

**Mortgage foreclosure -- Mortgage recorded by bank clearly and unambiguously described encumbered property by referring to its unique parcel number and its address instead of referring to it as "Lot 1" as the original source deed had -- Further, body of mortgage stated that legal description of property encumbered by mortgage could be found on attached addendum, which addendum described three parcels of land, the first two identified as Lots 22 and 23, and the third identified with the same address and parcel ID number that appeared in body of mortgage -- Trial court erred in granting summary judgment in favor of defendants who contended they had purchased Lot 1 without notice of mortgage because description of property in mortgage was patently ambiguous**

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR THE HOLDERS OF GSAMP TRUST 2005-AHL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AHL, Appellant, v. TREY G. COPE; AMANDA M. COPE; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR ARK-LA-TEX FINANCIAL SERVICES LLC d/b/a BENCHMARK MORTGAGE; SONIA TORIBIO a/k/a SONIA MIGUILINA MERCEDES a/k/a SONIA MERCEDES TORIBIO a/k/a SONIA MERCEDES; ATHIS R. TORIBIO; ANY AND ALL UNKNOWN PARTIES CLAIMING BY, THROUGH, UNDER, AND AGAINST THE HEREIN NAMED INDIVIDUAL DEFENDANTS WHO ARE NOT KNOWN TO BE DEAD OR ALIVE WHETHER SAID UNKNOWN PARTIES MAY CLAIM AN INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEES, OR OTHER CLAIMANTS; UNKNOWN TENANT #1; AND UNKNOWN TENANT #2, Appellees. 2nd District. Case No. 2D18-3696. Opinion filed May 29, 2020. Appeal from the Circuit Court for Charlotte County; Lisa S. Porter, Judge. Counsel: Benjamin B. Brown and Joseph T. Kohn of Quarles & Brady LLP, Naples, for Appellant. Michael E. Schuchat of Berlin Patten Ebling, PLLC, Sarasota, for Appellees Trey G. Cope, Amanda M. Cope, and Mortgage Electronic Registration Systems, Inc., as Nominee for ARK-LA-TEX Financial Services, LLC. No appearance for remaining Appellees.

(SALARIO, Judge.) This case concerns whether a mortgage held by Deutsche Bank (the Bank) adequately describes a specific parcel of residential real property referred to as Lot 1. Trey Cope, Amanda Cope, and Mortgage Electronic Registration Systems (MERS) defended the Bank's action to foreclose the mortgage on Lot 1 by arguing that they had purchased Lot 1 without notice of the mortgage because the description of the property in the mortgage was patently ambiguous. The trial court granted summary judgment in favor of the Copes and MERS and denied a motion for partial summary judgment by the Bank on the somewhat different basis that the mortgage did not describe Lot 1 by lot number. Because the language of the mortgage sufficiently and unambiguously describes the encumbered property, we reverse.

The property at issue was originally identified as Lot 1 in a deed conveying the parcel to Sonia Mercedes in 2002. That same deed also conveyed two nonresidential parcels, which were identified as Lots 22 and 23. Ms. Mercedes conveyed all three parcels to Athis and Sonia Toribio in 2005. However, the Mercedes-to-Toribio deed referred to Lot 1 by its unique parcel ID number and its address instead of by its lot number as the source deed had.

The same day that the Toribios received title to the three parcels, they also executed the mortgage at issue in this appeal. Like the legal description in the Mercedes-to-Toribio deed, the body of the mortgage describes the property it encumbers by referring to Lot 1's street address and parcel ID number, but not its lot number (i.e., it does not say "Lot 1"). The body of the mortgage also states that a legal description of the property the mortgage encumbers can be found on an attached addendum. The addendum, labeled as Exhibit A, declares "ALL THAT CERTAIN LAND SITUATED IN CHARLOTTE COUNTY, FLORIDA:" and then describes three parcels of land. The first two are identified as Lots 22 and 23, and the third is again identified with the same address and parcel ID number that appear in the deed and in the body of the mortgage. The promissory note secured by the mortgage also refers to the same property address that appears in the body of and on Exhibit A to the mortgage.

The mortgage was assigned to the Bank in 2011, and in 2012, the Bank successfully foreclosed on Lots 22 and 23. For reasons that are not clear from our record, the Bank did not also seek to foreclose on Lot 1 at that time. The Toribios subsequently conveyed Lot 1 to the Copes in 2015. Also in 2015, MERS recorded a junior mortgage on the same property.

