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THE APPROVAL OF THE COMMITTEE ON OPINIONS

WELLS FARGO BANK,
MINNESOTA, NATIONAL
ASSOCIATION, as Trustee for the
registered Holders of Merrill Lynch
Bank USA, Mortgage Pass-Through
Certificates Series 2001-A,

Plaintiff(s)

v.

PHILIP R. TAMIS, CYNTHIA
TAMIS, COMMERCE BANK
NORTH, VALERIE TAMIS MARIER,
PAULA S. GOULD, DDS, JP
MORGAN CHASE BANK, LEAF
SALTZMAN MANGANELLI
TENER, LLP, UNITED STATES OF
AMERICA, STATE OF NEW
JERSEY,

Defendant(s)

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION

BERGEN COUNTY

DOCKET No. BER-F-20770-04

CIVIL ACTION

OPINION

Argued: September 7, 2007

Decided: September 7th, 2007
Honorable Peter E. Doyne, P.J.S.C.

Scott D. Sherman, Esq. appearing for Valdimir Palma, Esq. of the law firm of Phelan Halliman & Schmieg, P.C., on behalf of the Plaintiff, Wells Fargo Bank, Minnesota, National Association, (Minion & Sherman, Esqs.).

Steven S. Polinsky, Esq. and Gerald R. Salerno, Esq. appearing on behalf of 25 Burning Hollow, LLC. (Steven S. Polinsky, Esq. and Aronsohn Weiner & Salerno, P.C.).

Santo J. Bonanno, Esq. appearing on behalf of the Defendants, Philip R. Tamis and Cynthia Tamis. (Santo J. Bonanno, Esq.).

Introduction

Presented is an application made on behalf of the successful bidder at the August 10th, 2007 Sheriff's sale, 25 Burning Hollow, LLC. ("Burning Hollow"), to be relieved from its successful bid. The matter is opposed by counsel on behalf of the plaintiff, Wells Fargo Bank, Minnesota, National Association ("plaintiff" or "Wells Fargo"), and as such, movant requested oral argument. Said request was honored and entertained on September 7th, 2007. On the late afternoon of September 6th, 2007 belated opposition to movant's application was also filed on behalf of Philip R. Tamis and Cynthia Tamis ("Philip" and "Cynthia" when referenced individually, "the Tamises" or "defendants" when referenced collectively). For the reasons that follow the application is granted.

The prior titled owners of the premises located at 25 Burning Hollow Road, Saddle River, New Jersey ("the premises"), were the Tamises.

On July 29th, 2002 the Tamises executed and delivered to Merrill Lynch Credit Corporation ("Merrill Lynch") a promissory note in the sum of \$2 million. To secure the loan of these monies from Merrill Lynch, the defendants executed a mortgage on the same date. On April 1st, 2004 the mortgage note went into default due to non-payment and on December 3rd, 2004 plaintiff filed a foreclosure action against the defendants. The plaintiff is the trustee for the registered holders of the Merrill Lynch Bank USA, mortgage pass through certificates series 201A. On April 23rd, 2007 an order of final judgment was entered in favor of the plaintiff in the amount of \$2,403,957.10.

The Sheriff's sale was originally scheduled for June 29th, 2007 and was the subject of two statutory adjournments and the concomitant rescheduling of the sale to August 10th, 2007. On August 8th, 2007 plaintiff's counsel received a correspondence appending a contract of sale for the subject premises from the attorney for the principal of Burning Hollow, Michael Acciardi ("Acciardi"). Acciardi is the sole member of Burning Hollow and a neighbor of the Tamises. Burning Hollow's counsel requested an adjournment of the Sheriff's sale to permit negotiations and a private transaction between the Tamises and Acciardi. Apparently, such a request was denied as the Sheriff's sale was held on August 10th, 2007 and the property sold to Burning Hollow for \$2,625,000. Acciardi asserts at no time prior to or after the sale did he have an opportunity to enter the premises, nor did anyone so enter on his behalf. In fact, Acciardi certifies shortly after the sale he left New Jersey on a family vacation. Acciardi certifies he had asked Philip on two or three occasions prior to the sale whether everything was "okay" inside the premises and was told everything was "fine." Philip denied Acciardi's request to enter the premises due to his wife's purported refusal to allow the same, at least according to Acciardi. Shockingly, it appears the Tamises lived in the premises immediately prior to the sale. At oral argument Tamises' counsel advised only Cynthia resided in the home prior to the sale. By way of Philip's belated certification he contravenes Acciardi's certification characterizing the same as "replete with misrepresentations regarding conversations he [Acciardi] has had with me [Philip] and his knowledge of the condition of my previous house." Philip certifies Acciardi inspected the outside of the home which has glass doors in the front of the house, the study, and the great room. As such, Philip

