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DISTRICT II

December 16, 2015

To:

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

2015AP217

U.S. Bank National Association v. Jon D. Westlund
(L.C. # 2013CV944)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Jon D. Westlund appeals pro se from an order confirming the sale of his foreclosed property. He complains that the property was not sold for fair value. 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 (2013-14).¹ We affirm the order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2013-14 version.

In May 2007, U.S. Bank National Association (U.S. Bank) made a loan to Westlund and his then-wife, Sherie K. Westlund, that was secured by a mortgage on property in Sheboygan county. The Westlunds defaulted on their loan payments in April 2013.

In December 2013, U.S. Bank filed a foreclosure action. After the Westlunds did not file an answer or other responsive pleading, U.S. Bank moved for default judgment, which the circuit court granted in March 2014.

A sheriff's sale was held on the foreclosed property in October 2014, at which U.S. Bank placed a successful bid of \$74,880. Westlund challenged U.S. Bank's subsequent motion to confirm the sale, alleging that the bid was too low. The court held a hearing on the matter.

At the hearing, counsel for U.S. Bank submitted a 2013 property tax bill and an appraisal in support of its motion to confirm. The property tax bill listed an estimated fair market value of \$106,400, and the appraisal listed an estimated market value of \$96,000. Counsel argued that under either estimate of the property's worth, the successful bid constituted fair value. Counsel also noted that U.S. Bank had waived its right to a deficiency judgment.

Westlund, meanwhile, submitted a comparative market analysis. Citing it, he complained that the successful bid did not constitute eighty percent of the property's value. He also asserted that he had made improvements to the property that the valuations did not take into account.

Ultimately, the circuit court found that the successful bid at the sheriff's sale constituted fair value for the property. Accordingly, it issued an order confirming the sale. This appeal follows.

The decision to confirm a sheriff's sale rests within the broad discretion of the circuit court. See *Bank of New York v. Mills*, 2004 WI App 60, ¶8, 270 Wis. 2d 790, 678 N.W.2d 332. We will affirm a court's exercise of discretion if it applies the correct legal standard to the relevant facts and reaches a reasonable result. See *Republic Bank of Chicago v. Lichosyt*, 2007 WI App 150, ¶31, 303 Wis. 2d 474, 736 N.W.2d 153.

Where, as here, there is no deficiency judgment sought, there is a presumption that the property sold for fair value. *Mills*, 270 Wis. 2d 790, ¶15. The Wisconsin Supreme Court has interpreted the requirement of "fair value" "to mean nothing more than 'such reasonable value as does not shock the conscience of the court.'" *Id.*, ¶11 (citing *First Wis. Nat'l Bank v. KSW Invs., Inc.*, 71 Wis. 2d 359, 367, 238 N.W.2d 123 (1976)).

At the hearing on the motion to confirm, the circuit court expressed familiarity with the location of the property and noted that the assessed values on the tax bills for many properties in that area had gone down significantly in 2014.² The court further noted that "fair value" of a property is not the same as "fair market value," and that sheriff's sales frequently are for lower values than a standard sale on the open market. The court also acknowledged seeing many properties go at relatively low bids at sheriff's sales over the last several years. Finally, the court stressed that U.S. Bank was waiving its right to a deficiency judgment, so it would not pursue the balance of the default judgment. Given all of this, along with the documents submitted by U.S. Bank, the court could not say that the successful bid shocked its conscience. It therefore confirmed the sale.

² The circuit court judge indicated that he did not live far away from the property in question.

Reviewing the circuit court's decision, we are satisfied that it properly exercised its discretion in confirming the sale. Accordingly, we affirm the order.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals