

REAL ESTATE

Challenging a Purchase Made at a Sheriff's Sale

BY ALAN NOCHUMSON

Special to the Legal

It is not over 'til the fat lady sings." This should be announced at the beginning of every sheriff's sale. Selling a piece of property at a sheriff's sale is the culmination of a long, drawn-out process. Any misstep on the way can cause the sale to be set aside. In *Merrill Lynch Mortgage Capital v. Steele*, the Pennsylvania Superior Court recently discussed the mechanism in setting aside a sale under Rule 3132 of the Pennsylvania Rules of Civil Procedure.

SHERIFF'S SALE SET ASIDE

In *Steele*, the day before a property was scheduled to be foreclosed upon at a sheriff's sale, the defendants sold the property to a third party. The purchaser was unaware of the pending sheriff's sale and no mention of it was made at closing. The next day, the purchaser innocently recorded the deed she obtained the previous day, not realizing the property had already been sold several hours previously at the sheriff's sale. Before the sheriff's deed was issued to the successful bidder, the purchaser filed a petition to set aside the sheriff's sale.

The trial court refused to set aside the sheriff's sale on grounds that the purchaser lacked standing to set aside the sale and because the successful bidder was a bona fide purchaser for value.



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Reversing the trial court's ruling, the Pennsylvania Superior Court first concluded that the purchaser had standing to file a petition to set aside the sheriff's sale because she was the record owner of the property at the time the petition was filed. Rejecting the successful bidder's suggestion that only the defendant could challenge the sale because they were the record owners of the property at the time of the sheriff's sale, the Superior Court explained that position was contrary to the express language of Rule 3132 of the Pennsylvania Rules of Civil Procedure, which provides that "[u]pon petition of any party in interest before delivery of ... the sheriff's deed to real property, the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances."

Since the record established that the purchaser had a "real, substantial and direct interest" in ensuring that the sheriff did not transfer title to the successful bidder, the

court held that the purchaser had standing under Rule 3132 to set aside the sale.

The court next admonished the trial court for applying the wrong standard in determining whether the sale should be set aside. The court reiterated that the proper inquiry is not whether the successful bidder was a bona fide purchaser for value, but rather whether "proper cause" existed under Rule 3132.

The court found that the equities tilted heavily in the purchaser's favor. The court pointed out that the bidder knew that a petition to set aside could be filed before the sheriff's deed was issued. On the other hand, the court noted that the record established that the purchaser proceeded to closing without any knowledge of the pending sheriff's sale.

Moreover, the court was swayed by the fact that the purchaser would be unable to recoup the funds she paid in closing. Finally, the court stated that the plaintiff would suffer no harm if the sheriff's sale were set aside, because the proceeds of the sale between the purchaser and the defendant were given to the plaintiff to satisfy the underlying judgment.

IMPROPER NOTICE

A sheriff's sale may also be set aside if a plaintiff fails to abide by the notice requirements prescribed by Rules 3129.1, 3129.2 and 3129.3 of the Pennsylvania Rules of Civil Procedure. The plaintiff must provide

for prior notice of the sale to the defendant and every person who has a recorded interest that may be affected by the sale and any unrecorded interest of which the plaintiff has knowledge.

In *Kaib v. Smith*, the Pennsylvania Superior Court restated a plaintiff's obligation in notifying individuals possessing unrecorded interests in the property. In *Kaib*, a tenant who had an unrecorded year-to-year lease containing an option to purchase complained that the sheriff's sale should be set aside because he did not receive prior notice of the sale.

The Superior Court in *Kaib* denied the petition, pointing out that a plaintiff is only required to serve prior notice on those individuals who have unrecorded interests of which the plaintiff has knowledge. Since the plaintiff had no knowledge of the tenant until after the sheriff's sale occurred, the court held that the tenant failed to establish proper cause to warrant setting aside the sale.

Service is generally perfected upon mailing of the notice to parties in interest. In *Boyer v. Walker*, the Pennsylvania Superior Court found that the plaintiff fulfilled this requirement by mailing the notice to the record lien holder's attorney, even though the attorney failed to forward the notice to the lien holder. In *Boyer*, that attorney's business address was reflected on the face of the lien holder's mortgage as the lien holder's

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address. The court believed that notice to the lien holder's attorney was reasonably calculated to inform the lien holder of the pending sheriff's sale and therefore constituted valid service.

In *RTC Mortgage Trust v. Fry*, the Pennsylvania Supreme Court tackled a notice sent to a junior lien holder that was sent back by the postal office. Although the post office indicated that the address was no longer valid and that the forwarding order had expired, the postal office stamped the forwarding address on the envelope containing the returned notice. Nevertheless, the plaintiff did not send the notice to the forwarding address. Instead, the sale proceeded without the lien holder receiving notice and the property was sold.

