Real Estate Case Summaries

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Following a foreclosure sale, the trial court has broad discretion to consider all equitable grounds in assessing a motion to set aside a foreclosure sale. Inadequate bid price is one of the equitable grounds that may be considered by the trial court, but it is not a necessary requirement to set aside a foreclosure sale.

Arsali v. Chase Home Finance, LLC, 38 Fla. L. Weekly S562a (Fla. 2013)

The trial court vacated the judicial foreclosure sale and certificate of sale issued by the clerk of court, dismissed the final judgment of foreclosure entered in favor of Chase Home Finance, LLC ("Chase"), and ordered the return of all monies paid by the third party purchaser, Nicholas Arsali ("Arsali"), at the foreclosure sale. Arsali appealed to the Fourth District Court of Appeal, which affirmed the trial court's ruling. The Fourth District Court of Appeal questioned whether the test set for in *Arlt v. Buchanan*, 190 So. 2d 575 (Fla. 1966) for vacating a foreclosure sale applies when adequacy of the bid price is not at issue, and certified that question to the Florida Supreme Court.

In September 2010, the trial court entered final judgment of foreclosure for Chase against Amy Wilson and Chris Manning (collectively the "Borrower"), and the foreclosure sale was scheduled for May 9, 2011. Nearly one month before the scheduled foreclosure sale, Chase and the Borrowers entered into a written agreement for reinstatement of the mortgage upon receipt of a lump sum payment to be made no later than May 6, 2011. On May 3, 2011, the Borrowers sent a cashiers check to Chase's counsel for payment of the entire indebtedness, which was received on May 4, 2011. Chase's counsel neglected to arrange for cancellation of the foreclosure sale. At the foreclosure sale on May 9, 2011, third party purchaser, Iron National Trust, LLC ("INT") submitted the highest bid for the property for $125,300. INT later assigned all rights to the property to Arsali. On May 13, 2011, after learning of the foreclosure sale, the Borrower filed a motion to vacate the foreclosure sale. On May 26, 2011, the Court heard the motion, and considered evidence including a copy of the reinstatement offer letter, the Borrower's cashiers check, and overnight mail receipts. Accordingly, the trial court's ruling to set aside the foreclosure sale was not based on inadequacy of the foreclosure bid. The Fourth District Court of Appeal explained that it was receding from its prior decision to the extent it requires that inadequacy of price be applied to every attempt to set aside a foreclosure sale.

The Fourth District Court of Appeal submitted to the Florida Supreme Court the following certified question: Does inadequate bid price need to be alleged and proven in order to set aside a judicial foreclosure sale? The Florida Supreme Court concluded inadequate bid price does not have to be proven. In reaching that conclusion, the Florida Supreme Court determined there was no conflict with the Court's prior rulings in *Arlt* and *Moran-Alleen Co. v. Brown*, 123 So. 561 (Fla. 1929). The Second, Fourth and Fifth District Courts of Appeal had concluded that *Brown* should be applied when grounds other than inadequacy of the bid form the basis to set aside a foreclosure sale, and *Arlt* should be applied when inadequacy of the bid is at issue. The Florida Supreme Court explained that *Brown* and *Arlt* are not in conflict and provided guidance with respect to why the trial court's broad discretion to weigh the equities in those cases should have been upheld. The Florida Supreme Court concluded the Borrower alleged and provided adequate equitable grounds, irrespective of the adequacy of the bid price, to set aside the judicial foreclosure sale and to dismiss the foreclosure action. Therefore, the Florida Supreme Court affirmed the trial court's ruling, and confirmed that an inadequate bid price is not a necessary requirement in an action to set aside foreclosure sale.

The doctrine of implied warranties of fitness, merchantability and habitability extends to essential services in common areas that support the habitability of a residence. Sec. 553.835, F.S. (2012) enacted July 1, 2012 cannot retroactively divest a cause of action based on those essential services that accrued prior to the enactment of that statute.

