

**THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS**

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COMMERCE BANK, N.A.,	:	CIVIL TRIAL DIVISION
	:	
Appellant/Plaintiff,	:	JUNE TERM, 2004
	:	No. 2042
	:	
v.	:	Superior Court Docket No.
	:	1918 EDA 2007
CLIFFORD LEE Van SYOC	:	
	:	
Appellee/Defendant	:	
_____	:	

OPINION

PROCEDURAL HISTORY

Plaintiff, Commerce Bank, NA appeal from the Findings And Order dated July 3, 2007, which granted the petition of Defendant, Clifford Lee Van Syoc to set aside the April 3, 2007 Sheriff Sale of certain real property located at 220 Locust Street, Unit PH-2-S, Society Hill Towers, Philadelphia, Pennsylvania (hereinafter 220 Locust Street Property).

FACTUAL BACKGROUND

On February 18, 1997, Defendant, Clifford Lee Van Syoc (hereinafter Van Syoc) executed a note to Commerce Bank, NA (hereinafter Plaintiff) in the amount of \$120,000.00 (hereinafter the "Note"). (Plaintiff Proposed Findings of Fact, pg.1). On the same date, Defendant executed in favor of Plaintiff a mortgage to secure the above stated Note in the amount of \$120,000.00 (hereinafter the "Mortgage," which collectively with the "Note," equal the "Loan Documents"). Id. The Mortgage was duly recorded on April

28, 1997 in the office of the Recorder of Deeds of Philadelphia County Mortgage Book JTD 525, Page 547. Id. The Mortgage encumbers real property situated at 220 Locust Street, Unit PH2-S, Philadelphia, Pennsylvania. Id.

Defendant is the mortgagor and real owner of the mortgaged premises. The Loan matured and became payable. However, Defendant failed to pay off the total amount due on the Loan. Id.

Defendant executed a modification to the Mortgage on or about May 14, 2002 and recorded on September 6, 2002 in the Office of the Recorder of Deeds of Philadelphia County at Document ID# 50522879. Id. At 3.

Defendant has not paid off all sums owing pursuant to the Loan Documents as modified. The interest rate on the sums owed by Defendant pursuant to the Loan Documents is 9.125%. Id. Interest, therefore, accrues on such sums at a per diem rate of \$28.07 for each day that the same remain unpaid. Id. Furthermore, pursuant to the Loan Documents, plaintiff is entitled to advanced sums in order to protect its interest in the Mortgaged Premises. Plaintiff was entitled to cost for title searches, court costs, attorney fees and escrow advances (for insurance, taxes and etc.) in addition to unpaid principle, interest and late charges. Id. At 4.

Van Syoc applied for assistance with the Pennsylvania Housing Finance Agency (PHFA), but was denied assistance.

On or about June 21, 2004, plaintiff instituted an action in mortgage foreclosure against Van Syoc pursuant to Pa.R.C.P. 1141 et seq. (hereinafter the Foreclosure Action). Plaintiff commenced the Foreclosure Action with respect to the Mortgaged Premises, as a

result of Defendants failure to make the payments of principal and interest, together with other charges as authorized by the Loan Documents when due. Id.

The action eventually resulted in a Consent Judgment in the amount of \$179,086.26 being entered on October 26, 2006. (See Docket). Consistent with the Consent Judgment, the 220 Locust Street premises was listed for Sheriff's Sale on April 3, 2007. The property was sold on April 3, 2007 for \$415,000.00. Van Syoc subsequently filed his Petition to Set Aside the Sheriff's Sale on April 23, 2007. (See Docket). By Findings & Order dated July 3, 2007 the Court set aside the Sheriff's Sale. (See Docket). Plaintiff subsequently filed their Notice of Appeal on July 26, 2007 and issued the Statement of Matters accordingly.

The sole issue on appeal is whether the trial Court committed an error of law or abused its discretion in setting aside the Sheriff's Sale on the basis of gross inadequacy of the sale price.

