

Orrstown v. Riley

ORRSTOWN BANK, AN INCORPORATED FINANCIAL INSTITUTION, v. DELBERT S. RILEY
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 2003-501

Petition to Set Aside a Sheriff's Sale; Discretion of Trial Court; Burden of Proof on Proponent

1. The determination to set aside a sheriff's sale is within the sound discretion of the trial court and invokes the equitable power of a court.
2. Pursuant to Pa.R.Civ. P. 3132, "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."
3. The burden of proof rests upon the proponent of the petition to show by clear and convincing evidence that the circumstances warrant relief.
4. Courts have entertained petitions and granted relief where the validity of sale proceedings is challenged, where a deficiency pertaining to the notice of the sale exists, or where misconduct occurs in the bidding process.
5. Where the Defendant failed to establish that setting aside the sheriff's sale would be just and proper under the circumstances mainly due to the Defendant's inactivity and cavalier attitude during the entire foreclosure process, the Petition to Set Aside the Sheriff's Sale was denied.

Appearances:

David A. Baric, Esq., *Attorney for Plaintiff*

Craig A. Diehl, Esq., *Attorney for Defendant*

Donald L. Kornfield, Esq., *Attorney for Interveners*

OPINION

Van Horn, J., July 31, 2006

Statement of the Case

This matter is currently before the Court as a result of the Defendant's Petition to Set Aside Sheriff's Sale. Since the history of this case was extensively summarized in the prior Opinion and Order of Court of May 31, 2006, the Court will defer to this previous Opinion for the factual background of this case.

A hearing on the Defendant's Petition to Set Aside Sheriff's Sale occurred on June 5, 2006. After carefully reviewing the memorandum briefs submitted by counsel and the entire record in this matter, the matter is ready for decision.

Discussion

Petition to Set Aside Sheriff's Sale Generally

The determination to set aside a sheriff's sale is within the sound discretion of the trial court and invokes the equitable power of a court. Pursuant to Pa.R.Civ.P. 3132, "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." The burden of proof rests upon the proponent of the petition to show by clear and convincing evidence that the circumstances warrant relief. Jefferson Bank v. Newton Associates, 686 A.2d 834, 838 (Pa. Super. 1996). Courts have entertained petitions and granted relief where the validity of sale proceedings is challenged, where a deficiency pertaining to the notice of the sale

exists, or where misconduct occurs in the bidding process. National Penn Bank v. Shaffer, 672 A.2d 326 (Pa. Super. 1996). Again, the burden of proving these circumstances, which warrant the exercise of judicial discretion, is on the Petitioner, 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." Id. at 329.

Summary of Defendant's Position in Support of Granting Petition

In support of his position, the Defendant urges the Court to look at the totality of the evidence and believes that, if done, the evidence provides the equitable basis to set aside the sheriff's sale. First, he most notably contends that the Plaintiff exhibited "outright misrepresentations and misleading behavior" > [1] during the mortgage foreclosure proceedings. The Defendant, along with other witnesses, testified that representatives from the Bank misled him to believe that he was not behind on any mortgage payments and reimbursement of attorney fees would not be needed. Overall, the Defendant claims that he was led to believe that the sale would not occur as scheduled because the account was current. Second, the Defendant states that the Praecipe for Writ of Execution was inaccurate in that the interest figure and per diem amount were both incorrect, and the Defendant believes these inaccuracies should result in setting aside the sale. Third, during the process of the foreclosure, the Bank instituted an Assignment of Rents, and therefore, the tenants of the property were forwarding mortgage payments directly to the Bank each month. The Defendant believes that this establishes a contract between the Bank and the Defendant, and therefore, since new notices of any further defaults were required but not given, the sheriff sale was inappropriate. The combination of these three factors, along with other side issues, serves as the basis for the Defendant's belief that there are adequate grounds for setting aside the sheriff's sale in this case. Therefore, the Defendant pleads to the equitable powers of the Court and requests the petition be granted.

