



E-FILED
CNMI SUPERIOR COURT
 E-filed: Jun 05 2019 02:13PM
 Clerk Review: N/A
 Filing ID: 63324031
 Case Number: 11-0131-CV
 N/A

By order of the Court, Presiding Judge Roberto C. Naraja

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

FOR PUBLICATION (2nd)

**IN THE SUPERIOR COURT
 FOR THE
 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

THE FINANCIAL & INSURANCE)	CIVIL ACTION NO. 11-0131
SERVICES GROUP, INC.,)	
)	
Plaintiff,)	
v.)	AMENDED ORDER DENYING
)	CONFIRMATION AND
)	CERTIFICATION OF SALE OF
LUCIA BORJA PALACIOS,)	FORECLOSED PROPERTY
)	
Defendant.)	
)	
)	

I. INTRODUCTION

THIS MATTER came before the Court on September 26, 2018 at 9:00 a.m. in the Pedro P. Tenorio Multipurpose Center Room 1 on Plaintiff’s Motion for Order Approving Report and Account of Sale. Plaintiff appeared through Attorney Michael White. Defendant did not appear. The Court ordered Plaintiff to submit further documentation and a supplemental memorandum.

II. BACKGROUND

The sale of the property in question was conducted pursuant to a Seventh Amended Notice of Sale issued on January 2, 2018. The Notice stated that “all of the right, title, and interest of Defendant in and to ... Lot No. 218-2-5” was being sold at public auction to the highest bidder. According to the Seventh Amended Notice of Sale, the sale was to be held at 1:30 p.m. on February 2, 2018 at the Law Offices of Michael A. White, LLC, Joeten Center, Susupe, Saipan, Northern Mariana Islands.

1 Edwin Tenorio, the purchaser of the property, appeared personally at the September 26, 2018
2 hearing. At the hearing, Mr. Tenorio advised the Court that he believed he was purchasing the entire
3 lot, but subsequently found out that he had purchased only an undivided one-half.

4 III. LEGAL STANDARD

5 2 CMC § 4537 covers actions for foreclosures of mortgages and subsection (e) provides the
6 procedure for the sale of a mortgaged property:

7 (e) *Sale of the Mortgaged Property*. When the mortgagor, after being directed to do
8 so, as provided in subsection (a) of this section, fails to pay the principal, interest,
9 costs, and attorney's fees at the time directed in the order, the court shall order the
10 property (or so much of it as may be necessary) to be sold; but such sale shall not
11 affect the rights of persons holding prior recorded encumbrances upon the same
12 estate or part thereof. Any sale of property under a judgment of foreclosure shall be
13 made by a person appointed by the court for that purpose and must be made at a
14 public place to be designated by the court, upon the notice and in the manner
15 provided by law governing sales under execution with such additional requirements
16 including but not limited to the extension of the term of notice, and requirement of
17 publication or announcement in local newspapers, radio or television, as may be
18 prescribed by the court to attempt to assure a reasonable return from the sale.
19 Nothing in this chapter shall deny to the mortgagee, or to a federal government
20 agency that has insured or guaranteed payment on a mortgage and which succeeds
21 to the interest of the mortgagee, the right to purchase the mortgaged property at a
22 foreclosure sale, and to receive a certificate of sale and deed pursuant to subsection
23 (f) of this section.

16 IV. DISCUSSION

17 In *CDA v. Angyuta Shipping Company, Ltd.*, this Court held that it would give special scrutiny
18 to applications for confirmation and certification for foreclosure sales. Civ. No. 03-0352 (NMI Super.
19 Ct. July 9, 2014) (Order Denying Confirmation and Certification of Sale of Foreclosed Property).
20 This scrutiny is meant to ensure that the sale price, along with other circumstances, will not produce
21 an unfair result and to ensure that a grossly inadequate sales price will not be confirmed without
22 sufficient reasoning. *Id.* While *Angyuta Shipping Company* addressed a sale for notably less than the
23 appraised value of a property, the same reasoning applies here and the Court will give special scrutiny
24 to applications for confirmation and certification for foreclosure sales to avoid an unfair result.

1 Plaintiff argues the Notice of Sale and the Terms and Conditions of Sale allocate the risk of a
2 mistake to Mr. Tenorio. Plaintiff points to Paragraph 2 of the Terms and Conditions of Sale for the
3 assumption that Mr. Tenorio had the obligation to do his own research as to the state of the title to
4 the property and that this paragraph allocated the risk of mistake to Mr. Tenorio. Paragraph 2
5 provides:

6 2. Warranties and Covenants. All property offered for sale will be sold in its current
7 condition, and at its current location. The sale will be held without any warranties
8 or covenants whatsoever, whether express or implied, including but not limited to
9 warranties of title, merchantability, and/or fitness for any purpose whatsoever, all
10 of which warranties or covenant are hereby expressly disclaimed. Neither the
11 undersigned nor the Plaintiff may give any warranty or covenant, express or
12 implied, with respect to the property listed for sale in this Notice. Neither the
13 undersigned nor the Plaintiff shall be liable for the quality of the property listed for
14 sale in this Notice, or any fault or defect in the description thereof. Buyers shall
15 not be entitled to rescission, damages, or any other remedy on account thereof.

16 However, Paragraph 4, subsection (e) of the Terms and Conditions of Sale, goes on to state “[e]very
17 sale is subject to approval by the Court.”

18 It is in the Court’s view that it is unfair for this sale to stand. Mr. Tenorio did not appear to be
19 a sophisticated businessperson or have a strong background in the legal field. On the other hand,
20 Plaintiff’s counsel has a strong background of dealing with matters such as the one at issue, including
21 the sale of mortgaged property to satisfy a judgment. At the September 26, 2018 hearing, Mr. Tenorio
22 advised the Court that he believed he was purchasing the entire lot, but subsequently discovered that
23 he had purchased only an undivided one-half.

24 In cases such as the one at hand, where a property is being sold to satisfy a judgment and the
Court, through its approval process, is involved, the Court finds that it is unfair for Plaintiff to use a
“buyer beware” excuse to allow a sale to stand. From here on, ~~Plaintiff shall be required to recite on
its Foreclosure Notice, a detailed description of the legal status of the subject property. For example,
whether it is encumbered, the exact size of the property that the prospective purchaser is receiving,~~

1 ~~whether there is any legal uncertainty in the title search. Plaintiff shall also attach a copy of the title~~
2 ~~search, any defect in title, and any other related, relevant information.~~ the notice of the sale of
3 mortgaged property, issued pursuant to 2 CMC § 4537(e), shall contain: (1) a legal description of
4 the property, (2) the total area of the subject property, (3) shall list any known encumbrances, and
5 (4) shall state that a copy of a title insurance report is available to any prospective bidder upon
6 request.¹

7 While Mr. Tenorio did not explicitly make a motion to vacate the sale of the subject property,
8 2 CMC § 4537(j) provides:

9 (j) *Vacating Sale.* Upon motion by an aggrieved party filed within one year of the
10 date of sale, *the court may vacate a foreclosure sale and order a new sale upon a*
11 *finding that there has been fraud in the procurement of the foreclosure decree,*
where the sale has been improperly, unfairly, or unlawfully conducted, or when the
12 sale is so tainted by fraud that to allow it to stand would be inequitable.

13 Here, the Court construes Mr. Tenorio’s objection to Plaintiff’s Motion for Order Approving
14 Report and Account of Sale as a motion to vacate the sale. As stated above, the Court finds that the
15 sale has been unfairly conducted. Plaintiff contends that Mr. Tenorio had the obligation to do his own
16 research as to the state of the title to the property and bore the risk of a mistake. Plaintiff even states
17 that Mr. Tenorio was “certainly aware that he only had limited knowledge of the facts to which his
18 mistake related, but chose to proceed in any event.”

19 In conclusion, and consistent with the discussion above, where the Court, through its approval
20 process, is involved in any transaction such as this, it will not approve a transaction that tends to
21 constitute an unfair practice. Such practices may include a waiver clause and other related buyer-
22 beware clauses, such unclear and vague boilerplate language, etc. The Court will require as much
23 transparency in the transaction as possible. From here on, the Court will require a detailed description

24 ¹ The added underlined language modifies the stricken language of the initially issued Order.

1 from Plaintiff of any encumbrances or defects in title that the buyer may face upon purchase of the
2 subject property.

3 **V. CONCLUSION**

4 For the aforementioned reasons, Plaintiff's Motion for Order Approving Report and Account
5 of Sale is **DENIED**. Plaintiff shall give notice pursuant to the April 10, 2012 Order and post the
6 property for sale at public auction. Plaintiff is also **ORDERED** to submit a bench appraisal to this
7 Court regarding this property (and shall do so regarding any future sales pursuant to 2 CMC §
8 4537(e)). The title report shall also be made available to any prospective purchasers at the public
9 auction.

10 **IT IS SO ORDERED** this 5th day of June, 2019.

11
12 /s/
13 **ROBERTO C. NARAJA**
14 Presiding Judge
15
16
17
18
19
20
21
22
23
24