# STATE OF MICHIGAN

# COURT OF APPEALS

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THOMAS M. SHOAFF,

Plaintiff-Appellee,

v

ESTATE OF DUANE BALDWIN, DUANE V. BALDWIN TRUST, THOMAS E. WOODS, as Personal Representative of the Estate of Duane Baldwin and as Trustee of the Duane V. Baldwin Trust,

Defendants-Appellants,

and

GARY D. BALDWIN, as Former Personal Representative of the Estate of Duane Baldwin, MARY JO BALDWIN, as Former Trustee of the Duane V. Baldwin Trust, JACOBS MANAGEMENT, LLC, FFM CO, INC., DGM CORPORATION, AGRICON, LLC, STOCKBRIDGE LIMITED PARTNERSHIP #1, STOCKBRIDGE LIMITED PARTNERSHIP #2, STOCKBRIDGE LIMITED PARTNERSHIP #3, STOCKBRIDGE PARTNERSHIP #4 and STOCKBRIDGE LIMITED PARTNERSHIP #5,

Defendants/Cross-Plaintiffs/Counterplaintiffs.

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UNPUBLISHED
July 1, 2008

No. 276469
Ingham Circuit Court
LC No. 99-090282-CZ

Before: Donofrio, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendants appeal by leave granted from orders of the circuit court granting plaintiff's motion to release funds on deposit with the court representing a surplus from a foreclosure sale and denying defendants' request that they be given credit for that surplus on plaintiff's judgment against defendants. We reverse and remand.

This appeal arises out of litigation that is the subject of two other appeals that were also submitted to this panel for resolution. We need not repeat those underlying facts here. The specific fact relevant to this appeal is that one of the entity defendants, DGM Corporation, had mortgaged two of the properties in Stockbridge, Michigan, which are the subject of the underlying dispute, to Greenstone Farm Credit Services. That mortgage was given approximately three months before the entry of the circuit court judgment in plaintiff's favor, which gives rise to the post-judgment proceedings now on appeal to this Court. DGM defaulted on the mortgage and, on March 7, 2006, Greenstone proceeded with foreclosure by advertisement. On April 4, 2006, the circuit court ordered that the property be seized for sale relative to satisfying the 2002 judgment and ordered that the proceeds of the sale be deposited with the circuit court.

The foreclosure sale took place on April 13, 2006, with plaintiff being the successful bidder in the amount of $600,000. Plaintiff claims that the property was only worth $500,000, but that he overbid to dissuade others from bidding and to prevent redemption by defendants. Apparently this strategy was based upon the fact that there were other contiguous parcels owned by the entity defendants and plaintiff believed that the value of the group of parcels would be diminished if the property subject to the foreclosure sale was split off. In any event, plaintiff was the successful bidder and, because the outstanding mortgage was approximately $129,000, the foreclosure sale produced a surplus of approximately $470,000, which was paid into the court.

On April 17, 2006, the circuit court issued the order that is the subject of the primary appeal (Docket No. 270693), which ordered that the title to the property for which the conveyances to the entity defendants had been set aside by the 2002 judgment be transferred to plaintiff in partial satisfaction of plaintiff's judgment. In the opinion in that case, we have reversed the trial court's order of April 17, concluding that the properties became estate property as a result of the 2002 judgment and that plaintiff could not execute on the property in circuit court to satisfy his judgment, but had to pursue his claim in probate court as part of the administration of the estate.

There were a series of motions and orders thereafter, resulting in the circuit court releasing the surplus to plaintiff and disallowing any credit for the surplus to be applied against plaintiff's judgment. Defendants filed an application for leave to appeal, raising four issues. We granted leave on September 21, 2007, "limited to the issue of whether the surplus funds should be credited towards satisfaction of plaintiff's judgment against defendant."

Despite the limitation stated in our order granting leave, defendants' brief on appeal addresses all of the issues raised in the original application for leave. Defendants explain that it believes all four issues are before this Court because, if defendants prevail on any of the issues, it will result in defendants receiving a credit against the judgment. While defendants' position is not entirely without merit, we do believe that defendants' brief goes beyond the scope permitted by our order. The limitation imposed by that order is unfortunate because, in light of the resolution in the main appeal to set aside the trial court's order transferring the properties to plaintiff, the most appropriate resolution of this appeal would seem to be to order plaintiff to turn the surplus over to the estate. But the scope of our order granting leave does not allow us to consider that remedy. Rather, we must focus on the specific question whether, once the surplus was turned over to plaintiff, defendants should have been granted a credit against the judgment. The propriety of turning the surplus over to plaintiff in the first place is simply not before us.

We are at a loss to understand any logic behind plaintiff's argument that defendants are not entitled to credit against the judgment for the surplus turned over to plaintiff. Even accepting, as we must given the procedural posture of this case, that plaintiff had priority to receive the surplus under MCL 600.3252 as the holder of a lien which encumbered the real estate sold at the foreclosure sale, it necessarily follows that the debt secured by the lien must be reduced by the amount of the surplus. We are unaware of anything in law, equity or logic that would support the conclusion that plaintiff is entitled to the surplus as a bonus and still seek recovery of the entire underlying debt.

A somewhat similar situation was present in *Pulleyblank v Cape*, 179 Mich App 690; 446 NW2d 345 (1989). In *Pulleyblank*, to secure a debt, defendants gave the plaintiff a mortgage on two properties, one located in Howell and one located in Plymouth. The defendants defaulted on the debt. The plaintiff commenced foreclosure by advertisement on both properties and first bought the Howell property at the foreclosure sale, bidding $251,792, apparently the amount of the outstanding mortgage that Pulleyblank was owed. Pulleyblank then sought to execute on the second property, claiming a deficiency after the sale of the first property. The basis of Pulleyblank's argument was that, although Pulleyblank bid $251,792 at the sheriff's sale, the property was only worth $103,000, leaving a deficiency. *Id.* at 692. This Court disagreed, *id.* at 694-695, making the following observation:

> There is no question that Pulleyblank, as mortgagee, had a right to purchase the property, and collect for a deficiency, if one existed. . . . However, as a purchaser under the foreclosure sale, a mortgagee stands in the same position as any other purchaser. *Hogsett v Ellis*, 17 Mich 351, 363 (1868). If a third party had bid and purchased this property for $251,792, regardless of its appraised value, that is the amount Pulleyblank would have received and credited on the debt. Certainly Pulleyblank could not argue in that situation that, since the property was worth only $103,000, the Capes could only receive credit for $103,00 on a debt and Pulleyblank should be able to pocket the windfall from the sale. Likewise, Pulleyblank, as the purchaser, "paid" $251,792 for the property, even though no actual cash exchanged hands. Therefore, Pulleyblank, as mortgagee, "received" $251,792 for the Howell property, and this purchase price must be applied to the debt.

Interestingly, Pulleyblank's stated motive for overbidding the property in that case, one similar to that expressed by plaintiff in this case, did not persuade this Court to rule in Pulleyblank's favor:

> In this case, Pulleyblank admitted at the . . . motion hearing that, to ensure that they obtained the property and to preclude anyone from outbidding them, they bid $251,792 for property that they now claim is worth only $103,000. As the trial court noted, this precluded other bids greater than $103,000. It also effectively precluded the mortgagors from exercising their equity of redemption.
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> We agree with the trial court that the $251,792 bid on the Howell property constituted full satisfaction of all indebtedness evidenced by the consent judgment and settlement agreement. It would defy logic to allow Pulleyblank to bid an inflated price on a piece of property to ensure that they would not be overbid and

to defeat the equity of redemption and to then claim that the "true value" was less than half of the value of the bid.

As was the case in *Pulleyblank*, it does not matter that plaintiff was the successful bidder at the foreclosure sale or that it would be plaintiff's money that was used to pay down the debt owed plaintiff. Just as the debt would have been reduced by $470,000 had the surplus been created because the property had been purchased at auction by some third-party for $600,000, so too is it reduced by the same amount because plaintiff successfully bid that amount for it at the auction. As this Court explained in *Pulleyblank*, the fact that plaintiff may have wanted to prevent someone else from purchasing the property and to prevent defendants from redeeming the property is immaterial. It is not, as plaintiff suggests, merely a matter of plaintiff transferring money from one pocket to another with no change in position.

For the above reasons, we conclude that defendants were entitled to a credit against the debt owed plaintiff in the amount of the surplus. Accordingly, the orders of the circuit court are reversed and the matter is remanded to the circuit court with directions to enter an order confirming partial satisfaction of the judgment in the amount of the surplus as of the appropriate date.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Defendants may tax costs.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ William B. Murphy