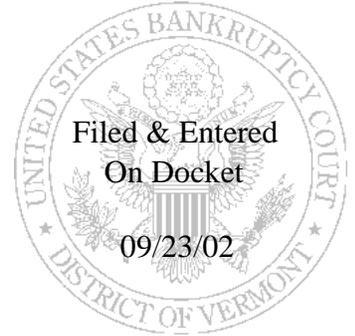


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**Michael J. Rebello and
Rose M. Rebello,
Debtors.**

**Case # 02-10288
Chapter 13**

**Jan M. Sensenich, as Chapter 13 Trustee
of the Estate of Michael J. Rebello and
Rose M. Rebello; Michael J. Rebello and
Rose M. Rebello,**

Plaintiffs,

v.

**Adversary Proceeding
02-1015**

**Peoples Trust Company of St. Albans,
Defendant.**

Appearances:

Todd Taylor

Gregory A. Weimer

Law Offices of Todd Taylor

Little, Cicchetti & Conard, PC

Burlington, Vermont

Burlington, Vermont

Attorney for the Debtor / Plaintiff

Attorney for the Defendant

ORDER GRANTING MOTION FOR RECONSIDERATION
and
REAFFIRMING ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT

Peoples Trust Company of St. Albans (“Peoples Trust”) has filed a Motion for Reconsideration (doc. #18) of the Court’s Order Granting Cross-Motion for Summary Judgment (doc. #16) in favor of the Chapter 13 Trustee and the Debtors. For the limited purpose of clarifying its Order, the Court grants Peoples Trust’s Motion for Reconsideration.

In its Order, the Court stated: “Hence, the fact that the uniform mortgage rider was properly executed, *contained curative language*, and was recorded five minutes after the mortgage was recorded does not succeed in curing the mortgage’s fatal defect.” Order at p.2 (emphasis added). However, it is clear from Peoples Trust’s arguments in its Motion for Reconsideration that the Court should have placed quotation marks around

the word ‘curative,’ since its use was merely a recitation of Peoples Trust’s characterization of the language. The Court does not find the language in the Uniform Mortgage Rider to be curative.

In its Motion for Reconsideration, Peoples Trust contends that the Uniform Mortgage Rider that was properly executed and recorded five minutes after the mortgage contained curative language that corrected and remedied the improper execution of the mortgage. Moreover, in its underlying Motion for Summary Judgment (doc. #12), Peoples Trust points to the language of the preamble and sixth paragraph of the Uniform Mortgage Rider. It relies upon In re SSL Corporation, 26 F.3d 302 (2d Cir. 1994), for support of its argument that the language in the Rider is curative. In SSL, the Second Circuit affirmed the district court’s order holding that the subject mortgage had been cured by a corrective affidavit, filed within the mortgagor’s chain of title, before the debtors filed for bankruptcy protection. SSL, 26 F.3d at 303. In this instance, Peoples Trust essentially argues that the Uniform Mortgage Rider’s boilerplate language is analogous to the corrective affidavit in SSL and therefore remedies the defects in the mortgage.

The Court is not persuaded by Peoples Trust’s argument. The language Peoples Trust mischaracterizes as ‘curative’ is no more than standard language found in similar documents. It fits squarely within the definition of ‘boilerplate’ language, which is defined as, “standard language in a legal document that is identical in instruments of a like nature.” BLACK’S LAW DICTIONARY 175 (6th ed. 1990). It is not language that is specifically drafted to address correcting an error in the execution of a document, as would be a corrective affidavit. Thus, the Court finds this case is more analogous to In re Potter, A.P. #01-1031, slip op. (Bankr. D. Vt. Sept. 21, 2001) than SSL. Like Potter, here, there is a subsequently filed document that does not specifically address or cure the deficient execution of the invalid mortgage. Therefore, the recording of the instant Uniform Mortgage Rider did not cure the subject mortgage’s fatal defect and did not create a valid instrument for purposes of constructive notice. See Potter, slip op. at p.5.

In conclusion, this Court finds the Uniform Mortgage Rider is not analogous to a corrective affidavit and its language does not cure the defective execution of the mortgage. To find otherwise would be to render

the requirements of 27 V.S.A. § 341 superfluous. Thus, the Court restates that the mortgage in question is void *ab initio*. See, e.g., Mortgage Lenders Network, USA v. Sensenich, No. 1:01CV335 (D. Vt. Jan. 22, 2002), *affirming In re Potter*, A.P. #01-1031, slip op. (Bankr. D. Vt. Sept. 21, 2001), (defectively executed mortgage could not serve as constructive notice; thus, mortgage itself was insufficient to constitute notice to subsequent bona fide purchaser).

Accordingly, **IT IS ORDERED** that the Court's Order Granting Cross-Motion for Summary Judgment (doc. #16) is reinstated with the clarification that the Court does not find the language of the Uniform Mortgage Rider to be curative.

Therefore, the Order entered on August 9, 2002 is hereby reaffirmed such that any lien on the subject premises arising from Peoples Trust's invalid mortgage is avoided, subject to the caveat that if this bankruptcy case is dismissed prior to the completion of all payments under the debtors' plan the avoided lien is reinstated under 11 U.S.C. § 349(b)(3); and subject to the other provisions regarding the lien avoidance set forth in that Order.

SO ORDERED.

September 20, 2002



Colleen A. Brown
United States Bankruptcy Judge