Maronda Homes, Inc. v. Lakeview Reserve Homeowners Assoc. Inc. et al., 38 Fla. L. Weekly S573a (Fla. 2013)

The trial court granted summary judgment in favor of the defendants, Maronda Homes, Inc. ("Maronda") and Thomson Construction Company ("Thomson"), with respect to the action filed by Lakeview Reserve Homeowners Association ("Lakeview") for breach of implied warranties of fitness and merchantability. The Fifth District Court of Appeal reversed that summary final judgment, remanded for further proceedings and certified conflict to the Florida Supreme Court regarding the scope of implied warranties of fitness and merchantability under Florida law.

Lakeview's cause of action arises from alleged defects in the development and construction of a residential subdivision that Maronda and Thomson had developed. During

construction, Maronda and Thomson retained control and managed the subdivision before transferring control to Lakeview, the homeowners association. After Lakeview assumed control of the subdivision, residents reported water drainage problems caused by the infrastructure of the subdivision that created problems including soil erosion and depressions, buckling and splitting of pavement and asphalt, faulty drainage and flooding of retention ponds that directly impacted the homes and access to the homes. Before the trial court, Maronda and Thomson moved for summary final judgment contending that common law implied warranties of fitness and merchantability do not extend to the construction and design of infrastructure, private roadways, drainage systems, retentions ponds, underground pipes, or any other common areas in a residential subdivision. The trial court agreed and granted summary final judgment to Maronda and Thomson based on the decision of the Fourth District Court of Appeal in *Port Sewall Harbor and Tennis Club Owners Ass'n, Inc. v. First Fderal Sav. And Loan Ass'n of Martin County*, 463 So. 2d 530 (Fla. 4th DCA 1985). The Fifth District Court of Appeal reversed the trial court's summary final judgment, held that the common law warranty of habitability is applicable to this case, and certified a conflict with *Port Sewall.*

The Florida Supreme Court discussed at length the foundations of implied warranty under Florida law, and the departure from the doctrine of caveat emptor, and confirmed the ruling of the Fifth District Court of Appeal that implied warranties of fitness for a particular purpose, habitability and merchantability apply to structures in common areas of a subdivision that immediately support the residence in the form of essential services. The Florida Supreme Court determined that the services in this case were essential to the habitability of the home, and Lakeview did have standing to bring those claims on behalf of the homeowners. The Florida Supreme Court also addressed the newly enacted Sec. 553.835, F.S. (2012), that took effect on July 1, 2012, and applied retroactively. The Florida Supreme Court noted that Sec. 553.835, F.S. (2012) was enacted to abrogate the decision of the Fifth District Court of Appeal, and the statute provided that the doctrine of implied warranties of fitness and merchantability do not apply to offsite improvements, which were defined to include infrastructure related improvements like those present in this case. The Florida Supreme Court determined that Sec. 553.835, F.S. (2012) was unconstitutional as applied to Lakeview's cause of action since it retroactively divested Lakeview of its cause of action. Accordingly, the Florida Supreme Court affirmed the decision of the Fifth District Court of Appeal, remanded to the trial court for further proceedings, and specifically disapproved the decision in *Port Sewall* to the extent it conflicted with this decision. Justice Canady dissented on the grounds that there were disputed facts as to whether the defects were essential services, which should have been remanded to the trial court for factual determination. Justice Canady further noted that the portions of the opinion that eluded to the unconstitutionality of Sec. 553.835, F.S. (2012) are purely dicta, and prospective application of that statute has not been decided by this decision.

Appointment of a receiver following final judgment of foreclosure but prior to foreclosure sale is permissible if the mortgage expressly provides for appointment of a receiver and if the moving party establishes a prima facie case that appointment of a receiver is necessary, such as to allow for remediation of environmental problems affecting the property.

U.S. Bank National Assoc. et. al. v. Terence B. Cramer et al., 113 So. 3d 1020 (Fla. 2nd DCA 2013)

The trial court denied U.S. Bank National Association's ("U.S. Bank") motion to appoint a receiver following entry of final judgment of foreclosure, but before the foreclosure sale had occurred, and U.S. Bank appealed to the Second District Court of Appeal.

