In re Bridge Information Systems, Inc.*, 288 B.R. 556, 560 (Bankr. E.D. Mo. 2002) (citing *Johnson v. First Nat. Bank of Montevideo*, 719 F.2d 270, 274 (8th Cir.1983)) (reasoning that absent an overriding federal interest, “a bankruptcy court should apply state law when adjudicating property rights.”). Under Arkansas law, a deed which contains “an indefinite property description is void and does not constitute color of title.” *Belcher v. Stone*, 67 Ark.App. 256,

259-60, 998 S.W.2d 759, 761 (1999) (citing *Darr v. Lambert*, 228 Ark. 16, 305 S.W.2d 333 (1957)). However, “[a] deed will not be held void for uncertainty of description if by any reasonable construction it can be made available.” *Belcher*, 67 Ark.App. at 260, 998 S.W.2d 759 at 761 (citing *Gibson v. Pickett*, 256 Ark. 1035, 512 S.W.2d 532 (1974); *Rye v. Baumann*, 231 Ark. 278, 329 S.W.2d 161 (1959)). “A description of land [in a deed] is sufficient if the descriptive words in [that] deed furnish a key for identifying the land conveyed.” *Id.* (citing *Davis v. Burford*, 197 Ark. 965, 125 S.W.2d 789 (1939)). Thus, if the land can be located through the description contained in the deed, that deed is not void for uncertainty. *Id.* (citing *Tolle v. Curley*, 159 Ark. 175, 251 S.W. 377 (1923)). Extrinsic evidence may be used to assist in the determination of what property was actually intended to be conveyed. *McCrary School Dist. of Woodruff County v. Brogden*, 231 Ark. 664, 668, 333 S.W.2d 246, 249 (1960) (citation and quotes omitted) (“[i]t may be laid down as a broad general principle that a deed will not be declared void for uncertainty in description if it is possible by any reasonable rules of construction to ascertain from the description, aided by extrinsic evidence, what property is intended to be conveyed.”).

Debtors’ arguments for the Court to hold the Deed invalid rest essentially on the ambiguity and confusion allegedly caused by the omission of the legal description of the Gamble Street Property from the body of the Deed, and the fact that the Gamble Street Property has been described in various places as being either in Tuckerman, AR, Gamble Station, AR or Campbell Station, AR. Leaving aside the legal description contained in Schedule C, the Deed lists the address of the Gamble Street Property as “6922 Gamble Street,

Tuckerman, Arkansas 72473” and states that this property is located in Jackson County, Arkansas.

Mr. Spradley explained in detail the steps he took, based on the information contained in the body of the Deed, to determine the location of this property. Solely using the address and county information in the Deed, he was able to ascertain the location of the Gamble Street Property without requiring the use of a legal description. Of particular importance in resolving any potential confusion about the situs of the Gamble Street Property is the clear evidence presented at this hearing by Mr. Spradley that there is only one Gamble Street in all of Jackson County, Arkansas. Thus, notwithstanding the various designations of the town in which the Gamble Street Property is located, it is clear that the parties intended this Deed to apply to the particular property at issue in this case, i.e. Debtors’ Gamble Street Property in Jackson County, Arkansas. The Court therefore finds that, under these facts, the description of the Debtors’ property as “6922 Gamble Street, Tuckerman, Arkansas 72473,” as stated in the Deed, coupled with the statement in the Deed that the property is located in Jackson County, Arkansas furnishes a key sufficient to identify the Gamble Street Property, in spite of the omission of this Property’s legal description from the body of the Deed.

Other Arkansas cases which have addressed the legal sufficiency of documents related to property conveyance have reasoned that descriptions similar to that contained in the Deed at issue here can be valid. *See Ray v. Robben*, 225 Ark. 824, 826, 285 S.W.2d 907, 908 (1956) (holding that description in contract for land sale which stated “A tourist court consisting of ten cabins, furnished, including all extra bedding, located on one full lot and




a fractional part of adjoining lot. Said location being 3408 Midland Blvd., Fort Smith, Ark.” was legally sufficient and noting that, with one exception, “the American courts uniformly uphold a description by street number.”); *Creighton v. Huggins*, 227 Ark. 1096, 1101, 303 S.W.2d 893, 897 (1957) (reasoning that “[a] designation of the premises in a contract or memorandum by street number ordinarily proves sufficient to satisfy the statute even though parol evidence must be resorted to in following the key furnished. This is particularly true where the vendor owns only one lot or parcel which may be readily located and identified from the address furnished.”); *Rooker v. Miller*, No. CA 85-409, 1986 WL 11863, at \*2 (Ark. App. Oct. 22, 1986) (citation omitted) (upholding validity of contract to purchase home where the description of property contained only a street address and did not specify the city or state, when that contract was read “in light of the circumstances of possession or ownership and the situation of the parties when the negotiations took place and the writing executed.”).

### CONCLUSION

Based on the foregoing facts and law, the Court finds the description of the Debtors’ property as “6922 Gamble Street, Tuckerman, Arkansas 72473,” as stated in the Deed, coupled with the statement in the Deed that the property is located in Jackson County, Arkansas furnishes a key sufficient to identify the Gamble Street Property, in spite of the omission of this Property’s legal description from the body of the Deed. In light of this finding, there is no need to address the remainder of Creditor’s arguments, and Creditor’s Motion for Relief from Stay and for Abandonment will be granted. A Judgment and an

Order in accordance with this Opinion will be entered by the Court.

**IT IS SO ORDERED.**



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HONORABLE AUDREY R. EVANS  
UNITED STATES BANKRUPTCY JUDGE

DATE: May 11, 2005

cc: Joseph Philip James, attorney for Debtors  
Michael J. Ptak, attorney for Creditor  
Chapter 7 Trustee  
U.S. Trustee