Summary of Plaintiff's Position in Opposition of Granting Petition

As for the Plaintiff's position, the Bank clearly believes that the Defendant did not put forth clear and convincing evidence of circumstances that warrant the requested relief. In the Plaintiff's letter memorandum, the Bank lists the following as grounds for which this Commonwealth recognizes as valid grounds to grant this type of petition:[2]

1. Challenge to the Validity of Sale Proceeding
2. Deficiency in Notice of the Sale
3. Misconduct in the Bidding
4. Interference with Potential Bidders by the Party Forcing the Sale
5. Irregularities at the Sale
6. Gross Inadequacy of the Sale Price

With the Defendant failing to provide clear and convincing evidence of any of the above, the Plaintiff avers that granting the Petition would be inappropriate in this matter.

Court's Analysis and Decision

As stated above, the relevant inquiry for determining whether a sheriff's sale should be set aside is whether "proper cause" was shown and the burden to show circumstances warranting said relief lies with the petitioner. Pa.R.Civ.P. 3132. Therefore, this Court thoroughly examined the facts and circumstances of this case, and the Court determines that the Defendant did not meet his burden to establish that setting aside the sheriff's sale would be just and proper in this case.

First, the Defendant, by his own testimony, is a sophisticated businessman who was fully aware of the ramifications associated with defaulting on a mortgage obligation. Though he contends that he did not believe that the sheriff's sale would come to actual fruition due to the representations made by the Bank, the Court was not convinced. The mortgage on the Defendant's property first came into default in November 2002, and a mortgage complaint was filed thereafter on March 3, 2003. Over the next two (2) years, the Defendant stalled the proceedings by filing two bankruptcy actions, defaulted on subsequent agreements with the bank to cure the default, and failed to maintain consistent insurance coverage on the

property. After a frustrating and long delay, the Bank finally filed a writ of execution and listed the property for a sale. Throughout this whole process, the Defendant and Bank were in full communication, the Bank sent all of the requisite notices to the Plaintiff, and the Sheriff placed notices regarding the upcoming sheriff's sale at the subject property. This Court refuses to award relief solely due to the Defendant's mistaken belief that the sale would not occur and will not relieve this party from consequences that are due to his own ignorance and lack of responsibility for his obligations to the Bank.

Second, the Defendant puts forth the assertion that the Bank made fraudulent misrepresentations, and thus, circumstances warrant granting his Petition. As per the established precedent in this Commonwealth, the party claiming fraud must establish the six (6) distinct elements of fraud by clear and convincing evidence.[3] The Court does not find that this Defendant fulfilled this burden. The Defendant solely argues that the bank did not request a need to reimburse attorney fees, and the Bank falsely told him that the only outstanding issue was homeowners insurance. When said insurance was obtained, the Defendant was then under the false impression that his total default was cured and the sale would be therefore canceled. This Court is somewhat confused as to the Defendant's assertion that he was unaware of past due attorney fees. The Defendant testified and identified a letter, dated January 6, 2004, where he demanded a specified statement that would itemize all of the charges. [4] If he was not aware of any fees as he represents to this Court, this request surely would not have been made. Overall, the Court finds that this argument of fraud lacks specific proof of all the needed elements; it stands as a blanket allegation with no evidentiary support. Therefore, fraud was not successfully proven in this case.

Third, the Defendant's statement that "common sense results in the setting aside of the sale" lacks any merit with this Court.[5] He stated that "under almost all mortgage foreclosure proceedings, the Debtor is not going to continue to make all monthly mortgage payments and likewise go out and purchase homeowner's insurance two months prior to a sheriff sale if he knows the property is going to be lost." [6] The mortgage payments were received by way of an Assignment of Rents. The Defendant in this matter did not make any direct payments to the Bank; it was the tenants of the property that were paying the Bank. Furthermore, the Court views the Defendant obtaining insurance as a small effort to keep the Bank satisfied, and it did not cure the ongoing default with the Bank. He only made this step after the bank demanded this step, and the lapse in insurance was yet another default of his mortgage obligation. Therefore, this "debtor" truly did not make mortgage payments and obtain insurance during the months leading up to the sheriff's sale, so "common sense" would not lead this Court to grant the Petition in this case.