U.S. Bank's predecessor in interest loaned Terence B. Cramer and Nancy H. Cramer (the "Cramers") the sum of $937,500.00, and the Cramers executed a mortgage securing that loan on real property that was the former site of a gas station. The mortgage contained a provision that allowed for the court to appoint a receiver as a matter of strict right to the lender and without notice to the borrower and without reference to the adequacy or inadequacy of the value of the property. After final judgment of foreclosure was entered U.S. Bank filed a motion to appoint receiver on

the grounds that 1) the mortgage permitted appointment of a receiver upon a default, 2) the Cramers failed to pay the real property taxes for the prior five years, 3) the existing environmental problems amounted to physical waste of the property, and 4) the Cramers repeatedly violated an existing rents order.

The Second District Court of Appeal reviewed the denial of motion for appointment of receiver based on abuse of discretion. The Second District Court noted that appointment of a receiver is typically permitted to maintain the status quo of the property, and therefore such appointment should only be made cautiously. However, the Second District Court noted that after entry of final judgment of foreclosure, the cautious approach carries must less weight. The Second District Court confirmed prior case law that permitted the appointment of a receiver post-judgment. The Second District Court determined that failure to pay taxes or comply with a rents order were arguably insufficient reasons to appoint a receiver; however, the express provisions of the mortgage permitting appointment of a receiver and the environmental contamination issues were valid reasons, and were substantiated by the affidavit from the loan servicer for U.S. Bank, which explained that the loan is subject to a pooling and servicing agreement that prohibits foreclosure of environmentally contaminated property until a receiver is appointed and those issues remediated. Since the Cramers filed no affidavit in opposition, U.S. Bank had established a prima facie case for appointment of a receiver. Accordingly, the Second District Court concluded that the trial court had abused its discretion, and remanded to the trial court to enter an order appointing a receiver.

An undated allonge to a promissory note endorsed in blank does not preclude standing of the plaintiff in a foreclosure action, as long as ownership of the note and mortgage is evidenced by substantial and competent evidence, such as ownership by virtue of a purchase and assumption agreement with the FDIC

Andrea Stone et. al. v. BankUnited, 115 So. 3d 411 (Fla. 2nd DCA 2013)

The trial court granted final summary judgment of foreclosure in favor of the plaintiff, BankUnited, a national bank ("BankUnited"), and the borrower, Andrea Stone ("Stone") appealed to the Second District Court of Appeal.

On April 16, 2010, BankUnited filed a foreclosure complaint against Stone based on a promissory note in the amount of $248,569.76 secured by Stone's homestead residence in Sarasota, Florida. As exhibits to the Complaint, BankUnited attached a promissory note and mortgage naming another entity as lender, BankUnited, FSB, a federal savings bank ("BankUnited FSB"), which was placed into receivership by the FDIC on May 21, 2009.

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The subsequent filing of the original note and mortgage included an allonge which contained a blank endorsement from BankUnited FSB. Stone challenged on the grounds that BankUnited did not have standing at the time the case was filed, and the allonge was not dispositive of that issue since it was endorsed in blank and undated. An evidentiary hearing was held, and BankUnited presented testimony from an employee that worked for BankUnited, FSB, and remained an employee of the new BankUnited. Pursuant to the purchase assumption agreement with the FDIC, BankUnited acquired all assets of the defunct BankUnited FSB including the note and mortgage in question. The trial court granted summary final judgment of foreclosure following the evidentiary hearing, and Stone appealed.

On appeal Stone argued that standing to foreclose derives from endorsement of the note and that BankUnited must show that endorsement occurred prior to the inception of the lawsuit, which could not be done since the allonge was not dated. The Second District Court determined that competent evidence had been presented by BankUnited that it was the owner of the note and mortgage prior to commencement of the lawsuit by virtue of the purchase assumption agreement. The Second District Court concluded that the fact the note was endorsed in blank and the endorsement was not affixed to the original note carries no weight in light of the competent and substantial evidence that BankUnited was the owner of the note and mortgage at the time the lawsuit was filed. According, the trial court ruling was affirmed.