postulates these doors allow visual inspection of the home's interior. Philip further certifies after Acciardi made his exterior inspection he made inquiry concerning the damage to the ceiling in the study, presumably offered to suggest Acciardi was able and did view the interior of the home. Philip also certifies Acciardi never requested to enter the home, and he never told Acciardi his wife wanted no one to enter therein.

Acciardi certifies on August 15th, 2007, primarily through reports in the media and telephone calls from various individuals, he learned of the "horrible conditions concealed inside the premises." These conditions, also described as "hideous," "catastrophic," and "frightening," were the result of numerous uncontrolled and unfed cats and dogs located within the premises. Suffice it to say, the condition of the premises as well as the unfortunate condition of the animals, has received extensive notoriety in various media outlets. One report from the local newspaper, The Record, reported animal welfare workers removed 23 dead dogs and cats and rescued in excess of 113 others from the Saddle River home owned by the Tamises. The dogs and cats rescued alive were purportedly in deplorable condition, covered in feces and urine. By way of his reply, Acciardi certifies 142 cats have been removed and the removal is continuing. According to Acciardi, and not contraverted by the plaintiff, the premises had extensive and extraordinary accumulations of animal feces and urine throughout the home, as well as extensive damage to the premises apparently caused by the various animals. By way of his reply certification Acciardi certifies he entered the premises subsequent to the sale and found the odor to be "overwhelming" such that there was a need to wear a mask to enter the premises. He describes, in some detail, the interior as being "entirely

destroyed.” Officials of the Borough of Saddle River, and possibly other agencies, have inspected the premises and have determined the same are unsafe for human occupancy and numerous code violations exist. Various animal cruelty charges have been filed against both Cynthia and Phillip.

On August 14th, 2007 the Saddle River Police, after responding to the premises, notified the Saddle River building official who apparently inspected the premises on the same date. On the following day the official issued a Notice of Unsafe Structure deeming the structure “an unsafe condition” due to “animal feces and carcasses” which structure must be “demolished or rehabilitated.” The Tamises were ordered to demolish the structure by August 14th, 2007 or correct the unsafe conditions by no later than August 16th, 2007. The failure to correct the unsafe condition or refusal to comply with the order could result in penalties up to \$2,000 per week per violation. On August 15th, 2007 a Notice and Order of Penalty was issued by the Saddle River construction code official finding a violation as the premises had been occupied without a Certificate of Occupancy ever being issued. The Tamises were ordered to pay a penalty in the amount of \$2,000 and if the violation remained after August 16th, 2007 an additional penalty of \$2,000 per week would result.

The brief in support of the application asserts videos have shown workers entering the premises “in hazmat gear” seeking to rescue the various living animals while also removing a large number of dead animals from the premises. But see R.1:6-6. Acciardi asserts the condition of the premises has led him to believe “the structure cannot be salvaged.” He further opines it is “difficult to believe the building could be adequately

sanitized to permit human habitation.” Albeit a challenge to the competency of these assertions could have been made, but have not been in the papers submitted in opposition. Acciardi asserts as he was “completely unaware of any of the frightening conditions at the premises, “which were not apparent from the outside of the building,” he was “surprised” and, premised upon the same, seeks to be relieved of his successful bid.

By way of its reply submission Burning Hollow submits a letter and report issued by Richard D. Perez, Executive Vice-President, North Jersey Public Adjusters, Inc. (“Perez”). By way of Perez’ letter to Acciardi dated August 30th, 2007, premised upon his physical inspection made on the date of his letter, Perez advised “in the 27 years [as an insurance adjuster] I have never seen a home or location more discussing [sic] or horrendous. ...Due to the deplorable conditions I cannot be sure if it is even possible to get a demolition crew into the location to work safely.” By way of his damage and condition report Perez estimates the total cost to repair the home would be \$2,250,000 comprised of \$1,925,000 for repair costs and \$325,000 for demolition costs for parts of the structure. Philip incompetently asserts the costs of clean-up “are grossly exaggerated.” No basis is afforded for that opinion, nor is any factual foundation established which would allow him to so opine competently.

