

COMMERCE BANK OF CENTRAL FLORIDA V.
PATRICIA S. BROWN, A/K/A PATRICIA A. SELSER,
C.P. Franklin County Branch, A.D. 1994-190

Civil action seeking the setting aside of a sheriff's sale for a "grossly inadequate" selling price and because the manner in which the sale was conducted was conducive to misleading bidders in regards to who was the last bidder was.

1. The court upon proper cause shown, may set aside a sheriff's sale and order a resale.
2. The burden of proving circumstances warranting the exercise of the court's equitable powers is on the applicant.
3. An application to set aside a sheriff's sale may be refused because of the insufficiency of proof to support the material allegations of the application, which are generally required to be established by clear evidence.
4. If a sales price is deemed to be "grossly inadequate", a sheriff's sale can be set aside.
5. "Mere inadequacy" of price in itself does not constitute grounds for setting aside a sheriff's sale.
6. A bid of \$56,000 as compared to an appraised value of \$87,500 is not "grossly inadequate".
7. When the evidence shows that a sale of real property was conducted in such a hasty and obscure manner that one could become easily confused as to who the last bidder was, a resale of that property is warranted.

*J. McDowell Sharpe, Esquire, Counsel for petitioner,
Commerce Bank of Central Florida
Robert C. Schollaert, Esquire, Counsel for respondent, Toni
R. Forrester*

OPINION AND ORDER

Walker, P.J., March 1, 1995

FINDINGS OF FACT

A sheriff's sale was conducted on December 9, 1994 in which the property owned by Patricia S. Brown, a/k/a Patricia A. Selser, located at 819 Long Lane, Chambersburg, Pennsylvania was to be sold. A dispute has arisen as to who placed the final bid prior to this particular property being knocked down by the auctioneer. The auctioneer testified that he knocked the property down to Toni Forrester, but prior to the sheriff's delivery of the deed to Mr. Forrester plaintiff filed a petition to set aside the sheriff's sale. Plaintiff has requested that the court exercise its discretion and set aside the sheriff's sale pursuant to Pa.R.C.P. 3132, which permits a court to set aside a sheriff's sale and order a resale prior to the delivery of the sheriff's deed "upon proper cause shown."

Plaintiff, who is the execution creditor in this matter, was represented at the sale by local counsel, John McDowell Sharpe, Jr. There were several bidders for this particular property which included Mr. Sharpe and Toni R. Forrester. The property in question was knocked down at a bid of fifty-six thousand (\$56,000) dollars. Under the procedure utilized at the time this property was sold, buyers of property were not permitted to settle on the property until all properties were sold. Therefore, any discrepancies concerning who was the last bidder of a property often would not be discovered until after the sale was completed. Such happened in this case; each of these parties believed that they were the purchaser of the property in question.

Upon the property being knocked down and believing himself to be the highest bidder, Mr. Sharpe immediately proceeded to the sheriff's table to settle on the property. Mr. Sharpe arrived at the table before the next property was sold, but was informed by the sheriff that he could not settle on the property until after all the properties had been sold. Mr. Sharpe then returned to his seat until the completion of the sale. Mr. Forrester, also believing himself to be the highest bidder, proceeded to the sheriff's table to settle on the

property. Mr. Forrester arrived at the table while the second or third sale was in progress. Mr. Forrester was also told that settlement would occur after all the properties had been sold. Sheriff Wollyung testified that he assumed Mr. Sharpe was the highest bidder on the first property and that Mr. Forrester was the highest bidder on a subsequent property as Mr. Forrester approached the table while a subsequent sale was in progress.

It was not till after the sale was completed that anyone was aware of any discrepancy as to who the highest bidder of the property in question was. Therefore, the property could not have been put back up for sale. The auctioneer, Marvin Amsley, left the auction and was called back and identified Mr. Forrester as the highest bidder.

Several people testified as to what occurred at the sale that day. Mr. Sharpe testified that he has been to sheriff's sales in the past and knows generally how they are conducted. Mr. Sharpe testified that in this case he was prepared to bid on the property up to \$100,000 more or less. He also testified that the bidding and calling went fast and that he believed that when the auctioneer was looking at him on the bid, he had bought it. No other method of delineating the buyer was used, such as pointing or calling out a name.

Timothy Misner, a local attorney, was also at the sale when the property in question was sold. He testified that he always sits in the front of the room off to the side because there have been similar problems in the past. Mr. Misner observed the sales which were carried out that day and recalled that they were conducted in a fast manner which was normal; all eight properties were sold in ten minutes or less. Mr. Misner testified that he had no trouble following the bidding and that there were no protests about the speed of the sales made that day. Mr. Misner further testified that Mr. Amsley's normal practice was to look at a bidder and then say "sold."

George Wenger, a partner in Mr. Sharpe's law firm, was also at the sale that day, as he took care of matters

concerning the property in question while Mr. Sharpe was away. Mr. Wenger testified that Mr. Forrester knew that the property would be sold in the \$100,000 range as he had inquired about the property when Mr. Wenger was handling the matter. Mr. Wenger also noticed that the sales were conducted in a rapid manner as there was less than a minute between the first bid and being sold. Mr. Wenger testified that he did not see any action on the part of the auctioneer which would identify the buyer of the property. He recalled that he did not know who the bidder was when Mr. Amsley said, "56, 56, sold."