In 2017, the Bank initiated the current action against the Toribios, the Copes, and MERS to foreclose on Lot 1. The Toribios were defaulted after they failed to file any response to the Bank's complaint. The Bank moved for partial summary judgment on the question of whether the mortgage encumbered Lot 1, arguing that the mortgage clearly identified Lot 1 by its address and parcel ID number, and it attached to its motion the affidavit of a surveyor attesting that in the mortgage, Lot 1 was "sufficiently and unambiguously described such that it can be located to the exclusion of all other real property." The Copes and MERS filed a joint motion for summary judgment arguing that they were both bona fide purchasers of Lot 1, having purchased it for value and without any notice of the Bank's mortgage. The lack of notice, they claimed, was due to the fact that the mortgage is patently ambiguous as to which of the three described parcels it encumbers.

After a hearing on both motions, the trial court agreed with the Copes and MERS that the mortgage did not give them notice that it encumbered Lot 1, but not on the basis that the mortgage is patently ambiguous. Rather, it found that the omission of the term "Lot 1" from the mortgage meant that the mortgage did not sufficiently describe that parcel -- an argument that neither party had made in their motion or at the hearing. According to the trial court, the property address and parcel ID number were insufficient to give notice that the property was encumbered by the mortgage. On that basis, the trial court granted summary judgment in favor of the Copes and MERS and denied partial summary judgment to the Bank.

In this timely appeal, the Bank challenges the trial court's determination that the property address and parcel ID number were insufficient to give notice that Lot 1 was encumbered.<sup>1</sup> The Copes and MERS correctly concede that the trial court's reasoning was incorrect, but they argue that the trial court nevertheless reached the correct conclusion because the mortgage is patently ambiguous. "We review a summary judgment under a de novo standard of review." *Johnson v. Deutsche Bank Nat'l Tr. Co. Ams.*, 248 So. 3d 1205, 1207 (Fla. 2d DCA 2018) (citing *Herendeen v. Mandelbaum*, 232 So. 3d 487, 489 (Fla. 2d DCA 2017)). A party moving for summary judgment must show that "there are no genuine issues of material fact and that it is entitled to judgment as a matter of law." *Id.* at 1208 (quoting *Coral Wood Page, Inc. v. GRE Coral Wood, LP*, 71 So. 3d 251, 253 (Fla. 2d DCA 2011)); *see also Cerron v. GMAC Mortg., LLC*, 93 So. 3d 456, 457 (Fla. 2d DCA 2012).

In this case, the only basis upon which the Copes and MERS claimed entitlement to summary judgment was that they were bona fide purchasers of Lot 1 without notice of the mortgage. A bona fide purchaser takes title to property free of another party's interest in the property so long as the property is purchased for value and without any notice of the other party's interest. *See* § 695.01(1), Fla. Stat. (2015); *Harkless v. Laubhan*, 278 So. 3d 728, 733 (Fla. 2d DCA 2019) (describing the criteria of a bona fide purchaser). But the bona fide purchaser defense fails when the purchaser had actual, implied, or constructive notice of the outstanding interest. *Harkless*, 278 So. 3d at 733 (explaining that "three types of notice must be considered": actual, implied, and constructive notice). The act of recording a mortgage is generally sufficient to give subsequent purchasers constructive notice of the mortgage. *See Whitburn, LLC v. Wells Fargo Bank, N.A.*, 190 So. 3d 1087, 1091 (Fla. 2d DCA 2015) (explaining that a party did have constructive notice of the other party's superior interest in a property because the mortgage was recorded); *cf. Harkless*, 278 So. 3d at 734 (concluding that a purchaser did not have constructive notice of a property interest because it was not recorded). There is no dispute here that the Bank properly recorded the mortgage. The issue is whether the mortgage itself sufficiently and unambiguously describes Lot 1.