Plaintiff challenges the factual assertion by Acciardi of lack of knowledge of the condition of the premises as Acciardi had been negotiating directly with the mortgagors to try to buy the property prior to the Sheriff’s sale. Premised upon the same, plaintiff’s counsel asserts “it is a [sic] reasonable to conclude Mr. Acciardi had or should have had actual notice, [sic] of the condition of the property, and therefore Mr. Acciardi suffered

no surprise following his successful bid on the property at the Sheriff's sale." (Plaintiff's brief in opposition dated August 30th, 2007, page 2). Plaintiff also wishes to assert Acciardi had a "reasonable opportunity to investigate and research, both during negotiations with Defendants and prior to placing his successful bid at the Sheriff's sale," and accordingly urges the court find a lack of surprise.

Plaintiff has not requested a plenary hearing.

Analysis

R. 4:65 addresses, generally, the Sheriff's sale of real estate. More particularly, R. 4:65-5 addresses the Sheriff's sale and objections thereto. The rule provides as follows:

A sheriff who is authorized or ordered to sell real estate shall deliver a good and sufficient conveyance in pursuance of the sale unless a motion for the hearing of an objection to the sale is served within ten days after the sale or at any time thereafter before the delivery of the conveyance. Notice of the motion shall be given to all persons in interest, and the motion shall be made returnable not later than twenty days after the sale, unless the court otherwise orders. On the motion, the court may summarily dispose of the objections; and if it approves the sale and is satisfied that the real estate was sold at its highest and best price at the time of the sale, it may confirm the sale is valid and effectual and direct the sheriff to deliver a conveyance as aforesaid.

No objections have been presented as to the timing of the application.

Generally, the ancient doctrine of caveat emptor applies to judicial sales. Campbell v. Parker, 59 N.J. Equity, 342 (E&A 1900). That said, it is beyond peradventure the court has authority to set aside the sale's result and relieve a successful bidder from its bid. See, e.g., Karel v. Davis, 122 N.J. Equity 526 (E&A 1937). This

power to set aside a sale is warranted “when there is an independent ground for equitable relief, such as fraud, accident, surprise, irregularity in the sale, and the like, making confirmation inequitable and unjust to one or more of the parties.” Crane v. Bielski, 15 N.J. 342, 346 (1954) (citing Karel, supra).

Here, movant asserts “surprise” as to the conditions concealed within the premises which are asserted to only have been discovered after the sale. Acciardi understandably asserts, by way of his counsel, no reasonable person would bid in excess of \$2.5 million for a property as afflicted with the abhorrent conditions as herein presented.

Surprisingly, there is a dearth of authority exploring “surprise” in the context presented. That, though, is not an insurmountable obstacle in light of the factual construct presented. If this instance does not constitute “surprise” it is difficult to imagine what circumstances would.

The plaintiff urges, although not with fervency, the doctrine of “equitable conversion” is applicable and, as such, Burning Hollow acquired all rights and liabilities of ownership by virtue of possessing equitable title to the premises. See Cropper v. Brown, 76 N.J. Eq. 406 (Chan. Court 1909). In the Cropper matter the Chancery court denied a successful bidder’s application to vacate a sale where buildings on the premises were destroyed by fire following the sale, but before the sheriff’s conveyance [emphasis supplied]. That determination was premised upon the lack of distinction in principles to be applied concerning parties to a judicial sale and other similar sales voluntarily made between parties. That, though, can serve as no solace for the plaintiff. Here, it is beyond peradventure the deplorable conditions must have existed prior to the sale.

As Burning Hollow has demonstrated, unequivocally, its “surprise” as to the condition of the premises, Burning Hollow is relieved of its bid. The plaintiff’s informal application to use Burning Hollow’s deposit to pay costs associated with another Sheriff’s sale and to hold the deposit should there be any deficiency is denied as being procedurally infirmed, R.1:6-2(a), and substantively lacking in any support.

Movant’s counsel shall prepare and submit the appropriate order pursuant to the five day rule.