

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

RICHARD LOUIS LACHNER
KIMBERLY RAE LACHNER

Debtor(s).

In Proceedings
Under Chapter 13

Case No. 04-31928

OPINION

THIS MATTER is before the Court on the debtors' Objection to Claim of creditor Glenn Strohbeck (Creditor). The facts of this case are not in dispute. On July 28, 1998, the debtors and the creditor executed a document which was intended to "serve as a second lien" on real property located at 109 East Center Street, Brighton, Illinois. The instrument stated the property address, as well as the amount of the loan, the duration of the loan and the monthly payment terms. The document was signed by a notary public and was filed with the Madison County, Illinois Recorder on September 18, 1998.

On May 7, 2004, the debtors filed their Chapter 13 bankruptcy petition. Creditor filed a secured claim in the amount of \$2,217.00. Debtors subsequently objected to the claim on the grounds that it was excessive and, further, that the claim should be paid as a general unsecured claim rather than as a secured claim. At hearing, the parties agreed that the claim should be allowed in the amount of \$1,464.89. However, the dispute involves whether the claim should be paid as a secured claim. The debtors argue that the mortgage document fails to adequately describe the subject property and, therefore, does not create a valid mortgage. In addition, the debtors maintain that the instrument does not contain an acknowledgment and, is, therefore, invalid under Illinois law.

In order to create a mortgage of real estate under Illinois Conveyances Act, the instrument in question must state the names of the mortgagor and the mortgagee, provide a statement of the debt

that is to be secured, and sufficiently describe the mortgaged property. 765 ILCS 5/11. In addition, the document must be signed by the mortgagor. Id. It is well established that an actual legal description of the mortgaged property is not necessary, so long as the instrument contains a “reasonably certain description of the premises covered [by the mortgage].” Illinois Law and Practice, Mortgages § 24. In the instant case, the mortgagor described the property by providing the street address, city, state and zip code. The Court finds that this description is sufficient for purposes of 765 ILCS 5/11 and that a valid mortgage was created under the statute.

The debtors also argue that the creditor’s lien is invalid because the mortgage does not contain an acknowledgment by the witnessing official.¹ A statement of acknowledgment is not necessary to the validity of an ordinary deed or mortgage of real estate, and an unacknowledged document is binding as between the parties that executed it. Shadden v. Zimmerlee, 401 Ill. 118, 81 N.E.2d 477 (Ill. 1948); Robinson v. Robinson, 116 Ill. 250, 5 N.E. 118 (Ill. 1886). See also Illinois Law & Practice, Acknowledgments, § 3. It is undisputed that the mortgage instrument in this case was signed by both the debtors and the creditor. In addition, the mortgage has been recorded with the county recorder’s office. Therefore, the court rejects the debtors’ argument and finds that as between the parties, a valid mortgage was created, despite the lack of an acknowledgment clause.

As a valid mortgage was created pursuant to 765 ILCS 5/11, the debtors’ Objection to Claim is overruled and the claim of creditor Glenn Strohbeck is allowed as a secured claim in the amount of \$1,464.89.

ENTERED: February 18, 2005

/s/ James K. Coachys
UNITED STATES BANKRUPTCY JUDGE

¹While the mortgage in this case was signed by a notary, the document does not include a sworn statement by that individual that she witnessed the parties’ signatures

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ORDER

For the reasons set forth in the Opinion entered this date, IT IS ORDERED that the debtors' Objection to Claim of creditor Glenn Strohbeck is OVERRULED.

ENTERED: February 18, 2005

/s/ James K. Coachys
UNITED STATES BANKRUPTCY JUDGE