IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR MORGAN STANLEY ABS CAPITAL I INC. TRUST 2005-HE2	§ § § § §	
	§	
Plaintiff-Below Appellant	§ §	
v.	§	**No. 506, 2012**
	§	
NANCY GOLDFEDER c/o EMIL MIKHAIL, Guardian ad Litem	§ §	
	§	
Defendant-Below Appellee	§ §	

APPELLANT'S OPENING BRIEF IN SUPPORT OF APPEAL

Appeal from the Superior Court for New Castle County
(Honorable Mary M. Johnston, Judge)

Lisa R. Hatfield, Esq.
Bar ID # 4967
Morris | Hardwick | Schneider
100 Commerce Drive, Suite 100
Newark, Delaware 19713
(302) 444-4602

Attorney for Deutsche Bank National Trust Company, as trustee for Morgan Stanley ABS Capital I Inc. Trust 2005-HE2, Appellant

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NATURE OF THE PROCEEDINGS

This is an appeal by the Plaintiff below (now Appellant) seeking review of an Order of the Superior Court for New Castle County dated August 23, 2012 granting Defendant's Motion to Vacate Sheriff's Sale, Vacate Confirmation and Set Aside Sheriff's Sale in an *In Rem Scire Facias Sur* mortgage action.

SUMMARY OF THE ARGUMENT

1. The trial Court erred in granting Appellee's Motion to Vacate the Sheriff's Deed, Vacate Confirmation and Set Aside Sheriff's Sale (the "Motion") without first finding a defect or error on the part of the foreclosing Plaintiff (now Appellant). The trial Court issued an order on August 23, 2012, which vacated the sheriff's deed in the underlying *In Rem* foreclosure action, vacated and denied confirmation of the Sheriff's sale held on November 8, 2011, and set aside the sheriff's sale. The Appellee's only argument in support of their motion was lack of notice of the foreclosure sale. In defense of the Appellee's motion, Appellant's counsel argued that Appellee was properly noticed of the sale. Despite agreeing that Appellant's counsel had given the Appellee proper notice of the sale, the trial Court granted the Appellee's motion. The trial Court did not find any defect in notice which would have supported the Appellee's motion, and therefore had no basis for granting said motion.

2. The trial Court erred in granting Appellee's motion in this matter, as the motion was untimely presented to the trial Court without

any excusable delay. The property in question in this *In Rem Sci. Fa. Sur* Mortgage proceeding was sold at sheriff's sale on November 8, 2011. No objection was made regarding this sale during the confirmation period. Therefore, the sale was judicially confirmed on December 23, 2011. On August 9, 2012 Appellee, through her guardian, filed a motion to vacate the sheriff's deed, vacate and deny confirmation of the sale, and set aside the sale. This motion was filed 275 days after the property sold at sheriff's sale, 230 days after the sale confirmed, and 197 days after the property was deeded to the Plaintiff. Pursuant to the Rules of Civil Procedure for the Superior Court of the State of Delaware (the "Rules") 69(d), "applications to set aside [sheriff] sales shall be made on or before the first Thursday succeeding [the] return date, and all such sales not objected to on or before the first Thursday, shall on the first Friday, be confirmed as a matter of course." The Supreme Court of Delaware has previously held that absent a defect in the foreclosure action, or allegations of excusable neglect, a motion made after the confirmation period should be denied as untimely. *See* Deibler vs. Atlantic Properties Grp., Inc., 652 A.2d 553, 556 (Del. 1985), Swiggett vs. Kollock, 3 Houst 326, 332 (Del. Super. Ct. 1866), Shipley vs. New Castle County, 975 A.2d 764, 770 (Del 2009). Appellee waived her rights by failing to take action prior to the confirmation of the sale, and as such the Court erred in granting Appellee's untimely motion.

3. The trial Court erred in granting the Appellee's motion based upon lack of prejudice to the Plaintiff, as the Appellee's motion should have been denied based upon the foregoing arguments without regard to prejudice. The Appellee's motion to vacate the sheriff's deed, vacate the confirmation and set aside the sheriff's sale finds its basis in Rule 60(b). Under that rule, Appellee's motion should only have been granted upon a finding of mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, etc. Del. Sup. Ct. R. 60(b). However, the trial Court judge found no error upon the part of the Appellant, no mistake nor fraud, and no excusable neglect on the part of the Appellee. The trial Court judge instead based her ruling upon whether or not the Appellant would be prejudiced by vacating the deed, vacating the confirmation and setting aside the sheriff sale. As this is not a basis for deciding Appellee's motion, the trial Court judge abused her discretion by basing

her ruling upon prejudice. Therefore, Appellant asserts that granting Appellee's motion was an error and an abuse of discretion by the trial Court judge.

STATEMENT OF THE FACTS

Defendant Nancy Goldfeder entered into a mortgage agreement with MERS as nominee for Home Funds Direct on or about October 25, 2004. Said mortgage was in the amount of One Hundred Seventy Seven Thousand One Hundred Dollars ($177,100.00) and was secured by the property located at 1610 North Union Street, Wilmington, Delaware 19806. The mortgage was later assigned to the Plaintiff, Deutsche Bank National Trust Company as Trustee. In 2007, Defendant Goldfeder defaulted on that mortgage and Plaintiff filed an *In Rem Sci. Fi. Sur.* Mortgage Action against the defendant on October 22, 2008. (A-6).

After the defendant failed to appear or plead in the matter, Plaintiff obtained a default judgment on April 13, 2010. The property was then scheduled for sheriff sale on July 13, 2010 but voluntarily stayed by the Plaintiff. A new writ of levari facias was issued in 2011 and a sale was held on November 8, 2011. Plaintiff was the highest bidder at sale. Said sale confirmed on December 23, 2011 and was deeded to the Plaintiff on January 25, 2012. (A-30).

On July 5, 2012, Defendant's physician filed a Motion for Appointment of Guardian Ad Litem for the Defendant. (A-21). On July 27, 2012, Defendant's Motion was granted. On August 8, 2012, Defendant, through her guardian and counsel, filed a Motion to Vacate Sheriff's Deed, Vacate Confirmation, and Set Aside Sheriff's Sale. (A-25). Said Motion was heard on August 23, 2012 and granted over Plaintiff's objection.

This is the Appellant's Opening Brief in support of the Appeal to the Supreme Court of Delaware from the Order that the sheriff's deed dated January 25, 2012 be vacated, that confirmation of the sheriff's sale of 1610 N. Union Street, Wilmington, Delaware 19806 is vacated and denied and the sheriff's sale of November 8, 2011 is set aside.

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING APPELLEE'S MOTION TO VACATE THE SHERIFF'S DEED, VACATE CONFIRMATION AND SET ASIDE SHERIFF'S SALE, AS THE ONLY BASIS FOR SETTING ASIDE SALE WAS LACK OF NOTICE AND THE TRIAL COURT DID NOT FIND A DEFECT IN THAT PROCESS.

QUESTION PRESENTED: Whether the trial Court should have vacated the sheriff's deed, vacated and denied confirmation of the sheriff's sale and set aside the sheriff's sale absent any finding of a defect in the notice requirements on the part of the Appellant. This issue was fairly presented in Appellant's response to Appellee's Motion (A-44 to A-47) and was specifically argued during the hearing conducted by the Superior Court as required by Delaware Supreme Court Rule 8. (See transcript pages 7-8).

SCOPE OF REVIEW: Review of this issue is a question of law and therefore the standard of review is *de novo*. Solomon v. Pathe Communications Corp., 672 A.2d 35 (Del. 1996)

MERITS: The trial Court erred in vacating the sheriff's deed, vacating and denying confirmation of the sheriff's sale, and setting aside the sheriff's sale in the underlying action without first finding evidence of a defect in the Appellant's case.

The time limit for a challenge to the confirmation of a sheriff sale is established in Superior Court Civil Procedure Rule 69(d) which reads, "Return of all sheriff's sales of real estate shall be made on the third Monday of the month succeeding the date of the sale and applications to set aside such sales shall be made on or before the first Thursday succeeding said return date, and all such sales not objected to on or before the first Thursday, shall on the first Friday, be confirmed as a matter of course." In the instant case, the sheriff sale was held on November 8, 2011 and the sale confirmed on December 23, 2011. As such, objections to confirmation were due by December 22, 2011. Appellee's motion to vacate said sale was filed on August 9, 2012, more than seven (7) months following the bar date. (A-25).

Collateral attacks upon a sheriff sale are barred following the confirmation date. Second Nat'l Building and Loan, Inc. v. The Sussex

Trust Co., 508 A.2d 902, 906 (Del. Super. Ct. 1985). However, as noted in the appellee's motion to vacate filed in the lower Court, an exception to the rule that objections must be filed prior to confirmation can be found in Deibler, 652 A.2d at 556. In Deibler, the Court states, "...objections to the process by which a property is sold on execution are waived if the objector fails to file a timely application to set the sale aside, unless the court finds a lack of notice or other basis to relieve the party of the consequences of the unexcused delay." Id. In the underlying matter, no such lack of notice was found by the lower Court.

In her argument below, Appellee relied upon an unpublished decision of the Superior Court, Household Bank, F.S.B vs. Daniels, 2005 WL 1953035 (Del. Super. Ct. 2005), to convince the Court that the Appellant failed to provide proper notice of the sheriff sale. (A-34). In the Daniels matter, the Court overturned a sheriff's sale upon finding that the, "Plaintiff's efforts in ascertaining [the owner's] address were not reasonably diligent." Id. at 3. In Daniels, service and notice were made upon the defendants by serving a "caretaker" of the property and by certified mailings to the property address. Id. at 1. The Court found that due to the Plaintiff's knowledge that service was made on a caretaker and that certified mailings were consistently returned, Plaintiff's efforts of providing notice we not reasonably diligent. Id. at 3.

The case at bar is wholly distinguished from the Daniels matter, in that the Appellant did attempt to ascertain additional addresses. As such, the lower Court found that the Appellant acted in "good faith" and made "every effort to comply with the law" to properly provide the Appellee with notice. (See transcript page 8, lines 21-23 and page 9, lines 11-13).

Pursuant to the Delaware Code sections governing sheriff's sales, Appellant sent notice of the sheriff's sale to the property address of 1610 North Union Street, Wilmington, DE 19806 ten (10) days prior to the sale date. (A-13). Appellant did not have any other address for the Appellee at that time, as all previously ascertained addresses had proven incorrect.

Appellant first attempted service in 2009 at the property address believed to be that of the Appellee located at 205 East Ayre Street, Wilmington Delaware 19804. (A-9). This was unsuccessful as the

Appellee was not living at this address. In fact, in July of 2010 Appellee filed a complaint with the Department of Justice stating that the individual residing at 205 East Ayre Street was committing fraud and theft of her property located at 1610 N. Union Street. (A-48). It is worth noting at this point that the 205 East Ayre Street address is actually the address of the Appellee's guardian in this matter; the same individual arguing that the Appellee did not have proper notice of the sale. Appellant then requested that the sheriff serve Ms. Goldfeder at the 1610 N. Union Street address. When the sheriff attempted to do so, he learned of another possible address and provided Appellant with the same. Appellant sent an additional check to the sheriff for service at the possible address of 123 W. Champlain Ave. however, this was also unsuccessful. (A-11). At that time, the sheriff then posted the property at 1610 N. Union and sent mailings to that address as Appellant did not know of any additional addresses.(A-10 and 11). Appellant proceeded with the Court case using the only known address of 1610 N. Union Street.

At the time of the sale, Appellant checked the tax records of New Castle County regarding the property located at 1610 N. Union Street and said records still listed the only address for Appellee as 1610 N. Union Street. Therefore, pursuant to 10 Del. C. §4973(a) Appellant had no alternative but to presume that the property address was Appellee's home address, and Appellant sent notice of the sheriff's sale to that last known address. (A-15).

Appellant made every effort to provide the Appellee with proper notice of the sheriff's sale. Appellant did not have a secondary address for the Appellee, particularly after Appellee filed a complaint stating that the secondary address on record was fraudulent. Appellant attempted to locate an additional address for the Appellee, but was unsuccessful. Additionally, Appellee, through her guardian, filed a complaint with the Department of Justice on January 24, 2012, seventy-five (75) days *after* sale in which she lists her home address as 1610 N. Union Street. (A-39).

The trial Court found that the Appellant acted in good faith in attempting to provide notice of the pending sale to the Appellee. The trial Court failed to find any evidence of a defect in notice to the Appellee. Given the foregoing, the trial Court erred in granting the Appellee's motion to vacate the sale and the ruling should be reversed.

