

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

In Re: :  
: C.A. No. K12M-10-020 WLW  
In the Matter of Unclaimed Proceeds :  
from the Execution of Sale by the :  
Sheriff of Kent County :  
04T-11-002 :  
: :  
Date of Sale: January 25, 2005 :  
Property Address: :  
43 S. Kirkwood Street :  
Dover, DE 19901 :  
Name of Owner at Time of Sale: :  
Betty J. S. Frink :  
: :  
Tax Parcel ED-05-076.08-06-26.00-000

Submitted: April 1, 2013  
Decided: July 3, 2013

**ORDER**

Upon Liberty Financial Group LLC's Petition for  
Release of Unclaimed Proceeds. *Denied.*  
Upon Friendly Finance Corporation's Cross-Petition for  
Release of Unclaimed Proceeds. *Granted.*

Jason C. Powell, Esquire of Ferry Joseph & Pearce, P.A., Wilmington, Delaware;  
attorney for Liberty Financial Group, LLC.

Daniel C. Kerrick, Esquire of Ciconte Wasserman Scerba & Kerrick, LLC,  
Wilmington, Delaware; attorney for Friendly Finance Corporation.

WITHAM, R.J.

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***I. Introduction***

Before the Court is a petition filed by Liberty Financial Group, LLC (hereinafter “Liberty Financial”), acting on behalf of Betty J. S. Frink (hereinafter “Frink”), seeking the distribution of surplus proceeds arising from a sheriff’s sale of real property owned by Frink. Friendly Finance Corporation (hereinafter “Friendly Finance”) filed a cross-petition asserting interest in the proceeds of the sale as partial satisfaction of a judgment it holds against Frink. The Court finds that the remainder of the proceeds derived from the sale must be disbursed to partially satisfy the judgment held by Friendly Finance. Accordingly, Liberty Financial’s Petition for the Release of Unclaimed Proceeds is hereby denied, and Respondent’s cross-petition is hereby granted.

***II. Relevant Factual and Procedural Background***

On February 10, 1995, Frink purchased a parcel of land located at 43 South Kirkwood Street (hereinafter “the property”), in Dover, Delaware. On June 6, 1997, Frink, as mortgagor, mortgaged the property to Beneficial Delaware, Inc. (hereinafter “Beneficial”), in the amount of \$6,000.00. This mortgage (hereinafter “the original mortgage”) was recorded with the Kent County Recorder of Deeds Office on July 9, 1997. On December 23, 1998, Frink executed a second mortgage with Beneficial in the amount of \$50,000. The second mortgage was recorded on January 4, 1999.

Beneficial filed a foreclosure action in this Court on the property on April 9, 2001. The Court entered judgment in favor of Beneficial, and the property was sold at a sheriff’s sale on January 25, 2005. Excess proceeds in the amount of \$6,597.06

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remained after the satisfaction of the Beneficial mortgages and various other liens on the property. The Sheriff deposited the remaining proceeds with the Prothonotary pursuant to 10 *Del. C.* § 2111. It is this sum that is the subject of the present dispute.

On January 22, 2004, Friendly Finance obtained a judgment lien against Frink in the amount of \$9,930.93, plus interest at the rate of 22.9 percent per annum from December 17, 2003, attorneys fees and court costs. As of that date, Frink still owned the property. Accordingly, pursuant to 10 *Del. C.* § 4702, Friendly Finance's judgment lien effectively attached to the property upon the entry of the order granting judgment in Friendly Finance's favor.

Liberty Financial, acting on Frink's behalf, filed the instant petition on October 26, 2013. In its petition, Liberty Financial requests that the Court order the Prothonotary to release the surplus proceeds to Frink. Friendly Finance filed a response and cross-petition for the release of the surplus proceeds on January 10, 2013. In its responsive pleading, Friendly Finance asserts a claim to the surplus proceeds to satisfy its outstanding judgment against Frink. The Court will now consider these cross-petitions.

