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DISTRICT IV

April 17, 2014

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You are hereby notified that the Court has entered the following opinion and order:

2012AP2706

JPMorgan Chase Bank NA v. Magdalena Parise
(L.C. #2009CV200)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

Dominic Parise appeals an order of the circuit court confirming the sheriff's sale of his property in this foreclosure action. On appeal, Parise argues that he did not receive notice of the sheriff's sale held on October 22, 2012, or the confirmation proceedings following the sale. The plaintiff-respondent, JPMorgan Chase Bank NA ("Chase"), asserts in its brief that Parise was

notified of the sale by posting and publication, thus satisfying the notice requirements in WIS. STAT. §§ 815.31 and 846.16 (2011-12).¹ Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). We summarily affirm.

WISCONSIN STAT. § 815.31(1) states, in relevant part, “The time and place of holding any sale of real estate on execution shall be publicly advertised by posting a written notice describing the real estate to be sold” WISCONSIN STAT. § 846.16(1) states, in relevant part, that “the sheriff or referee who makes sale of mortgaged premises, under a judgment therefor, shall give notice of the time and place of sale in the manner provided by law for the sale of real estate upon execution” Both of these statutes require that the notice be given three weeks prior to the sheriff’s sale and that a copy of the notice be published “for 3 successive weeks in a newspaper of the county prior to the date of sale.” Secs. 815.31(2) and 846.16(1).

Chase points out several affidavits in the record to support its position that it gave proper notice of the sheriff’s sale and confirmation hearing. The first affidavit is one made by a Columbia County special deputy sheriff, averring that she posted the notice of sale on August 23, 2012, at the Columbia County Law Enforcement Center and on the Columbia County website. The second affidavit, made by an authorized representative of Capital Newspapers, avers that the notice of sale was published for six consecutive weeks in the PORTAGE DAILY REGISTER, beginning on September 6, 2012, and ending on October 11, 2012. Chase argues that the notice it gave by posting and publication was sufficient and that, under *Family Sav. & Loan Ass’n v.*

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Barkwood Landscaping Co., Inc., 93 Wis. 2d 190, 206, 286 N.W.2d 581 (1980), there was no requirement that Parise be served personally with the notice of sale. Finally, Chase points out a third affidavit in the record, an affidavit of service made by its attorney and filed in the circuit court, averring that a notice of motion and motion to confirm the sheriff's sale was served on Parise after the sale. Chase also cites portions of the transcript of the confirmation hearing indicating that Dominic Parise appeared personally and objected to the confirmation.

The Parises did not file a reply brief refuting any of these arguments made by Chase with respect to the notice issue. Therefore, Parise is deemed to have conceded that Chase gave notice of the sale and the confirmation hearing, and that such notice was adequate. *See Charolais Breeding Ranches Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (a party cannot complain if unrefuted propositions of the opposing party are taken as confessed).

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals