

## Crossing the “The”: The Importance of Careful Drafting for Recorded Mortgages

Article By:

Frank B. B. Knowlton

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In *Enter. Bank v. The Ingros Fam. LLC, et al.*, 2022 WL 2283392 (Bankr. W.D. Pa. June 23, 2022), a lender faced a potentially costly decision when it mistakenly left the word “The” from a borrower’s name.

In *Ingros*, First National Bank provided an initial mortgage on a commercial property owned by The Ingros Family, LLC. The Ingros Family, LLC later refinanced this mortgage with Enterprise Bank, but in preparing the mortgage, Enterprise Bank identified the mortgagor as “Ingros Family, LLC” (without the “The” before Ingros Family). Enterprise Bank learned of this error, and sought to, among other things, reform its mortgage to correct the mortgagor’s name in order to avoid losing priority to a subsequent judgment lien held by Ryan Sharbonno. Enterprise Bank filed its action in state court, but after The Ingros Family, LLC filed for Chapter 11, the case was removed to the bankruptcy court. Sharbonno filed a motion to dismiss Enterprise Bank’s action.

The bankruptcy court denied Sharbonno’s motion to dismiss and held that although Enterprise Bank filed its mortgage under an incorrect name, it could still be valid nonetheless, since a reasonable title searcher using the Register of Deed’s index system would still have notice of the mortgage’s existence. Further, the bankruptcy court held that Enterprise Bank had properly stated a cause of action for reformation due to a mutual mistake between The Ingros Family, LLC and Enterprise Bank, especially since it was clear that Enterprise Bank’s refinance proceeds were used to satisfy First National Bank’s original mortgage.

While the bankruptcy court’s order is certainly a good one for Enterprise Bank, since this is only at the motion to dismiss stage, it remains to be seen as to whether Enterprise Bank will ultimately prevail. However, the lesson for this case is clear: it is always cheaper to correctly identify a mortgagor on the front end (especially by simply performing a business name search with a Secretary of State’s online directory) rather than have to later litigate the issue.

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