

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Lenox Mortgage XIV LLC

Court of Appeals No. L-12-1291

Appellant

Trial Court No. CI0201103860

v.

Swan Creek Four Seasons Housing
Associates LTD

DECISION AND JUDGMENT

Appellee

Decided: May 31, 2013

* * * * *

Jeffrey A. Brauer, Royce A. Remington and Phillip G.
Eckenrode, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} On July 25, 2012, a foreclosure sale was held in which property located at 1220 Four Seasons Drive, Toledo, was offered for sale. The original mortgagee, Lenox Mortgage XIV LLC (“Lenox”), made a successful credit bid of \$3,800,000 for the property. Immediately after the sale, Lenox filed an assignment of bid with the Lucas

County Sheriff, asking the sheriff to issue title for the property in the name of its related business entity, Alcurt Toledo LLC (“Alcurt”).

{¶ 2} On September 25, 2012, the Lucas County Court of Common Pleas journalized an order confirming the sheriff’s sale and distribution. That same day, the trial court journalized an order directing the Lucas County Sheriff to issue a deed to Alcurt, and also to assess 1.5 percent poundage on the transfer, pursuant to R.C. 311.17. A notice of appeal from the trial court’s order assessing poundage was filed in this court on October 12, 2012.

{¶ 3} On appeal, Lenox sets forth the following “issue” for our review, which we will deem to be an assignment of error:

Whether following confirmation of a foreclosure sale the trial court erred in directing the Sheriff to assess poundage under R.C. 311.17 on the purchase price of real property solely because the real property was assigned to the foreclosing lender’s bid assignee.

{¶ 4} In making its decision in this case, the trial court relied on its earlier judgment entry in *In re Assignments of Bid*, Lucas C.P. Case Nos. CI0200904546, CI0200808054, CI0200808420, CI0200902245, CI0200901695, CI0200905164 (Sept. 13, 2010). Similar to the facts present in this appeal, in that case, the purchasers at a foreclosure sale were the respective mortgage holders of foreclosed properties. In each instance, the mortgage holder’s winning bid was assigned to a third party before the sale

was confirmed, and the court was then asked to confirm the sheriff's sale and issue the title to the property in the name of the assignee.

{¶ 5} In a judgment entry journalized on September 13, 2010, the trial court concluded that the transfer precluded the imposition of a conveyance fee pursuant to R.C. 319.54. However, the trial court ordered the sheriff to assess "appropriate poundage" on each transfer pursuant to R.C. 311.17(B)(4). The judgment in that case was not appealed.

{¶ 6} On consideration, we find that the issue raised in this appeal is identical to the one raised in *In re Assignments of Bid, supra*, i.e., whether Lenox's assignment of a successful bid to Alcurt prior to confirmation of the sheriff's sale triggers the assessment of poundage pursuant to R.C. 311.17(B)(4).

{¶ 7} R.C. 311.17 states, in relevant part, that:

[T]he sheriff shall charge the following fees, which the court or its clerk shall tax in the bill of costs against the judgment debtor or those legally liable therefor for the judgment:

* * *

(B) In addition to the fee for service and return:

* * *

(4) Poundage on all moneys *actually made and paid to the sheriff* on execution, decree, or sale of real estate, one and one-half per cent * * *.

(Emphasis added.)

{¶ 8} The Ohio Supreme Court has long held that R.C. 311.17(B)(4) does not entitle the sheriff to collect poundage on the entire bid made at a foreclosure sale where the sum due on the mortgage was more than the successful bid and no money was actually paid to the sheriff as a result of the sale. *Citizens Natl. Bank of Norwalk v. Norman*, 29 Ohio St.3d 62, 505 N.E.2d 960 (1987). Although the facts in *Citizens* differ slightly from those in this case, the decision was based primarily on the premise that the plain wording of R.C. 311.17(B)(4) limits the imposition of poundage to “moneys actually made and paid to the sheriff.” *Id.* at 64.

{¶ 9} As noted by the trial court, Ohio law permits the assignment of a successful bid prior to confirmation of the foreclosure sale in order to complete the transfer, confirm the sale, and obtain title in the transferee’s name from the sheriff. However, this method of transfer is not required. For example, as with the assignees in *In re Assignment of Bids, supra*, if Alcurt had successfully bid for the property at the foreclosure sale, it would have been required to pay money to the sheriff for the property, and poundage would have been imposed pursuant to R.C. 311.17(B)(4). However the fact is that, due to the assignment of the bid to Alcurt before the sale was confirmed, and the sheriff’s decision to issue title to Alcurt, no money was actually paid to the sheriff.

{¶ 10} On consideration of the foregoing, we agree with the trial court to the extent that it identified what amounts to a loophole in the application of R.C. 311.17(B)(4). However, we do not agree with the court’s attempt to close that loophole

and impose poundage in this case, in direct contravention of the plain wording of R.C. 311.17. Appellant's assignment of error is, therefore, found well-taken.

{¶ 11} The judgment of the Lucas County Court of Common Pleas is hereby reversed and the imposition of 1.5 percent poundage pursuant to R.C. 311.17(B)(4) is vacated. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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