II. THE TRIAL COURT ERRED IN GRANTING APPELLEE'S MOTION TO VACATE THE SHERIFF'S DEED, VACATE CONFIRMATION AND SET ASIDE SHERIFF'S SALE, AS THE APPELLEE'S MOTION WAS UNTIMELY FILED WITH NO FINDING OF EXCUSABLE DELAY.

QUESTION PRESENTED: Whether the trial Court erred in granting relief from confirmation of the sheriff sale and ordering that the sheriff's deed and confirmation of sale be vacated 275 days after the property sold at sheriff's sale, 230 days after the sale confirmed, and 197 days after the property was deeded to the Plaintiff. This issue was fairly presented in Appellant's response to Appellee's Motion. (A-47).

SCOPE OF REVIEW: Review of this issue is a question of law and therefore the standard of review is *de novo*. Solomon v. Pathe Communications Corp., 672 A.2d 35 (Del. 1996)

MERITS: The trial Court erred in vacating the sheriff's deed, vacating and denying confirmation of the sheriff's sale, and setting aside the sheriff's sale in the underlying action as the Appellee's motion was untimely filed with no finding of excusable delay.

As stated previously, the time limit for a challenge to the confirmation of a sheriff sale is clearly established in Superior Court Civil Procedure Rule 69(d). The second exception to the rule that objections must be filed prior to confirmation, found in Deibler, states that "...objections to the process by which a property is sold on execution are waived if the objector fails to file a timely application to set the sale aside, unless the court finds a lack of notice *or other basis to relieve the party of the consequences of the unexcused delay*." Deibler, 652 A.2d at 556 *(emphasis added)*. However, a presumption of unreasonable delay and lack of diligence attaches once the sale is confirmed by the court. Shipley, 975 A.2d 764. In the instant case, the presumption of unreasonable delay and lack of diligence attached on December 23, 2011. In order to succeed in having the sale set aside under Rule 60(b), Appellee would have had to present sufficient evidence to overcome that presumption. The Appellee failed to do so.

Appellee, in her motion to the lower Court, states that the delay in filing the motion to vacate the sale resulted from being misled by Bank of America's assertion that it was the owner of the property and a "detour to the Attorney General's office." (A-27). Neither claim is sufficient to support a finding of reasonable delay or diligence in filing.

Appellee's assertion that she, through her guardian, was misled by a notice posted on the property on January 15, 2012 and again on January 25, 2012 (A-27) that claimed that Bank of America was the owner of the property cannot reasonably be construed to be the source of an additional five (5) months delay in filing a motion to appoint a guardian ad litem and an additional six (6) month delay in filing a motion to vacate the sheriff sale. Both of the notices to which Appellee refers were posted after the date of confirmation. The name of the party who owns the property twenty-three (23) days following the confirmation, and sixty-eight (68) days following sale, has no bearing on the Appellee's ability to file a motion to vacate the sale if appropriate. In fact, the only reason that information would be relevant would be to ensure proper notice to all parties of the motion to vacate. As such, Appellee had all the information necessary to file her motion in January 2012 as she had actual knowledge of the party who brought the foreclosure action, the attorney for the party and the current owner of the property.

Appellee's second assertion, that the delay was caused by a "detour to the Attorney General's Office," (A-27) is also an insufficient explanation for the delay in filing a motion to vacate the sale. In her motion below, Appellee states that after guardian Emil Mikhail discovered the property was deeded to Deutsche Bank rather than Bank of America, as the notice posted on the property on January 15, 2012 stated, he filed a complaint with the Attorney General. Appellee only attached the first page of the complaint to her motion. (A-39). In fact, the complaint filed did not make mention of the difference in the vesting party in the sheriff's deed and the notice posted on the property on January 15, 2012 as Appellee indicated. (A-41). Furthermore, it could not have made mention of the vesting information as the Appellee filed a complaint with the Department of Justice on January 24, 2012 but the sheriff's deed vesting the property to Deutsche Bank was not recorded until February 7, 2012. (A-39 & 30, respectively). In fact, rather than discuss the difference in the vesting deed and the posted notice that the Appellee claims led to the filing of the complaint, the complaint alleges that the Appellee never signed a mortgage with anyone in 2004 and that the entire loan was paid in full in 2004. (A-41). This complaint was signed by the Appellee's guardian, Emil Mikhail. Dr. Mikhail knew this information to be false as Appellee's guardian had made several payments on the mortgage on behalf of the Appellee over the years. (See Transcript Page 4, lines 3 - 13). As such, Appellee's actions were simply an attempt to assert a defense that was not presented in the foreclosure action and that was not truthful, and the argument that her detour to the Attorney General's office amounts to excusable delay must fail.

