

Bankers Trust Company v. Gonzalez, No. A.D. 1996-57

Petition granted for liquidated damages under Deficiency Judgment Act, 42 Pa.C.S.A. sections 8103 and 8104; creditor/purchaser in *in rem* mortgage foreclosure action must mark the judgment satisfied even though the judgment has been extinguished and the debtor cannot be pursued personally on the judgment debt.

1. The Deficiency Judgment Act was designed to shield a debtor whose real property has been foreclosed upon from additional personal liability where the property has been sold at a sheriff's sale for an amount less than the judgment debt.
2. If the sheriff's sale proceeds are insufficient to satisfy the amount of the debt, the Act requires the creditor/purchaser to file a petition to fix the fair market value within six months after the deed is delivered in order for it to proceed against the debtor for the remainder of the judgment debt. 42 Pa.C.S.A. section 8103(a).
3. If the creditor/purchaser does not file the six-month petition, an irrebuttable presumption arises that it was paid in full and the judgment is extinguished; the debtor may then petition the court to have the judgment marked satisfied. 42 Pa.C.S.A. section 8103(d).
4. A mortgage foreclosure action is an *in rem* action and does not impose personal liability on the mortgagor against whom the judgment is obtained; a mortgagee who obtains a judgment in mortgage foreclosure and is the purchaser of the real estate at a sheriff's sale can recover the deficiency only if it also obtains a personal judgment against the mortgagor/debtor on the mortgage note or bond and files petition to fix the property's fair market value within six months of the sale.
5. Where the creditor/purchaser does not file an action on the mortgage note or bond, but obtains an *in rem* judgment only, and does not file the six-month petition under section 8103(a), the creditor/purchaser must mark the judgment satisfied even though the judgment has been extinguished and the debtor cannot be pursued personally for the deficiency. 42 Pa.C.S.A. section 8104(a); *First National Consumer Discount Company v. Fetherman*, 527 A.2d 100 (Pa.1987).
6. Once the mortgagor/debtor makes a written request of the creditor/purchaser to mark the judgment satisfied and tenders the necessary filing fee, failure to so mark the *in rem* judgment satisfied within thirty days exposes the creditor/purchaser to a claim in liquidated damages of 1% of the original amount of the judgment for each day beyond thirty days. 42 Pa.C.S.A. section 8104(b).

Daniel J. Birsic, Esquire, Counsel for Plaintiff
Timothy W. Misner, Esquire, Counsel for Defendant

OPINION and ORDER OF COURT

Herman, J., March 9, 1998:

FACTUAL BACKGROUND

SPECIAL NOTICE

TO: MEMBERS OF FRANKLIN COUNTY BAR
ASSOCIATION

You are cordially invited to a ceremony for admission of new members to the practice of law in Franklin County on Monday March 30, 1998 at 9:00 a.m. in Courtroom #1 at the Franklin County Courthouse.

We shall welcome the following new members:

Laurri C. Boyler, Esq.
Patrick J. Casey, Esq.
Michael W. Davis, Esq.
Norma J. Lukacs, Esq.
Steven J. Kohler, Esq.
Kendra D. McGuire, Esq.
Larry K. Meminger, Esq.
Eric J. Weisbrod, Esq.
Melanie A. Zampini, Esq.
Heather L. Zeger, Esq.

Following the ceremony, you are invited to a reception for new members in the Jury Assembly Room where refreshments will be served

This action concerns the application of the Deficiency Judgment Act, 42 Pa.C.S. 8103 *et seq.* The plaintiff Bankers Trust Company filed a complaint in mortgage foreclosure against the defendants Ariel Gonzalez and Miriam Gonzalez. The plaintiff foreclosed on a mortgage securing real estate located at 1714 Highland Terrace in Waynesboro, Franklin County. Judgment was entered on February 20, 1996 for the plaintiff and against the defendants for \$85,930.90. The plaintiff purchased the real estate at a sheriff's execution sale on August 9, 1996 for \$1,341.42.

By letter dated March 24, 1997 counsel for the defendants requested the plaintiff to mark the judgment satisfied of record and tendered the filing fee. Defendants' counsel sent another letter dated April 30, 1997 requesting the plaintiff to satisfy the judgment by May 9, 1997. The plaintiff responded by letter dated May 6, 1997 that the judgment executed on at the sheriff's sale did not need to be marked as satisfied. "Bankers Trust Company is under absolutely no obligation to satisfy a judgment in mortgage foreclosure after it has been taken to sheriff's sale." (Exhibit C attached to the defendants' petition). The defendants filed a petition on May 22, 1997 to mark the judgment satisfied under 42 Pa.C.S. section 8103(d) and also made a claim for liquidated damages under 42 Pa.C.S. section 8104. On June 10, 1997, the plaintiff marked the judgment satisfied and filed an answer to the petition. Argument was held and the matter is ready for decision.