***III. Parties' Contentions***

In its cross-petition, Friendly Finance argues that the foreclosure sale discharged all liens on the property, and that the proceeds should have been distributed to the lienholders in the order of their priority. As senior lienholder, Friendly Finance asserts an absolute claim to the surplus from the foreclosure sale.

In its petition and response, Liberty Financial contends that the equitable

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defense of laches bars Friendly Finance's claim. Specifically, Liberty Financial claims that the nearly eight years Friendly Finance waited to execute on its judgment constitutes an unreasonable delay that prejudices Frink. Therefore, Liberty Financial asks this Court to grant its own petition and enter an order directing the Prothonotary to release the surplus to the attention of the undersigned counsel for the Petitioner.

***IV. Discussion***

Delaware law requires the discharge of all non-mortgage liens when a property is sold at foreclosure sale.<sup>1</sup> Therefore, the January 25, 2005 sheriff's sale of Frink's former property discharged all nonmortgage liens against the property. This includes the valid judgment lien Friendly Finance obtained against Frink on January 22, 2004.

Having decided that the sheriff's sale discharged the judgment lien, the Court must determine the order in which the proceeds from the sheriff's sale must be distributed. Delaware has a pure race recording statute, meaning that priority is granted to the promisee who first records his interest.<sup>2</sup> In the present case, the distribution of the proceeds was made first to costs, second to taxes, third to wages, fourth to the Beneficial mortgages, and then to all succeeding liens in order of priority. A recent title search of the property revealed that two outstanding judgment liens remained attached to the property at the time of its foreclosure sale: (1) the

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<sup>1</sup> See *Eastern Sav. Bank, FSB v. CACH, LLC*, 55 A.3d 344, 347 (Del. 2012); see also 10 Del. C. § 4985 (real property purchased at a sheriff's sale must be free from all liens against the previous owner).

<sup>2</sup> 25 Del. C. § 153; *Eastern Sav. Bank*, 55 A.3d at 349.

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judgment Friendly Finance obtained against Frink, recorded on January 2, 2004, and (2) a judgment the state Division of Revenue obtained against Frink, recorded on April 23, 2004. Therefore, the remainder of the sheriff's sale proceeds must be released to Friendly Finance as partial satisfaction of its judgment lien.

Liberty Financial argues that, because Friendly Finance took no action to enforce its judgment for eight years, Friendly Finance's cross-petition is barred by the doctrine of laches. Laches is "an unreasonable delay by a party, without any specific reference to duration, in the enforcement of a right, and resulting in prejudice to the adverse party."<sup>3</sup> The Court finds that the doctrine of laches is inapplicable in this case because Friendly Finance has made efforts to enforce its judgment against Frink. Although nearly eight years has elapsed between the sheriff's sale of Frink's former property and Friendly Finance's cross-petition, Delaware law allows a judgment creditor up to ten (10) years to enforce its judgment by execution.<sup>4</sup> Moreover, Friendly Finance made numerous attempts to enforce the judgment during the three years following the entry of its judgment, but its efforts were unsuccessful.<sup>5</sup> Accordingly, in light of Friendly Finance's diligent attempts to locate Frink and enforce its judgment, the Court finds there has been no unreasonable delay on the part

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<sup>3</sup> *Whittington v. Dragon Group, LLC*, 991 A.2d 1, at \*7 (Del. 2009) (unpublished table decision).

<sup>4</sup> *Id.* § 4711.

<sup>5</sup> See Friendly Finance's Reply to Pet. Liberty Financial Group, LLC's Resp. to Opp. to Pet. For Release of Unclaimed Proceeds, E-File 49981783, at ¶ 3 (detailing Friendly Finance's efforts to garnish Frink's wages and serve her with a subpoena *duces tecum*).

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of Friendly Finance in executing its judgment. Friendly Finance is entitled to receive the surplus proceeds from the sheriff's sale of Frink's former property in partial satisfaction of its lien.

**CONCLUSION**

For the foregoing reasons, Liberty Financial Group, LLC's Petition for Release of Unclaimed Proceeds is **DENIED**. Friendly Finance Corporation's Cross-Petition is **GRANTED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.  
Resident Judge

WLW/dmh