Logically, a recorded mortgage can only give constructive notice of an encumbered property that is sufficiently described by the mortgage. *See Fla. Bank & Tr. Co. of W. Palm Beach v. Ocean & Lake Realty Co.*, 160 So. 1, 2 (Fla. 1935) ("To convey or mortgage real estate there must be such a description as will identify the land which is the subject of the deed or mortgage." (citing *Boley v. McMillan*, 63 So. 703, 706 (Fla. 1913))); *Lafitte v. Gigliotti Pipeline, Inc.*, 624 So. 2d 844, 845 (Fla. 2d DCA 1993) (explaining that a mortgage is not effective if a title search of the encumbered property would not reveal the mortgage); *Air Flow Heating & Air Conditioning, Inc. v. Baker*, 326 So. 2d 449, 451 (Fla. 4th DCA 1976) ("[R]ecording a mortgage with [n]o description imparts notice of nothing and defeats the very effect and purpose of recordation."). "The rule is that a description is sufficient if, by relying on the description read in light of all facts and circumstances referred to in the instrument, a surveyor could locate the land." *U.S. Bank N.A. v. Holbrook*, 226 So. 3d 363, 364 n.2 (Fla. 2d DCA 2017) (quoting *Mendelson v. Great W. Bank, F.S.B.*, 712 So. 2d 1194, 1196 (Fla. 2d DCA 1998)); *accord Mitchell v. Thomas*, 467 So. 2d 326, 328 (Fla. 2d DCA 1985) ("To effect a valid conveyance of land, a deed must contain a legal description which is sufficiently definite and certain to permit the land to be identified." (citing *Hoodless v. Jernigan*, 35 So. 656, 660 (Fla. 1903))).



Thus, the Copes and MERS can only claim a lack of notice if a surveyor could not locate Lot 1 by its street address and parcel ID number.

Courts generally understand a street address to sufficiently describe a parcel of land. *Mendelson*, 712 So. 2d at 1196 (“Florida courts have upheld conveyances that identified the subject properties by their street addresses . . . .” (first citing *Bajrangi v. Magnethel Enter., Inc.*, 589 So. 2d 416, 419-20 (Fla. 5th DCA 1991); and then citing *Baker v. Baker*, 271 So. 2d 796, 797-98 (Fla. 3d DCA 1973)); see also *Holbrook*, 226 So. 3d at 364 n.2 (recognizing that a mortgage may not need to be reformed to be valid because it “appears to contain a valid street address and parcel identification number”); *Regions Bank v. Deluca*, 97 So. 3d 879, 885 (Fla. 2d DCA 2012) (concluding that a mortgage gave constructive notice that it encumbered a property where the legal description consisted of a street address). And in this case, it was undisputed that the Bank's surveyor was able to locate Lot 1 based on its description in the mortgage. Thus, both precedent and the undisputed facts presented to the trial court require us to conclude that Lot 1's street address and parcel ID number are sufficient to identify Lot 1. The trial court erred by granting them summary judgment on the basis that the mortgage did not sufficiently describe the encumbered property.

Nevertheless, the Copes and MERS argue that even though the trial court's reasoning was incorrect, we should affirm because the court correctly granted summary judgment in their favor. See *Dade Cty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644-45 (Fla. 1999) (explaining that under the “tipsy coachman” rule, an appellate court may affirm a trial court which “reaches the right result, but for the wrong reasons”). They contend that although Lot 1 was sufficiently identified by its lot number and parcel ID address, the mortgage was still unenforceable because the description of Lots 22 and 23 in Exhibit A rendered the instrument patently ambiguous. See *Mendelson*, 712 So. 2d at 1198 (“[I]f the instrument's description of the property is patently ambiguous, and the instrument furnishes no other information from which the parties' intention can be gleaned, the attempted conveyance is void . . . .”). We disagree; the description of the encumbered property in the mortgage is quite clear.

Whether a legal description in a mortgage is ambiguous is a question of law which we review de novo. Cf. *City of Clearwater v. BayEsplanade.com, LLC*, 251 So. 3d 249, 253 (Fla. 2d DCA 2018) (“[W]e review de novo whether a deed is ambiguous or unambiguous.” (citing *Hastie v. Ekholm*, 199 So. 3d 461, 464 (Fla. 4th DCA 2016))); *Price v. Castel Key Indem. Co.*, 152 So. 3d 2, 3 (Fla. 2d DCA 2014) (“The interpretation of a contract, including whether the contract or one of its terms is ambiguous, is a matter of law subject to de novo review.” (quoting *Real Estate Value Co. v. Carnival Corp.*, 92 So. 3d 255, 260 (Fla. 3d DCA 2012))). A description of land is patently ambiguous if “the Court, reading the language of the instrument in light of all the facts and circumstances referred to therein, is unable to derive therefrom the intention of the parties as to what land was to be conveyed.”<sup>2</sup> *Mathews v. Fla. Crossbreeds, Inc.*, 330 So. 2d 183, 185 (Fla. 2d DCA 1976) (quoting *Carson v. Palmer*, 190 So. 720, 722 (Fla. 1939)); see also *Clayton v. Poggendorf*, 237 So. 3d 1041, 1047 (Fla. 4th DCA 2018) (“A patent ambiguity is intrinsically apparent on the face of the document due to ‘the use of defective, obscure, or insensible language.’” (quoting *Emergency Assocs. of Tampa, P.A. v. Sassano*, 664 So. 2d 1000, 1002 (Fla. 2d DCA 1995))). For instance, a description of property is patently ambiguous when a deed “contains two inconsistent descriptions, either of which would identify a different parcel of property from that described by the other” and there is “not other language in the instrument which shows the grantor's intent sufficiently for the Court to determine which piece or parcel was intended to be conveyed.” *Carson*, 190 So. at 722 (citing *Hall v. Bartlett*, 112 P. 176, 178 (Ca. 1910)).

