

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PEOPLES STATE BANK OF,	:	CV- 11-02,329
WYALUSING,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	CIVIL ACTION
	:	
	:	
TIMOTHY M. SCHWEITZER, and	:	
TINA R. SCHWEITZER, his wife	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 4th day of February, 2014, following argument held on December 18, 2013 on the defendants’ motion pursuant to Pa. R.C.P. 3132 to set aside the sheriff sale, the defendants’ motion is GRANTED in part and DENIED in part. It is ORDERED and DIRECTED that the sheriff sale is set aside as to property located in Penn Township but not the property located in Picture Rocks Borough.¹

At issue in this case is whether mortgages held by plaintiff secured defendants’ property located in Penn Township. This question turns on whether the Penn Township property was adequately described in the mortgages and upon construction of the mortgage documents. A description of property is sufficient as long as it clearly identifies the property. *See, e.g., Pierro v. Pierro*, 438 Pa. 119, 123 (Pa. 1970). “Real estate may be described by reference to a plan, a plot, a lot number, or a prior conveyance or by name [.]” *O’Connell v. Cease*, 110 A. 266, 267 (Pa. 1920). “A mortgage is a formal document of a specific character, and should be strictly construed.” *Western Pennsylvania National Bank v. Peoples Union Bank & Trust Co.*, 266 A.2d 773, 775 (Pa. 1970)(“If a mortgage indicates on its face . . . that it covers only a specific advance of funds, then it can secure only the unpaid portions of the original loan, no more.”) “It is well-settled that a contract must be interpreted as a whole and effect must be given to all of its

¹ Plaintiff purchased both properties at the sheriff sale which minimizes complications that would exist if the matter included a good faith purchaser.

provisions.” *First Philadelphia Realty Corp. v. Albany Sav. Bank*, 609 F. Supp. 207, 210 (E.D. Pa. 1985) referencing, *Woytek v. Benjamin Coal Co.*, 446 A.2d 914 (1982). “In other words, a contract must not be construed so as to render any of its terms meaningless.” *First Philadelphia Realty Corp. v. Albany Sav. Bank*, 609 F. Supp. 207, 210 (E.D. Pa. 1985), referencing, *Girard Trust Bank v. Life Ins. Co. of North America*, 364 A.2d 495 (1976). Lastly, Pennsylvania courts have noted that: “[i]t is a familiar rule of construction that ‘the express mention of one thing in a grant implies the exclusion of another.’” *Fidelity Mortgage Guarantee Co. v. Bobb*, 160 A.120 (Pa. 1932); see also, *Brady v. Yodanza*, 493 Pa. 186, 193 (Pa. 1981)

Applying these principles of law to the facts of this case, this Court construes the 2005 and 2007 mortgage documents to encumber only the property located in Picture Rocks Borough and not the Penn Township lot/parcel. The mortgage documents expressly described the property as being located in Picture Rocks Borough.² The deed described parcels labeled parcel 1 and parcel 2, which had previously been separated. One of the parcels is in Picture Rocks Borough and the other is in Penn Township. This Court believes that the express mention of the property located in Picture Rocks coupled with the absence of any mention of the property located in Penn Township implies the exclusion of the latter property from the mortgage lien at issue. See, e.g., *Fidelity Mortgage Guarantee Co. v. Bobb*, 160 A.120 (Pa. 1932). This construction gives meaning to all of the terms in the property description. See., e.g. *Girard Trust Bank v. Life Ins. Co. of North America*, 364 A.2d 495, 498 (1976) This Court does not believe

² The 2005 mortgage provides in relevant part that “...Borrower does hereby mortgage, grant and convey to Lender the following described property located in the BOROUGH of PICTURE ROCKS, LYCOMING COUNTY *** REAL PROPERTY AND IMPROVEMENTS LOCATED IN PICTURE ROCKS BOROUGH, LYCOMING COUNTING DESCRIBED IN EXHIBIT “A”, ATTACHED.” Exhibit “A” is a copy of a deed description of two parcels, one in the Borough of Picture Rocks and the other in the Township of Penn. The 2007 mortgage provides in relevant part that “... Mortgager grants ... and mortgages to Lender the following described property: REAL PROPERTY AND IMPROVEMENTS LOCATED IN THE BOROUGH OF PICTURE ROCKS, DESCRIBED IN LYCOMING COUNTY RECORD BOOK 4269 AT PAGE 64, CONTAINING 43 ACRES OF LAND, MORE OR LESS.” The record book 4260PG064 records a deed with two parcels, one in the Borough of Picture Rocks and the other in the Township of Penn.

the description of the property as being located in Picture Rocks Borough can be disregarded as a mere technical error because that description specified which of two parcels was being identified. *C.f., Hunter v. Hunter*, 20 Pa. D. & C. 3d 96 (1981)(erroneous street address did not render description insufficient where description in the mortgage document was clearly the same property described in the deed.)

Accordingly, the Court enters the following Order.

ORDER

AND NOW, this 4th day of February, 2014, it is ORDERED and DIRECTED that defendant's motion to set aside the sale as to the Penn Township property is **GRANTED**; the sale as to the Penn Township property is set aside. However, the motion to set aside the sale as to the property located in Picture Rocks Borough is **DENIED**; the sale as to the property located in Picture Rocks Borough is not set aside.

BY THE COURT,

Date

Richard A. Gray, J.

cc: Christian Frey, Esq. for Defendants
Christopher D. Jones, Esq. for Plaintiff
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Sheriff