The court set aside the sale due to inadequate prior notice. Unlike a lien holder who has moved and left no forwarding address, the court stressed that the plaintiff could have notified the lien holder without expending extraordinary efforts. The court pointed out that the plaintiff could have mailed the notice to the forwarding address provided by the postal office.

INADEQUATE PURCHASE PRICE

The price at which the property is sold at a sheriff's sale may also constitute proper cause for setting aside a sale. While mere inadequacy of price is not a sufficient basis for setting aside a sheriff's sale, gross inadequacy of price is sufficient. Pennsylvania courts refuse to fix the term grossly inadequate at any given amount or any percentage of the sale, but rather look at the particular facts and circumstances of each case.

In *S & T Bank v. Dalessio*, the Superior Court refused to set aside a sheriff's sale

based upon inadequacy of sale price. In *Dalessio*, the marital residence of a divorced couple was subject to a sheriff's sale. The husband owned the residence. After a confessed judgment was entered against husband, the husband's brother purchased the judgment. The husband's brother then purchased the property at the sheriff's sale for \$375,000. The wife attempted to set aside the sale for inadequacy of price. She had an appraiser set the property value at \$657,000, while the husband's brother appraiser valued the property at \$365,000.

The court concluded that the sale price, when compared to the husband's brother's appraisal, did not shock the conscious such as to be deemed so grossly inadequate to set aside the sale. The court pointed out that the outcome of the case would have been different if the husband's brother had not provided an appraisal challenging property value contained in the appraisal obtained by the wife. Given the conflicting appraisals, the court believed the sale price fell within an acceptable range.

In *Blue Bell National Bank v. Balmer*, the Superior Court also refused to set aside a sheriff's sale based upon claims of inadequacy of price. In *Balmer*, the petitioner entered into an agreement two days prior to the scheduled sale to purchase one of the tracts of land subject to the sale. A day later, the petitioner entered into an agreement to sell the tract of land for \$1.5 million. The plaintiff refused to postpone the sale based upon either of those agreements. That tract of land and three others were sold together at the sheriff's sale for \$1,249,000. Within a month after the sheriff's sale, the successful bidder entered into agreements to sell three of the four tracts.

The petitioner sought to set aside the sale claiming inadequacy of price in view of \$1.5 million offered for the one tract alone.

AREA MORTGAGE RATES

Lender	Fixed Rates	Adjustable Rates		Jumbo Rates*		Commercial	Yes/No**
		30 yr.	15 yr.	1 yr.	30 yr. fixed		
National Future Mtg. 800-291-7900		5.38/0	4.75/0	N/A	5.63/0		Yes
AA E Mortgage 877-793-1400		5.38/0	4.75/0	N/A	5.63/0		No
Lighthouse Mortgage 800-784-1331		5.38/0	4.88/0	N/A	5.63/0		No
Amex Direct Lending 800-426-1207		5.63/0	4.88/0	N/A	5.88/0		No
Madison Mortgage Services 888-897-0200		5.38/0	4.88/0	3.75/0	5.75/0		No
Madison First Financial 888-516-4666		5.38/0	4.75/0	N/A	5.75/0		No
Turnstone Mortgage 800-757-7514		5.50/0	4.88/0	3.13/0	5.88/0		No
East Coast Financial 800-353-9440		5.50/0	4.88/0	N/A	5.88/0		No
State Farm Bank 877-734-2265		5.88/0	5.38/0	4.50/0	5.75/0		No
Wilmington Mortgage 610-558-3099		5.50/0	5.00/0	N/A	5.75/0		No
Century Mortgage Corp. 800-224-7006		5.00/3	4.38/3	2.63/2	5.38/3		No
American Family Mtg. 610-358-5324		4.75/2.5	4.13/3	3.13/3	4.75/3.5		No

* A "Jumbo" or non-conforming mortgage is a loan amount in excess of \$333,700.

** Indicates if a lender offers mortgage loans for commercial properties. Call to discuss rates and terms.

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properties were sold for between 57 percent and 75 percent of their estimated value. The Superior Court found that these percentages did not shock the conscious and upheld the sheriff's sale.

These cases illustrate the difficulty in setting aside a sale due to inadequacy of price. Noticeably absent from either of the cases were any allegations that there was any fraud or collusion between the defendant or the bidders. A court may set aside a sale if the

lusion deflated the purchase price.

LESSONS LEARNED

Despite the Superior Court's ruling in *Steele*, courts are generally reluctant to set aside a sale presuming that the prices received at a duly advertised sale is the highest and best obtainable. As a result, courts will likely deny any attempt to overturn a sale unless there are gross procedural or substantive irregularities that adversely affect the rights of individuals