

In re BRANTLEY
286 B.R. 918 (Bankr. S.D. Ga. 2002)

JOHN S. DALIS, Chief Judge.

Altegra Credit Company (herein “Altegra”), Ford Motor Credit Company (herein “Ford”), and Michael and Melinda Bradley (herein “Debtors”) assert competing claims over distribution of insurance policy proceeds held by the Chapter 13 Trustee....

* * *

The following are portions of the security deed establishing Altegra’s interest in the insured property:

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interests, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower’s covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby grant and convey to Lender and Lender’s successors and assigns with power of sale, the following described property located in Johnson County, Georgia...

.... All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the “Property”...

UNIFORM COVENANTS: Borrower and Lender covenant and agree as follows

5. *Hazard or Property Insurance*: Borrower shall keep ... the Property insured against loss by fire, hazards included within the term “extended coverage” and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurances shall be chosen by Borrower subject to Lender’s approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender’s option, obtain coverage to protect Lender’s rights in the Property in accordance with paragraph 7. All insurance policies and renewals shall be acceptable to Lender Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, *insurance proceeds shall be applied* to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds *shall be applied to the sums secured* by this Security Instrument, whether or not due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30 day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If ... the Property is acquired by Lender, Borrower's rights to insurance proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition....

.... If under Georgia law Altegra holds a valid security interest extending to the insurance proceeds then Altegra is entitled to payment.

.... O.C.G.A. 11-9-109(d)(8) states that O.C.G.A. 11-9-315 applies with respect to proceeds and priorities in proceeds, including proceeds under a policy of insurance.

Under the security deed Altegra holds a valid security interest in the property. *See* O.C.G.A. 11-9-203(b)....

Ford argues, however, that Altegra does not have a security interest in any proceeds of the collateral. Ford asserts that the security deed must include specific grant language to secure proceeds of the collateral....

However, contrary to Ford's urging, for a secured party to receive the proceeds of its collateral, it need not include specific grant language to reach the proceeds as part of its security interest.... O.C.G.A. 11-9-203(f).

.... Therefore, having determined that Altegra holds a valid security interest in the collateral, Altegra has the right to receive the proceeds from its collateral as provided by O.C.G.A. 11-9-315.

.... Under § 9-315 the term "disposition" includes damage or destruction of collateral. *JCS Enterprises, Inc. v. Vanliner Insurance*, 227 Ga. App. 371, 489 S.E.2d 95 (1997). After destruction of Altegra's collateral, a security interest attaches to the proceeds, and Altegra has all rights to such proceeds.

Lastly, Ford argues that the security deed does not provide for a security interest in the insurance proceeds However, O.C.G.A. 11-9-102(63)(E) defines “proceeds” to include insurance proceeds. Accordingly, insurance proceeds paid after the destruction of the collateral are proceeds for purposes of O.C.G.A. 11-9-315 and subject to the lender’s security interest.

.... Insurance proceeds payable by reason of loss or damage to property are included within the definition of “proceeds”. *JCS*, 489 S.E.2d [at 96-97] (insurance benefits are considered “proceeds”). As such insurance proceeds are part of the secured party’s security interest in the original collateral.....

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