Fourth, the Defendant argues that the "Bank's continued acceptance of the monthly mortgage payments created a contract between the parties." [7] With this alleged new contract that was established when the bank accepted post-default judgment payments, the Defendant believes that new notices of any later defaults were required. Since the Bank issued no new notices, the Defendant asserts that the sale was invalid. The Defendant did not provide this Court with any legal authority which states that acceptance of payments after default would create a new contract between the parties. Furthermore, the post-default payments, to which the Defendant refers in his argument, are payments that were only received as part of an Assignment of Rents that started as a result of the Defendant's initial default. Also, though the Bank received monthly payments, the entire amount required to cure the default was never tendered. Written notice would have been required if the default was entirely cured and then there were subsequent breaches of the contract. Therefore, the Court does not find any merit in the contention that these limited payments by the tenants created a need for new notices.

Fifth, there are innocent third parties involved in this case that need to be considered as the Court uses its discretion in determining the fate of this Petition. David L. Moore and Melvin L. Moore purchased the subject property at the sheriff's sale. These two individuals are bona fide purchasers for value; yet, due to the ongoing litigation, they have been unable to take real interest in this property. The fairness to the Moores needs to be considered in this case, and this Court believes their rightfully gained interest weighs heavily against the Defendant.

Finally, with a Petition to Set Aside Sheriff's Sale, courts need to focus on whether the "execution" of a judgment was properly handled. As per his own admissions, the Defendant stated that he did not have any arguments as to the sale itself. As stated in the previous Opinion of May 31, 2006, the Defendant seems to be focusing on elements that may prove that it was improper to "enter" judgment against him. The decision regarding the disposition of this Petition should only focus on the "execution" of said judgment, and the Defendant has failed to provide any relevant evidence to this regard.

In this instant case, the Defendant failed to offer any true evidence that moves this Court to set aside the sheriff's sale. The Defendant defaulted on his mortgage obligation. He knew his property was subject to foreclosure and did nothing to protect it by working to truly cure his default. His inactivity and cavalier attitude resulted in his current troubles. With no established basis, it would be improper to grant the Defendant's Petition to Set Aside a Sheriff's Sale. Therefore, the Defendant's Petition is hereby denied.

ORDER OF COURT

And now this 31st day of July, 2006, after a hearing on the Defendant's Petition to Set Aside the Sheriff's Sale and overall consideration of the record in this matter, it is hereby ordered that the Defendant's Petition to Set Aside the Sheriff's Sale is denied. It is further ordered that the deed shall be acknowledged and the Sheriff of Franklin County shall delivery said deed to David L. Moore and Melvin L. Moore, as bona fide purchasers at the Sheriff Sale.

[1] See Defendant's Petition to Set Aside Sheriff's Sale (Filed May 18, 2005)

[2] See Plaintiff's Letter Memorandum, Page 1.

[3] See *generally* Gibbs v. Ernst, 647 A.2d 882 (Pa. 1994). The six (6) elements are as follows: (1) representation; (2) material to the transaction at hand; (3) made falsely with knowledge of its falsity or recklessness as to whether it is true or false; (4) with intent of misleading another into relying upon it; (5) justifiable reliance upon the misrepresentation; and (6) resulting injury proximately caused by reliance upon the representation.

[4] See Defendant's Exhibit 12.

[5] See Defendant's Letter Memorandum, Page 4.

[6] See Defendant's Letter Memorandum, Page 4.

[7] See Defendant's Letter Memorandum, Page 5.