Appellee's Motion to Vacate the Sheriff sale in this matter was untimely filed. Appellee has asserted no reasonable basis for a two hundred and thirty (230) day delay from the date of confirmation to the date of filing her motion. As such, the judgment of the lower Court should be reversed.

III. THE TRIAL COURT ABUSED ITS DISCRETION BY GRANTING APPELLEE'S MOTION TO VACATE THE SHERIFF'S DEED, VACATE CONFIRMATION AND SET ASIDE SHERIFF'S SALE ON THE BASIS OF LACK OF PREJUDICE TO THE APPELLANT

QUESTION PRESENTED: Whether the trial Court abused its discretion by granting relief from confirmation of the sheriff sale and ordering that the sheriff's deed and confirmation of sale be vacated 275 days after the property sold at sheriff's sale, 230 days after the sale confirmed, and 197 days after the property was deeded to the Appellant based upon an allegation of incompetency of the Appellee and a lack of prejudice to the Appellant. Pursuant to Delaware Supreme Court Rule 8, the interest of justice requires that this issue be presented for appeal, as it specifically addresses the discretionary authority of the trial Court, a question which could not be decided by the trial Court itself.

SCOPE OF REVIEW: Review of this issue has been addressed in numerous cases before this Court all stating as follows:

> Judicial discretion is the exercise of judgment directed by conscience and

> reason, and when a court has not exceeded the bounds of reason in view of the circumstances and has not so ignored recognized rules of law or practice so as to produce injustice, its legal discretion has not been abused.

Chavin v. Cope, 243 A.2d 694, 695 (Del. Super. Ct. 1968).

MERITS: The trial Court erred in vacating the sheriff's deed, vacating and denying confirmation of the sheriff's sale, and setting aside the sheriff's sale due to a lack of prejudice to the plaintiff. Under Deibler, 652 A.2d 553, a sheriff's sale should not be set aside on a collateral attack subsequent to confirmation, absent a showing of lack of notice or excusable delay. In Appellee's motion to the Court below, Appellee raised a third issue; lack of prejudice. This argument is one which can only apply if analyzed under a Rule 60(b)(6) motion for relief for "any other reason."

The standard of review for granting relief under this section is well established in the law and requires a showing of "extraordinary circumstances." Bachtle v. Bachtle, 494 A.2d 1253, 1256 (Del.1985). If the movant can demonstrate extraordinary circumstances exist, the Court may grant the relief requested. However, the Court is still bound, in the exercise of its discretion, not to exceed the boundaries of reason or ignore rules of law or practice such as to create an injustice. Here, such a situation has occurred.

The Appellee, through her guardian in her motion to vacate the sheriff sale, did not meet the burden of pleading "extraordinary circumstances" which would merit the relief requested. The motion itself indicates that the guardian received notice that a sheriff sale had occurred on January 15, 2012. (A-27). The Appellee had notice that the foreclosure action was pending and a sheriff sale was scheduled as early as July 2010 when she filed a complaint with the Department of Justice alleging someone was trying to steal her property and requesting that the sale be cancelled. (A-48). At no time from July of 2010 through the date of confirmation (December 23, 2011) did the Appellee take any action with the Court to contest the foreclosure proceeding. (A-3 and 4). At no time from January 15, 2012 through August 23, 2012 did the guardian take any action, other than being appointed guardian, with the

Court to contest the foreclosure proceedings. (A-3). Neither the Appellee nor her guardian has presented any extraordinary circumstances which would excuse this delay or require the Court to vacate the sale in the interest of justice.

Even if the Court were to find extraordinary circumstances did exist, the Court must still weigh that against the rules of law and practice and the injustice that would result to the non-moving party. In the instant case, the well-established rules of what circumstances give rise to a collateral attack of a sheriff sale subsequent to confirmation have been ignored. In addition, the trial Court erred in finding that the prejudice to the Appellant was "relatively limited." (See transcript, page 9, line 14).

Appellant began this foreclosure proceeding in October of 2008. (A-6). There have not been any payments made on this loan during the foreclosure process. In addition, Appellant voluntarily stayed the first sale as a result of Appellee's allegation that someone was trying to steal her home in July of 2010. (A-48). Appellant then took the property to sale in November of 2011 and the property transferred to the Appellant by deed recorded February 7, 2012. To date, this matter has been pending for over five (5) years. Appellant has incurred the cost of litigation, the cost of sale, the loss of payments and interest and the depreciation in value as the purchaser at sheriff sale.

On June 19, 2012, Appellant filed a writ of possession in the lower Court to gain possession of the property now deeded to appellant. Before that matter could be heard, Appellee filed its motion for a guardian and subsequently, motion to vacate. Now, as a result of the lower Court ruling, the Appellant has lost title to the property and will have to file a first pluries writ of levari facias to request a new sale. This will certainly trigger a motion to vacate the judgment by the Appellee as she, through her attorney and guardian, has already stated she intends to file said motion. (See transcript, page 4, lines 17-22). Appellant is, and will continue to be, highly prejudiced by the continued litigation of this matter. The property remains in litigation, without payment by the Appellee or possession granted to the Appellant to satisfy this now eight (8) year old debt with an unpaid principal balance of one hundred seventy-three thousand, five hundred ninety-nine dollars and seventy-three cents ($173,599.73). The denial of the Appellant's right to possess, market and sell this property to recoup its losses, when the Appellee sat on her rights for over five years (5) is a manifest injustice and highly prejudicial.

The trial Court erred in finding that the prejudice to the Appellant is minimal. In addition, the Court made no finding of extraordinary circumstances which would excuse the Appellee's delay in filing and found no defect in the actions of the Appellant. As such, the ruling of the lower Court should be reversed.

CONCLUSION

It is well settled in Delaware law that confirmation of a sheriff sale acts as a bar to any subsequent attacks on the sale. Over the years, case law has carved out two exceptions to this rule; lack of notice and excusable of delay. The trial Court below did not find that either of these two exceptions existed in the instant case. As such, the ruling of the lower Court should be reversed, confirmation should be affirmed and the Appellant's deed reinstated.

Respectfully Submitted,
Morris Hardwick Schneider

/s/ Lisa R. Hatfield

Lisa R. Hatfield, Esq., Bar ID 4967
Morris |Hardwick |Schneider
100 Commerce Drive, Suite 100
Newark, Delaware 19713

Attorney for Deutsche Bank National Trust Company, as trustee for Morgan Stanley ABS Capital I Inc. Trust 2005-HE2

Plaintiff Below-Appellant

December 7, 2012

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DEUTCHE BANK NATIONAL
TRUST COMPANY, AS TRUSTEE
FOR MORGAN STANLEY ABS
CAPITAL I INC. TRUST 2005-HE2,

Plaintiff,

v. C.A. No. 08L-10-197

NANCY GOLDFEDER c/o
EMIL MIKHAIL, Guardian Ad Litem,

Defendant.

BEFORE: HONORABLE MARY M. JOHNSTON, J.

APPEARANCES:

CHASE N. MILLER, ESQ.
Morris Hardwick Schneider
for the Plaintiff

WILLIAM J. RHODUNDA, JR., ESQ.
Rhodunda & Williams
for the Defendant

HEARING TRANSCRIPT
August 23, 2012

DOMENIC M. VERECHIA, RPR
SUPERIOR COURT OFFICIAL REPORTERS
500 N. King Street, Suite 2609, 2nd Floor
Wilmington, Delaware 19801-3725
(302) 255-0710

August 23, 2012
Courtroom No. 8C
9:10 a.m.

PRESENT:

As noted.

- - - - -

THE COURT: Before we address Kennedy v. Encompass, I have a motion in Deutsche Bank v. Goldfeder.

Is that your motion?

MR. RHODUNDA: Yes, Your Honor.

THE COURT: For whatever reason, it didn't make the calendar, but it was noticed for today. But is there opposition to this motion?

MR. MILLER: Yes, Your Honor. Chase Miller on behalf of the plaintiffs.

THE COURT: Come forward then. And I do have the response to defendant's motion to vacate the sheriff's sale.

MR. RHODUNDA: Good morning, Your Honor.

THE COURT: You may proceed.