DISCUSSION

Section 8103 of the Deficiency Judgment Act was designed to shield a judgment debtor whose real property has been foreclosed upon from additional personal liability where the property has been sold at a sheriff's sale for an amount less than the judgment debt. *Cheltenham Federal Savings and Loan Association v. Pocono Sky Enterprises, Inc.*, 451 A.2d 744 (Pa.Super. 1982); *First Pennsylvania Bank v. Lancaster County Tax Claim Bureau*, 470 A.2d 938 (Pa.1983). If the sheriff's sale proceeds are insufficient to satisfy the amount of the judgment debt, the Act requires the creditor/purchaser to file a petition to fix the fair market value within six months after the deed is delivered in order for it to proceed against the debtor for the remainder of the debt. If the creditor/purchaser does not file a timely petition, an irrebuttable presumption is created

that the creditor/purchaser was paid in full. The debtor may then petition the court to have the judgment marked satisfied and discharged. 42 Pa.C.S. section 8103; *Citicorp Mortgage Inc. v. Morrisville*, 690 A.2d 723 (Pa.Super. 1997).¹

Because the plaintiff did not file a petition to fix the fair market value within six months of the delivery of the sheriff's deed, the judgment is presumed to have been fully satisfied. The plaintiff does not dispute that section 8103(d) demands this result. The dispute is whether the plaintiff was thereafter obligated under section 8104(a) to mark the judgment satisfied within thirty days of receipt of the defendants' written request and tender of the filing fee. The defendants contend the plaintiff's failure to do so entitles them to liquidated damages under section 8104(b).²

It has long been held that a deficiency judgment cannot be obtained in a mortgage foreclosure action because that type of judgment is *in rem* and does not impose any personal liability on the mortgagor against whom the judgment is obtained. A mortgagee who obtains a judgment in mortgage foreclosure and is the purchaser of the real estate at a sheriff's sale can recover the deficiency only if it

¹Section 8103(a): *General rule.*- Whenever any real property is sold...to the judgment creditor in execution proceedings and the price for which such property has been sold is not sufficient to satisfy the amount of the judgment, interest and costs and the judgment creditor seeks to collect the balance due...the judgment creditor shall petition the court having jurisdiction to fix the fair market value of the real property sold...

Section 8103(d): *Action in absence of petition.*-If the judgment creditor shall fail to present a petition to fix the fair market value of the real property sold within [six months] after the sale...the debtor...may file a petition...setting forth the fact of the sale, and that no petition has been filed within [six months] after the sale...whereupon the court...shall direct the clerk to mark the judgment satisfied, released and discharged.

²Section 8104(a): *General rule.*- A judgment creditor who has received satisfaction of any judgment in any tribunal of this Commonwealth shall, at the written request of the judgment debtor, or of anyone interested therein, and tender of the fee for entry of satisfaction, enter satisfaction in the office of the clerk of the court where such judgment is outstanding, which satisfaction shall forever discharge the judgment.

Section 8104(b): *Liquidated damages.*- A judgment creditor who shall fail or refuse for more than 30 days after written notice in the manner prescribed by general rules to comply with a request pursuant to subsection (a) shall pay to the judgment debtor as liquidated damages 1% of the original amount of the judgment for each day of delinquency beyond such 30 days...

also obtains a personal judgment against the mortgagor/debtor on the mortgage note or bond and files a petition to fix the property's fair market value within six months of the sale. *Insilco Corporation v. Rayburn*, 543 A.2d 120 (Pa.Super. 1988); *Valley Trust Company of Palmyra v. Lapitsky*, 488 A.2d 608 (Pa.Super. 1985). Where the judgment imposes no personal liability on the mortgagor/debtor and the debt has been discharged by operation of law, the judgment creditor has no obligation under section 8103(d) to take additional action on the matter. Rather, it is up to the mortgagor/debtor to petition the court to mark the judgment satisfied, released and discharged. It is the defendants' leap from section 8103(d) to section 8104(b) which the plaintiff maintains is unwarranted.