In this case, the question of which land was intended to be encumbered by the mortgage is answered by the body of the mortgage, which further directs the reader to the legal description in Exhibit A. This tells us that the mortgage encumbers the land described in Exhibit A. And although Exhibit A contains descriptions of three different parcels of land, it also states that it pertains to “ALL THAT CERTAIN LAND” described in the exhibit. Taking the body of the mortgage and Exhibit A together, the only reasonable interpretation is that the mortgage encumbers all three of the parcels described in Exhibit A. This includes Lots 1, 22, and 23. Because we are able to derive the singular intention of the parties from the language of the mortgage, it is not patently ambiguous. Cf. *Carson*, 190 So. at 722.

The Copes and MERS argue that the mortgage could be interpreted in three different ways: as encumbering only Lot 1, as encumbering only Lots 22 and 23, or as encumbering Lots 1, 22, and 23. Their first interpretation -- that the mortgage encumbers only Lot 1 -- hinges on the fact that Lot 1 is the only parcel described in the body of the mortgage. But this interpretation ignores the language directing us to look to Exhibit A for the property descriptions and the fact that Exhibit A also describes Lots 22 and 23. Their second interpretation -- that the mortgage encumbers

only Lots 22 and 23 -- similarly fails. This interpretation hinges on the fact that Exhibit A uses lot numbers to describe Lots 22 and 23 but uses a street address and parcel ID number to describe Lot 1. However, nothing in the mortgage suggests that the parties may have intended to encumber only property described in one way (i.e. lot numbers) but not property described in another way (i.e. street address and parcel ID number). Rather, Exhibit A specifically indicates that it includes “ALL” of the parcels described therein. Because we must “read[ ] the language of the instrument in the light of all facts and circumstances referred to therein,” we reject the Copes and MERS’s interpretations which would require us to ignore the plain language of the mortgage. *See Mathews*, 330 So. 2d at 185 (quoting *Carson*, 190 So. at 722).

In sum, the mortgage unambiguously encumbers Lots 1, 22, and 23. And seeing as Lot 1 was sufficiently described in the mortgage, the Copes and MERS had constructive notice that it was encumbered by the mortgage. The trial court therefore erred by concluding that the Copes and MERS were bona fide purchasers of the property without notice of the mortgage. We reverse the trial court’s order granting summary judgment to the Copes and MERS and denying the Bank’s motion for partial summary judgment on the issue of whether the mortgage encumbers Lot 1 and remand for further proceedings consistent with this opinion.<sup>3</sup>

Reversed and remanded. (NORTHCUTT and BLACK, JJ., Concur.)

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<sup>1</sup>The Bank has not argued that the trial court erred by granting summary judgment on a ground that was not requested, and our opinion should not be read as expressing a view on that question.

<sup>2</sup>The Bank argues that the doctrine of patent ambiguity, which finds its roots in some fairly old cases, has been “significantly eroded” and given way to a more lenient standard questioning whether a surveyor can locate the land intended to be conveyed. *See Hutchinson Island Realty, Inc. v. Babcock Ventures, Inc.*, 867 So. 2d 528, 532 (Fla. 5th DCA 2004). Because we resolve this case in the Bank’s favor even under the more demanding standard argued by the Copes, we need not express a view on this question.

<sup>3</sup>Although we conclude as a matter of law that the mortgage unambiguously encumbers Lot 1 and sufficiently describes it, we do not direct the entry of partial summary judgment in favor of the Bank because it appears from the arguments in the Bank’s summary judgment motion that it is possible that the Bank’s entitlement to that relief hinges on a determination that certain other defenses asserted by the Copes are legally insufficient or inapplicable on the undisputed facts. We leave it to the trial court to address in the first instance whether it is necessary to reach those defenses to grant the Bank the partial summary judgment it seeks and, if so, to resolve the Bank’s arguments with respect to those defenses.

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