MR. RHODUNDA: Your Honor, this is a fairly narrow issue in this matter. It's a motion to vacate the deed, vacate confirmation, and set aside the sale.

Your Honor granted a previous motion appointing a guardian here. In this particular case, there's absolutely no evidence that my client or the guardian received notice prior to the sale, which occurred back in November of 2011.

In addition to that, what the plaintiff is required to do is show reasonable efforts to try and obtain a proper address for the sale. In this particular case, they sent notice of the sale to 1610 North Union Street, which is the address of the property; but it appears it was just done in the rote course of, okay, that's the address, that's where we're going to send the notice. And I say that because the complaint itself back in 2008 that ultimately resulted in a judgment that ultimately resulted in a sale identified a street, an Iris Street address as being her address. And that, in fact, is the address that she lived at primarily over the years of this litigation. She does suffer from severe mental illness, and she didn't always live at Iris Street; but that was the primary address where she lived during those years.

Based on the *Household Bank v. Daniels* case decided by Judge Witham, which requires the plaintiff in this case to make reasonable efforts to ascertain an address, that this motion should be granted.

THE COURT: Now, I'm a little bit confused about the role of the guardian in this case. He had made mortgage payments out of his personal bank account.

MR. RHODUNDA: Well, the guardian in this particular case was a treating physician for Ms. Goldfeder. And he was very sympathetic to her serious mental health issues. He did make payments for her over the years. She did maintain a friendly relationship, like an "acquaintance type trying to be helpful" relationship, because her family did not want to deal with her issues.

So was he there in and out over the years trying to help her out along the way? Yes. There were checks that were provided, a whole stack of checks where he actually paid the mortgage payment. I think, to the extent that the plaintiff wants to raise those issues, they're probably more relevant to, if this motion were to be granted, to a later motion we would file regarding the judgment itself and what the knowledge was about a pending case.

THE COURT: Assuming that I would grant this motion -- we're just going to start all over again, I think.

MR. RHODUNDA: I think what would happen, if you granted the motion, is that the bank would then go through a sales process. We have actually received communications from, I believe, counsel to someone within the bank trying to resolve the matter in some fashion. And so we certainly would like to take advantage of that opportunity to try and find some way to resolve this dispute. There are so many disputes in this case that go back to the original loans. Because this mortgage actually exemplifies all the problems with the mortgages that were given in the mid two thousands.

And it was a Countrywide loan originally. It was an exorbitant rate. It was a loan she never should have taken. And we would argue that it was predatory lending to begin with. So there were a lot of issues that are not before the Court right now that provide the basis, I think, for possibly some resolution with the information that was provided. So at this point certainly, if this motion were granted, it would just call for the sale to reoccur. We would file a motion --

THE COURT: What's the status right now? I'm confused as to who actually owns the property right now. Does the plaintiff own the property?

MR. RHODUNDA: Yes. Well, the plaintiff -- the servicer for the plaintiff is Bank of America. That is another factor that led to a lot of the confusion here. In the plaintiff's response they talk about the property being transferred. The property was transferred from the sheriff to Bank of America as a servicing entity, Georges Bank. But the property has not been resold. In fact, the property still has the possessions of Ms. Goldfeder in it and is quite a disaster in the property.

THE COURT: I can imagine.

MR. RHODUNDA: So essentially there's really no prejudice because the bank, for a variety of reasons, hasn't moved forward for anything on the property because it's just -- even before this litigation came up the bank, I think, has somewhat been forestalled trying to figure out what to do with this mess that's going on on the property. It's certainly not habitable at this point.

THE COURT: I'd like to hear on behalf of the bank.

MR. MILLER: Good morning, Your Honor. Chase Miller on behalf of the plaintiff.

The main issue here for decision is notice of the foreclosure sale which occurred in November of 2011. Notice was sent to the property address because that was the only address that we had for the defendant once the sale came around. We did have knowledge of the 205 Ayre Street address when we filed the complaint. That was listed as her primary address in the records my office received from our client, the plaintiff.

However, in 2010 Ms. Goldfeder filed, who is defendant, she filed a complaint with the Department of Justice alleging that the person appointed her guardian now was attempting to defraud her out of her property, which is the 1610 North Union Street. And the letter from the Department of Justice stated that the 205 Ayre Street was the person who was attempting to defraud her and steal her property's address. We took that as the defendant not living in the property. And county records at the time of sale actually showed 1610 North Union Street as her address based off of where they're sending tax records. And typically, I've noticed that the county records will show a different address than the property address if the person actually has another primary address other than the property.