Citing *First National Consumer Discount Company v. Fetherman*, 527 A.2d 100 (Pa.1987), the defendants contend the plaintiff's failure to mark the judgment satisfied entitles them to liquidated damages. In that case, First National held a lien against two separate parcels of the Fethermans' property under a mortgage and note. When the Fethermans defaulted on the note, First National obtained a judgment pursuant to a mortgage foreclosure action. One of the parcels was sold at a sheriff's execution sale to First National for a sum less than the judgment amount. First National did not file the six-month petition to fix the sold parcel's fair market value and later argued that because the sale price was insufficient to satisfy the judgment, it was entitled to pursue the Fethermans for the deficiency. The court disagreed and found that under section 8103(d), there was an irrebuttable presumption that the judgment had been satisfied in full. The court stated:

We hold that where a judgment creditor purchases the debtor's real estate at a sheriff's sale and then fails to petition to fix the fair market value of that real estate within the statutory time limitation, the judgment creditor is deemed to have received full satisfaction in kind of the underlying debt obligation. Further, at the written request of the judgment debtor and the tender of the fee for satisfaction, the judgment creditor has the duty to have the judgment marked satisfied of record. Where the judgment creditor fails to do so for more than thirty days after receiving such notice, the judgment creditor is liable for liquidated damages pursuant to Section 8104(b). In a proceeding to recover liquidated damages, the judgment

creditor will not be heard to say that he did not received full satisfaction.

Id. at 105. This approach was followed in *Fidelity Federal Savings and Loan Association v. Capponi*, 684 A.2d 580 (Pa.Super. 1996).

Fetherman provides no reasoning and no authority for its conclusion that a mortgagor/debtor who has already been fully discharged under section 8103(d) is also entitled to liquidated damages. That case does not address a situation where a mortgage foreclosure creditor who buys the property chooses not to pursue the mortgagor/debtor personally for the difference between the purchase price and the amount of the judgment. Rather, that court simply repeats, without discussion or analysis, the statement routinely cited in the precedents: that the Deficiency Judgment Act applies with equal force to actions *in rem* as to those *in personam*, and the fact that an action in mortgage foreclosure is *in rem* does not render compliance with the Act unnecessary. *Valley Trust Company of Palmyra v. Lapitsky*, 488 A.2d 608 (Pa.Super. 1985); *Standard Pennsylvania Practice 2d*, section 78:33. However, the proper interpretation of that general proposition when viewed in the context of all relevant precedent and the statutory language is that if a creditor does pursue an *in personam* action against a mortgagor/debtor under the note or bond which usually accompanies a mortgage, the creditor must comply with section 8104(a) once the mortgagor/debtor satisfies the personal debt or be liable for liquidated damages under section 8104(b). It does not mean, however, that a discharged mortgagor/debtor is entitled to liquidated damages where the judgment creditor who was also the mortgagee retains no right to pursue the mortgagor/debtor personally for the deficiency. Once the judgment has been discharged by operation of law under section 8103(d), the discharged mortgagor/debtor is shielded from personal liability because no judgment exists for the creditor to pursue. *Meco Realty Co. v. Burns*, 200 A.2d 869 (Pa.1964).

The purpose of section 8104 is to encourage creditors to remove satisfied judgments from court dockets, to lift liens from debtors' property and allow debtors to repair their credit records. *Hanover Plumbing Supply, Inc. v. Russell*, 680 A.2d 1181 (Pa.Super. 1996). Because the plaintiff chose to pursue only an *in rem* action in mortgage foreclosure and not an *in personam* action, no personal liability was placed on the defendants as judgment

mortgagors/debtors and their personal financial condition was never compromised. Under those circumstances, the defendants should not be permitted to recover liquidated damages.

The plaintiff in the case at bar did not pursue an *in personam* action against the defendants under a note or bond and does not dispute that the judgment was deemed fully satisfied once the six-month period lapsed. The plaintiff was therefore not required to mark the judgment satisfied under section 8104 when that judgment no longer existed as a basis for proceeding *in personam*. *Fetherman* does not explain why a mortgagor/debtor should be allowed to bypass the petition mechanism under section 8103(d) and then claim liquidated damages under section 8104(b). Such an approach ignores the language and core purpose of the Act, and all case authority preceding *Fetherman* which interpreted the Act. This authority indicates that a mortgagor/debtor whose debt has been discharged by operation of law cannot be vulnerable thereafter to *in personam* claims of the judgment creditor on a judgment which has already been extinguished. A mortgagor/debtor allowed to recover liquidated damages pursuant to section 8104(b) under those circumstances would, in essence, be receiving a windfall. Such an outcome would produce an unfair result clearly contrary to the statutory scheme.

Despite the foregoing analysis, we are constrained to follow *Fetherman* and its progeny and award the defendants liquidated damages. Until such time as our Supreme Court revisits its holding and resolves the schism in the law, *Fetherman*, decided in 1987, calls upon the prudent judgment creditor to protect itself from penalties by marking judgments satisfied if the debtor so requests in writing and tenders the necessary filing fee pursuant to section 8104.

For the foregoing reasons, the defendants' petition for liquidated damages will be granted. An appropriate Order of Court will be entered as part of this Opinion.

ORDER OF COURT

NOW this 9th day of March, 1998, the petition filed by Ariel Gonzalez and Miriam Gonzalez for liquidated damages in the amount of \$26,638.61 is GRANTED.

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