Amobile home park prospectus pursuant to the Florida Mobile Home Act, Chapter 723, F. S. (2012) is a disclosure document and part of the contract between the mobile home owner and the mobile home park, but it is not a supreme governing document that can be used to override lot increase provisions in a valid lease between the mobile home owner and mobile home park.

Tara Woods SPE, LLC v. Louella Cashin, 116 So. 3d 492 (Fla. 2nd DCA 2013)

The trial court granted final summary judgment rescinding a mobile home lease contract in favor of the plaintiff, Louella Cashin ("Cashin"), and against the defendant, Tara Woods SPE, LLC, ("Tara Woods"), the mobile home park owner. Tara Woods appealed to the Second District Court of Appeal.

In August 2007, Cashin purchased a resale mobile home in Tara Woods Mobile Home Park. Tara Woods owns

the park which is regulated by the Florida Mobile Home Act, Chapter 723, F.S. (2012) (hereinafter the "Act"). On August 8, 2007, Cashin executed a Rental Assumption Agreement acknowledging and agreeing to assume the lease of the prior owner. Cashin also executed a Rental Agreement for the period assumed from September 1, 2007, through December 31, 2007. In addition, Cashin executed an acknowledgement confirming receipt of an approved prospectus from Tara Woods, and acknowledging that the original prospectus supplied to the prior owner was not provided. The approved prospectus (the "Approved Prospectus") provided by Tara Woods included as an attachment a Lifetime Lease, which Cashin later executed with Tara Woods, although the date of that execution is unclear. The Lifetime Lease permitted lot increases greater than those in the prior owner's lease. In June 2010, almost three years after executing the Lifetime Lease, and after two annual rent increases, Cashin filed a two count suit against Tara Woods seeking (1) declaratory relief that the Approved Prospectus be deemed the "supreme governing document" such that any provisions in the Lifetime Lease that conflicted with the Approved Prospectus were unenforceable, and (2) damages for the difference between rent Cashin paid under the Lifetime Lease as opposed to the obligation that would have been otherwise due under the prior owner's lease. Following a non-jury trial, the trial court ordered, among other things, that Cashin was entitled to rely on the prior owner's original prospectus and that lot increases must comply with that original prospectus. Cashin later elected to rescind the Lifetime Lease as provided in the Final Judgment, and thereafter a supplemental Final Judgment was entered that provided for damages pursuant to Count 2.

On appeal, Tara Woods argued that the trial court erroneously concluded that the park owner did not do enough to comply with the Act, and that Cashin waived certain rights. The Second District Court of Appeal adopted Tara Woods' argument, and addressed several of the issues in dispute that formed the basis of the trial court's ruling. First, Cashin's rights are governed by the Act and the Lifetime Lease, but not the Approved Prospectus. The Second District Court explained in detail that the Approved Prospectus is a disclosure document. Second, the Second District Court addressed Sec. 723.059, F.S. (2012) of the Act, titled "Rights of Purchaser". The Second District Court concluded that the trial court had misinterpreted this statute, not as a statute delineating Cashin's obligations, but a statute imposing duties on Tara Woods. The effect of the trial court's interpretation was to place a duty on Tara Woods to inform Cashin of her rights under the statute, that the Lifetime Lease was optional, and that if Cashin elected to execute the Lifetime Lease the rental increase provisions would not be the same. The Second District Court concluded the trial court's interpretation was in error and effectively imposes requirements and duties to the mobile home park owner that are not included in the Act. The Second District Court further concluded that a park owner: 1) has no obligation to provide a resale purchaser a copy of the prior owner's prospectus, only a current approved prospectus; and 2) has no obligation to provide a resale purchaser a copy of the optional lease Cashin had the right to enter into or to explain the difference between the lot increase terms in that optional lease and the prior owner's lease. For these reasons, the Second District Court determined Tara Woods had complied with all statutory obligations under the Act. Accordingly, the trial court ruling was reversed and remanded.