SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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September 2, 2008

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Submitted: May 23, 2008
Decided: September 2, 2008

RE: *Option One Mortgage v. Cahall, et al.*
C.A. No. 06L-09-105 CHT

Dear Counsel:

Defendants ask the court to set aside a sheriff's sale in a mortgage foreclosure.[1] They claim the sale was irregular because the sheriff misled them into thinking it had been postponed while they were negotiating with the lender. Defendants insist they are prepared to satisfy the loan and save their home. The lender and the sheriff defend the sale.

[1] *See, Burge v. Fidelity Bond & Mort. Co.,* 648 A.2d414, 420 (Del.1994)(affirming the "broad discretion of the Superior Court to confirm or set aside sheriff's sales.")

I.

On October 11, 2008, the lender, Option One Mortgage Corporation, filed judgment for $87,793.75, based on Defendant's having defaulted on the mortgage secured by their home in Townsend, Delaware. After proper notice, on March 11, 2008, the sheriff sold the property to T.D. Enterprise LLC, of Elkton, Maryland. [2]

The factual dispute stems from Defendants' claim that they contacted the sheriff's "24 hour-line" on the evening before the sale. They heard a recorded message to the effect that their property had been removed from the sheriff's sale list because a $110,000 offer had been received. Hence, Defendants did not attend the sale and bid on their property, although they had the money.

Defendants further claim that their former attorney did not tell them about the sale, and the first they learned of it was when the buyer contacted them on April 8, 2008. According to Defendants "they went into full panic mode" and, on April 10, 2008, through counsel, they filed an emergency motion to set aside the sale.

II.

Defendants' argument begins with the fact, developed during the motion practice, that the sheriff added Defendants' property to the sheriff sale list after the list's first printing. No copy or transcript of the recorded announcement exists, but the sheriff implies that the recording listed 85 "stayed properties," followed by Defendants' property, which was an addition. Thus, the sheriff believes that

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[2] The buyer's Property Manager and a principal have submitted letters supporting the sale. If the sale is set aside, buyer claims it is entitled to reimbursement for all of its expenses, including, at least, $10,000.00 for the Property Manager's salary.

Defendants "listened to the 24 hour recorded stay/information line and misinterpreted what they heard." The court agrees with the sheriff's take on what happened.

The sheriff, however, does not contend that, under the circumstances, Defendant's misinterpretation of the recorded announcement was unreasonable. Instead, the sheriff argues that Defendants did not speak with anyone in the sheriff's office directly and the recording's preamble stated, "you must have a sheriff sale list in order to use this line." Defendants did not have a list. As presented above, the list, itself, was wrong. Surely, the sheriff's failure to include Defendant's property on the first list was not Defendant's fault. And, according to the first list, Defendant's property was not on the block. Nonetheless, the sheriff fails to explain why Defendants should be faulted here for using the line without a list.

The court appreciates the fact that Defendants probably heard what they wanted to hear when they called the sheriff's office. Nevertheless, their property was a "manual addition" to the list and it was mentioned after 85 properties that were stayed. Moreover, Defendants have presented evidence supporting their claim that they were positioned to bid on their property on March 11, 2008, and they are still able to pay-off the loan in full.

Taking everything into account, the sheriff's sale was irregular because the subject property was a manual addition to the list and the sale followed the unclear, recorded message that unwittingly encouraged Defendant's self-serving belief that, due to their on-going negotiations with the lender, their property's sale had been stayed. The irregularity here was not gross, but upholding the sale would be unjust.[3] This finding turns in large part on Defendant's credibility, which is bolstered by their unequivocal assertion that they could, and will, pay-off this loan. Toward that end, at the court's insistence, Defendants have deposited cashiers' checks for more than $91,000.

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[3] *Burge*, 648 A.2d at 421.

On April 14, 2008, the lenders submitted a payoff statement for Defendants' loan totaling $96,784.55. That included the unpaid balance, interest, late charges and assorted fees such as $8.50 for "Lien Release Fee." (Apparently, the lender is insisting on charging Defendants to provide the notice of satisfaction it must, by law, provide.)

III.

If, within ten days of this order's date, Defendants deposit with lender's counsel $98,000, or they directly wire the amount to the lender as provided in the lender's payoff statement, and they deposit $1,500 with the sheriff to cover the buyer's reasonable expenses,[4] the court will enter a final order setting aside the March 11, 2008 sheriff's sale. Upon the order's entry, the sheriff will return all the money held by the sheriff, including any fees collected from the buyer. If, on the other hand, Defendant's fail to payoff the loan in the amounts provided above, then, upon submission by the lender, the court will enter an order confirming the sale and directing the sheriff to deed the property to the buyer.

Very truly yours,

/s/ Fred S. Silverman

FSS:mes
Enclosure
Oc: Prothonotary (Civil)
Terry W. McCoy, T.D. Enterprises, LLC

[4] *Id.* at 421-22 (finding the Superior Court did not abuse its discretion upon awarding costs and attorney fees where equity so requires.)