LEGAL ANALYSIS

The decision to set aside a Sheriff's Sale is within the sound discretion of the trial Court and the Court's decision will not be reversed on appeal unless there is a clear abuse of discretion. *Fidelity Bank v. Pierson*, 437 Pa. 541, 264 A.2d 682 (1970).

The Court has authority to set aside matters involving Sheriff Sale pursuant to Pa.R.C.P. 3132 which states:

Upon petition of any party in interest before delivery of the personal property or 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.

Plaintiff argues that Van Syoc failed to provide sufficient evidence of gross inadequacy of sale price, which would allow the sheriff's sale to be set aside.

It is clear that Pennsylvania law requires evidence of the actual or estimated value of the property sold in order for the Court to make a determination as to the gross inadequacy of the sale price. *Greater Pittsburgh Business Development Corp. v. Braunstein*, 390 Pa.Super. 454, 568 A.2d 1261 (1989). It has been clearly established that “*gross inadequacy of sale price is sufficient, in itself, for setting aside a sheriff's sale.*” *Capozzi v. Antonoplos*, 414 Pa. 565, 570, 201 A.2d 420 (1964), (citing *Peoples-Pbgh Tr. Co. v. Blickle*, 330 Pa. 398, 199 A. 213 (1938)). (emphasis added).

This Opinion incorporates the Findings & Order of July 3, 2007 (attached as Exhibit A hereto) that Van Syoc has presented sufficient evidence of gross inadequacy of sale price and therefore the Sheriff Sale was properly set aside.

The 220 Locust Street Property is a much sought after Penthouse Unit in the landmark, Society Hill section of East Philadelphia, adjacent to and overlooking the Delaware River. (Findings & Order pg. 2).

Mr. Van Syoc is an attorney and a long-time resident in the building and is familiar with the property values of other similar units and non-Penthouse units. (N.T. dated 6/20/07, pg. 44) Van Syoc testified that the Penthouse Units rarely come on the real estate market and are much sought after when they do. The testimony was uncontradicted and credited by this Court. *Id.* Van Syoc represented that the market value of his Unit was approximately \$700,000.00. (*Id.*, pg. 46).

To further support Mr. Van Syoc's evaluation of the property, he offered an Affidavit of Allan Domb, a Philadelphia realtor with over twenty-five (25) years of

purchase and sales experience in the luxury condominium market. (Defendant's Memorandum of Law In Support Of Reply to Plaintiff's New Matter To Petition To Set Aside Sheriff's Sale, pg. 1). Mr. Domb is personally familiar with Mr. Van Syoc's property because he sold it to him. Id. Mr. Domb stated in his Affidavit that the current fair market value of the property is approximately \$650,000.00.

Lastly, Mr. Van Syoc offered the testimony of an expert on the issue of the fair market value of the property. (Findings & Order, pg.2). Mr. Raymond L. Blau of Raymond Blau Estate Appraisals, LLC was offered to testify as to the fair market value of the 220 Locust Street Property. (N.T. dated 6/20/07, pg. 11-48). Mr. Blau is a certified real estate appraiser in the States of Pennsylvania and Delaware. (N.T., pg. 14). Mr. Blau has been doing appraisals since 1975 and prepares approximately 1500 appraisals a month in the city of Philadelphia. (Id. 14-20). The parties stipulated to Mr. Blau's qualifications as a real estate appraiser for the relevant market. (Id., pg.15).

As a result of his inspection of 220 Locust Street, Mr. Blau did have an opportunity to prepare an appraisal of the property. (Id. pg. 16). After appraising the property, Mr. Blau prepared an expert report (Exhibit P-1) incorporating an inspection and appraisal of the 220 Locust Street Property. (Id.) In his testimony he described the 220 Locust Street property as a penthouse property on the 32nd Floor with panoramic views of the Delaware River and of Penns Landing, which is a developed section of the Philadelphia waterfront. (Id., pg. 17). Taking comparable properties into consideration and the fact that the location of the 220 Locust Street Property was in the prime location of the city's Delaware River waterfront, Blau's opinion was that the fair market value was \$600,000.00. (N.T., pg. 22).