So we took that information as 1610 North Union Street being her primary address. That was the only address we had on record for her at the time of sale. And we complied with the statutes and sent notice to her last known address.

And the defendant's motion also brings up a 1099 that was sent to the defendant after sale showing that the plaintiff had another address on file. However, nothing has been shown that the plaintiff knew about that address at the time of sale. That 1099 was mailed in January of 2012, was prepared in January of 2012. And it actually states on it that the date of abandonment of the property by defendant is in December of 2012, which is actually after the sheriff's sale date and the same date that the sale confirmed. So there's no knowledge on the plaintiff's part prior to the sheriff's sale that the defendant did not live at 1610 North Union Street.

THE COURT: It appears that the bank has acted in good faith in providing notices and has made attempts to comply with the law with regard to this sheriff's sale. If I were to grant this motion nevertheless, what is the prejudice to the bank?

MR. MILLER: Loss of nine months since the sale of the property. We filed an eviction action for a writ of possession in June of this year, 2012. That action has been stalled by the appointment of the guardian and now the efforts to vacate the sale. So the bank is making efforts to move forward with this property and clean it out and set it for sale to, you know, a new party, but we've just been stalled at this point.

THE COURT: As I said, I think that the bank has acted in good faith, made every effort to comply with the law. Nevertheless, we're dealing with an incompetent person and relatively limited prejudice if I'm granting this motion. Under the circumstances, I am going to grant the motion and the sheriff's sale to be vacated.

MR. RHODUNDA: Thank you, Your Honor.

MR. MILLER: Thank you, Your Honor.

(Whereupon the proceedings concluded at 9:20 a.m.)

STATE OF DELAWARE:

NEW CASTLE COUNTY:

I, Domenic M. Verechia, Official Court Reporter of the Superior Court, State of Delaware, do hereby certify that the foregoing is an accurate transcript of the proceedings had, as reported by me in the Superior Court of the State of Delaware, in and for New Castle County, in the case therein stated, as the same remains of record in the Office of the Prothonotary at Wilmington, Delaware, and that I am neither counsel nor kin to any party or participant in said action nor interested in the outcome thereof.

This certification shall be considered null and void if this transcript is disassembled in any manner by any party without authorization of the signatory below.

WITNESS my hand this 25th day of October, 2012.

/s/ Domenic M. Verechia
Domenic M. Verechia, RPR
Certification No. 162-PS

EFiled: Aug 24 2012 4:07PM EDT
Transaction ID 46093129
Case No. 08L-10-197 MMJ

Filed: Aug 23 2012 11:27AM
Transaction ID 45997470
Case No. 08L-10-197 MMJ

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR MORGAN STANLEY ABS CAPITAL I INC. TRUST 2005-HE2,	)	C.A. No. 08L-10-197 MMJ
	)	Tax Parcel 26-013.30-083
Plaintiff,	)	IN REM ACTION
v.	)	SCI FA SUR MORTGAGE
NANCY GOLDFEDER,	)	MORTGAGE INSTRUMENT NO. 20041103-0119829
Defendant.	)	

ORDER VACATING SHERIFF'S DEED, VACATING
CONFIRMATION AND SETTING ASIDE SHERIFF'S SALE

AND NOW, TO WIT, this 23rd day of August, A.D., 2012;

The Within Motion to Vacate Sheriff's Sale, Vacate Confirmation and Setting Aside Sheriff's Sale having been duly noticed, heard and considered;

IT IS HEREBY ORDERED that

a. The Sheriff's Deed, dated January 25, 2012 and recorded in the Office of Recorder of Deeds in and for New Castle County, Delaware, in Instrument No. 20120207-0006806, is hereby VACATED;

b. Confirmation of the Sheriff's Sale of 1610 N. Union Street, Wilmington, DE 19806, held November 8, 2011 is hereby VACATED and DENIED;

c. The Sheriff's Sale of 1610 N. Union Street, Wilmington, DE 19806, of November 8, 2011, is hereby SET ASIDE.

M. M. Johnston

THE HON. MARY M. JOHNSTON
JUDGE, SUPERIOR COURT

FILED PROTHONOTARY
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