Marvin Amsley, the auctioneer, testified that he knocked the property down to Mr. Forrester with the words, "sold to the gentleman in the back" while gesturing towards the back with the sale bill. Mr. Amsley testified that he looked to Mr. Sharpe for a bid of \$57,000 but that Mr. Sharpe turned his head. Mr. Amsley also testified that he was not aware of the appraised value of the property at the time of the sale, and that he would not be surprised that a property appraised at \$87,000 would be sold for \$56,000.

James Reed, a local attorney, was also at the sale in which the property in question was sold. He testified that the bidding was fast that day and that he only paid attention when the bidding got "hot." Mr. Reed testified that he sat next to Mr. Forrester while Mr. Forrester was bidding and believed that Mr. Forester was the highest bidder. Mr. Reed observed the auctioneer looking at someone in the front of the room when saying "56, 56" and then motioned towards the back and said "sold."

Toni Forrester testified that he had no problem following the bidding that day. Mr. Forrester testified that he stood up immediately following the knock down and proceeded to the sheriff's table to settle on the property. He was then told to wait till the sale was over to settle. After he learned there was a dispute as to who was the highest bidder for the property in question, Mr. Forrester testified that he was upset and returned to work but returned to the courthouse and

made a deposit on the property as required. This deposit remains in the custody of the sheriff.

Sheriff Wollyung testified that he assumed Mr. Sharpe was the highest bidder of the property in question because he approached the table first and before the second property was sold. He further testified that he assumed that Mr. Forrester had purchased a subsequent property as he reached the table during the selling of a subsequent property. The sheriff testified that if he had known of the discrepancy sooner he would have reopened the bidding and was going to do so until Mr. Amsley identified Mr. Forrester as the high bidder.

DISCUSSION

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. Pa.R.C.P. 3132.

Plaintiff has asked this court to set aside the sheriff's sale for two reasons:

1. The sales price was grossly inadequate all the circumstances.
2. The manner in which the bidding was conducted by the auctioneer led to a situation in which the executing creditor was misled into believing he had made the last bid and denied the opportunity to realize more fully on its judgment.

As a general rule, the burden of proving circumstances warranting the exercise of the court's equitable powers is on the applicant, and the application to set aside a sheriff's sale may be refused because of the insufficiency of proof to support the material allegations of the application, which are generally required to be established by clear evidence. *Bornman v. Gordon*, 363 Pa.Super. 607, 611, 527 A.2d 109, 111 (1987) alloc. den. 538 A.2d 874.

It is true that if a sales price is deemed to be "grossly inadequate," a sheriff's sale can be set aside. *Capozzi v. Antonopolos*, 414 Pa. 565, 201 A.2d 420 (1964). However, "mere inadequacy" of a price in itself does not constitute grounds for setting aside a sheriff's sale. *Continental Bank v.*

Frank, 343 Pa.Super. 477, 495 A.2d 565 (1985). The question remains, however, as to what constitutes "grossly inadequate." The court has reviewed the case law in this area and believes that even if the bidding price was inadequate, a bid of \$56,000 is not grossly inadequate as compared to the appraised value of \$87,500.

Plaintiff further argues that the bidding process was hasty and unfair because the manner in which the auctioneer conducted the sale led Mr. Sharpe to believe that he was the highest bidder rather than Mr. Forrester. Upon reviewing the testimony at the hearing, it is evident to this court that the sale was in deed conducted in such a hasty manner that one could become easily confused as to who the last bidder actually was, and the sale of all eight properties took ten minutes or less to sell. In fact, one local attorney has made it a point to set himself aside from others so that he might avoid such a misunderstanding.

It is important to note that those who attended the sale observed that the auctioneer failed to identify the last bidder prior to knocking the property down to that bidder other than eye contact. It is also telling that changes have since been made concerning the manner in which sheriff's sales are conducted in order to alleviate problems such as that which occurred in this case.

CONCLUSION

The court is of the opinion that it is just and proper to order a resale of the property located at 819 Long Lane, Chambersburg, Pennsylvania. Although plaintiff has not shown a grossly inadequate selling price of the property, the sale was carried out in such a speedy and obscure manner as to warrant a resale. The court directs that the sale be set aside and the sheriff list the property for sale at the next scheduled sheriff's sale. The court recognizes that this situation was created due to no fault of either party. Therefore, this court will exercise its equitable powers and direct that a lien be created against the property in the amount of five hundred forty-four (\$544) dollars for attorney

fees and the amount of interest paid on the home equity to the date of this order. This lien will have priority over Commerce Bank of Central Florida's lien.

ORDER OF COURT

March 1, 1995, the court directs the sheriff to return to Toni Forrester the deposit placed in his possession on December 6, 1994 on the date of this order or as shortly thereafter as is possible.

The court directs that the sale be set aside and the sheriff list the property for sale at the next scheduled sheriff's sale.

The court further directs that a lien be created against the property in the amount of five hundred forty-four (\$544) dollars for attorney fees and the amount of interest on the home equity to the date of this order. This lien will have priority over Commerce Bank of Central Florida's lien.

WHAT'S A FOUR LETTER
WORD FOR RECOVERY?

Hope
Life
Help
Love
Home
Work

If someone you
care about has a
problem with
alcohol or other
drugs, maybe we
can help.

Alcoholism/
addiction is a
treatable disease.
No lawyer has to be
disbarred.
No lawyer has to
die from it.

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