In arriving at his conclusion, Mr. Blau used a market data approach to the valuation of the 220 Locust Street Property in lieu of other methods. (Id., pg. 24). He selected three (3) non-penthouse units. The 220 Locust Street Property has 1253 sq.ft. of living space. Comparables 1,2,3 have 1183 sq.ft, 1183 sq.ft. and 1457 sq.ft. respectively. The market values range from \$574,500.00 to 607,900.00 respectively. According to Mr. Blau, the basic square feet interior space is of primary importance while the interior layout was of lesser importance. Id.

Mr. Blau supported his estimation by his testimony pertaining to the methodology of appraising a property of this nature:

...In order for me to establish an opinion of the value I have to go through researching market data, prior sales, what were market conditions during the prior sales, what were the terms and conditions of those sales, what can that unit be bought for now. Take into consideration there hasn't been a penthouse unit sold in I can't tell you how many years. There are factors such as location within a complex, second floor, 11th floor versus penthouse. There is a certain value for every floor as you go up. There is also a certain value, and it's hard to put a dollar amount on somebody wanting to own the label of penthouse, but there is value in that also.

So I took all this into consideration. I looked at the other condos. I don't like to travel out of the market. I didn't want to go to Dorchester. I didn't want to go to Hopkinson House. I wanted to stay right here. However, in order to establish some square footage indicators and that sort of thing I did take a look at a couple of other buildings with the exception of the Rittenhouse Square area.

I spoke to a condo developer down here who I know very well who has done, I guess they may be on their fifth condo conversion right now to get their opinion on a square footage basis. I also spoke with two appraisers who I have

been working with for over 35 years, Henry Hoffman and Michael Froloff, who I consider my peers, and we sort of all collaborated when they have a specific problem or issue and they'll bounce it off of me, and we sort of have that rapport with each other. And I guess again the time constraints for me to complete this appraisal, I wanted to make sure that I was well prepared or as prepared as I could be....

Based on what I looked at and what I analyzed, I determined that my estimate of the fair market value would be \$600,000 if this property were marketed within a reasonable period of time under the definition of market value. (N.T., pg. 21-23).

Mr. Blau also further explained the necessity for valuation of the property based on comparable unit analysis:

We try first to utilize what we would considered paired sales, and that would mean it would be nice if I got three identical apples. Just we don't live in that kind of world. So I have to work harder for my money and dig and then make adjustments for what I believe based on the sales of other units what a proven buyer would pay to own a penthouse as opposed to the 11th floor, to own a penthouse that faces north and east as opposed to a penthouse that would face west and look at the rooftops of buildings straight through West Philadelphia into Cobbs Creek... (N.T. pg. 26).

Mr. Blau found that the prices in condominium market in Center City were dictated not by the number of bedrooms, rather than by the square footage of the unit. *Id.* He explained that the price is also based on desirability of the property, which is dictated also by its location and the fact that it is a penthouse. (*Id.*, pg.26). Therefore, Mr. Blau's testimony regarding his appraisal of the 220 Locust Street property, given its location, square footage, the fact that it was a penthouse property and its views, sufficiently establishes its fair market value of at least \$600,000.

Taken into consideration all three estimates of the owner, Mr. Domb and Mr. Blau, all of which were uncontradicted, this Court conservatively found the fair market value of the 220 Locust Street Property to be \$625,000.00. The Sheriff Sale price was \$415,000.00. This presents a discount of 33.6% off the market value. Taking into consideration some discount off the market value due to distress sale at the sheriff's auction, and the potential costs of evicting the owner, a reduction of \$210,000.00 cannot be reasonably justified.

Therefore, Van Syoc has provided sufficient evidence that the Sheriff Sale price of \$415,000.00 was grossly inadequate, which alone, provides ample support for this Court to set the sale aside.

CONCLUSION

Based on the foregoing analysis, this Court respectfully requests that the Findings & Order dated July 3, 2007, which set aside the Sheriff Sale of the 220 Locust Street property, be affirmed by the Court above.

BY THE COURT:

1-14-2008

Date

ALLAN L. TERESHKO, J.