

Wells Fargo Bank, N.A. v. Sprague, No. 248-3-07 Rdcv (Teachout, J., Dec. 19, 2007)

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STATE OF VERMONT
RUTLAND COUNTY

WELLS FARGO BANK, N.A.,)	
as Trustee,)	Rutland Superior Court
Plaintiff,)	Docket No. 248-3-07Rdcv
)	
v.)	
)	
STEVEN R. SPRAGUE,)	
and Occupants residing at [])	
,Rutland, Vermont,)	
Defendants.)	

ENTRY ORDER
Confirmation of Foreclosure Sale

This foreclosure matter came before the court on September 10, 2007 for a hearing on Plaintiff’s Motion for Confirmation related to a public sale to Plaintiff. Plaintiff Wells Fargo Bank (“Wells Fargo”) was represented by Joshua B. Lobe, Esq. Defendants were not represented at the hearing.

Wells Fargo seeks to compensate itself from sale proceeds for expenses for which it paid, two of which are at issue. See V.R.C.P. 80.1(j)(1) (allowing plaintiffs to deduct from sale proceeds “reasonable expenses incurred in making the sale”). The first expense was for delinquent property taxes paid by Wells Fargo after it bought the property at the public sale. The second was for hazard insurance premiums paid by Wells Fargo prior to the judgment order but not included in the accounting. At the conclusion of the hearing, the court permitted Wells Fargo to submit supplemental memoranda explaining why it should be allowed compensation for these expenses from sale proceeds.

Facts

Wells Fargo obtained a judgment order on June 5, 2007 in the amount of \$136,721.72 plus per diem interest. This amount included the principal, accrued interest,

late charges, court costs, recording fees, and attorney's fees included and approved in the accounting. As of that date, Wells Fargo had also paid \$561.97 for insurance on the premises. For an unknown reason, the expense was not submitted for the accounting, and therefore not included in the judgment or redemption figure.

A certificate of non-redemption was issued on June 20, 2007.

A public sale was held on July 25, 2007. Wells Fargo bought the property at the public auction for \$145,995.62. There was one other bidder. At the time of sale, there were delinquent unpaid property taxes.

Wells Fargo paid \$6,519.06 for delinquent taxes on August 14, 2007, three weeks after the public sale.

Wells Fargo seeks an order that there are no surplus proceeds payable to Defendant from the sale proceeds. Wells Fargo initially claimed it was entitled to keep all the proceeds because its expenses totaled \$148,267.10, which was in excess of the sale price of \$145,995.62. Its claimed expenses included, in addition to the judgment of \$136,721.72, the accrued per diem interest, auctioneer's fees, post judgment filing fees, publication fees, recording fees, and legal fees, all of which were approved at the hearing on September 10, 2007. Its initial figure also included the two expenses at issue: \$6,519.06 for the delinquent property taxes and \$561.97 for the insurance premiums.

Analysis

Real Estate Taxes

At the time of sale, the delinquent property taxes constituted a lien against the property. Any bidder would be expected to offer a price that took the amount of the tax lien into account. It would not be equitable to permit a foreclosure plaintiff to outbid a competing bidder, and subsequently obtain reimbursement for after-paid property taxes from sale proceeds.

Wells Fargo now concedes that delinquent taxes paid after the public sale are not appropriate for inclusion in the indebtedness due and owing to it, and withdraws its request for approval of this expense.

Insurance Premiums

The hazard-insurance premiums were paid by Wells Fargo on March 15, 2007. This was more than one month before the accounting was requested. Wells Fargo admits that the premiums should have been included in the affidavits it submitted in support of its requested total amount due. See V.R.C.P. 80.1(f) (providing procedure for accounting).

Wells Fargo requests, however, that the court allow the premiums "as a matter of equity and fairness" because the Defendants benefited from the insurance policy as well.

The policy provided coverage for the period between January 5, 2007 and July 5, 2007, a period during which the Defendant retained legal title to the property.

“[F]oreclosure actions are equitable in nature and therefore it is proper for the court to weigh the equities of the situation.” *Retrovest Assocs. v. Bryant*, 153 Vt. 493, 500 (1990) (quoting *Merchants Bank v. Lambert*, 151 Vt. 204, 206 (1989)). The equities of the situation do not favor Wells Fargo for two reasons.

First, the Defendant was entitled to assume that the Judgment reflected the total amount claimed by Plaintiff and due for redemption. The order included a number of costs beyond principal and interest, and the Defendants would have reasonably expected insurance premiums to be included as well. See V.R.C.P. 80.1(g) (providing that “[t]he judgment shall set forth the amount agreed to be due by the parties or found due at the accounting”); *Barclay v. Drew*, 105 Vt. 280, 282–83 (1933) (holding that insurance premiums may be included in the mortgage debt). Had the Defendant redeemed, he would not have been required to pay the amount of the premium. Wells Fargo had full opportunity to seek reimbursement of this expense at the time of the accounting. It is not equitable for Wells Fargo to be able to enlarge its compensation later, as defendants and market bidders are entitled to rely on the figures established through the statutory accounting procedure.

Second, the benefit of the insurance premium payment made by Wells Fargo was primarily for Wells Fargo, and not Defendant. The court is not persuaded that the Defendant benefited from the insurance policy. The underlying mortgage instrument required the mortgagors to purchase hazard insurance for the benefit of the mortgagee. Under this arrangement, any insurance proceeds would have been applied first to the security interest held by Wells Fargo. Accord 54A Am. Jur. 2d Mortgages § 263 (“It is a well-established rule that if the mortgagor is bound by covenant or otherwise to insure the mortgaged premises for the better security of the mortgagee, the latter will have an equitable lien upon the money due on a policy taken out by the mortgagor, to the extent of the mortgagee’s interest in the property destroyed.”). Furthermore, in the event that the mortgagors allowed insurance coverage to lapse, the instrument allowed Wells Fargo to “obtain coverage *to protect Lender’s rights* in the Property.” (Emphasis added). Indeed, it is not clear from the record whether the defendants were entitled to *any* proceeds under the policy paid for by Wells Fargo. Thus, while there may have been some residual protection for the Defendant from Wells Fargo’s insurance expense, it is evident that the insurance was primarily intended to protect Wells Fargo’s interest in the property. Cf. *In re McK, Ltd.*, 14 B.R. 518, 519 (Bkrcty.Colo. 1981) (denying creditor’s request that hazard insurance premiums be allowed as an administrative expense in bankruptcy proceeding because the insurance was primarily intended to protect the creditor’s own secured interest).

Considered as a whole, the “equities of the situation” do not favor overlooking Wells Fargo’s procedural error.

ORDER

For the foregoing reasons,

1. The requested amounts for delinquent property taxes and insurance premiums are *not approved*;
2. The court will issue an order of confirmation providing for distribution of the sale proceeds approved on September 10, 2007; and
3. Attorney Lobe shall prepare an Order of Confirmation specifying the recipients of sale proceeds and the specific amounts approved for distribution.

Dated at Rutland, Vermont this ____ day of November, 2007.

Hon. Mary Miles Teachout
Superior Court Judge