

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ACADEMY HILLS PHASE IV)
MAINTENANCE CORP.,)

Plaintiff,)

v.)

C.A. No. N22C-02-167 CLS

BARBARA B. ROGERS, C.)
LAWLER ROGERS, and STEPHANIE)
A. ROGERS,)

Defendants.)

Date Submitted: May 12, 2023

Date Decided: May 25, 2023

*Upon Defendants Motion to Set Aside Sheriff's Sale. **GRANTED.***

OPINION

Edward J. Fornias, III, Esquire, Law Office of EJ Fornias, PA, Wilmington, Delaware, 19802, Attorney for Plaintiff Academy Hills Phase IV Maintenance Corporation.

Daniel F. McAllister, Esquire, McAllister Firm LLC, Wilmington, Delaware, 19801, Attorney for Defendants Barbara B. Rogers and Stephanie A. Rogers.

Brian T. Murray, Esquire, Rhodunda, Williams & Kondraschow, Wilmington, Delaware, 19803, Attorney for One-Pie Investments, LLC.

Randall S. MacTough, Esquire, Eckert Seamans Mellott, LLC, Wilmington, Delaware, 19801, Attorney for interest party Wilmington Savings Fund Society solely as Owner Trustee of CSCM 2018-SP3 Trust, through its serving agent and attorney in fact, Select Portfolio Servicing, Inc.

Donald L. Gouge, Jr., Esquire, Donald L. Gouge, Jr., LLC, Wilmington, Delaware,
19801, for notice purposes only.

SCOTT, J.

INTRODUCTION

This matter before the Court on the Motion of Defendants Barbara B. Rogers and Stephanie A. Rogers (together, “Movants” or “Defendants”) is to set aside a sheriff’s sale conducted after the New Castle County Sheriff’s Office confirmed the sheriff’s sale. For the reasons set forth in this Opinion, Movants’ Motion to Set Aside Sheriff’s Sale is **GRANTED**.

FACTUAL AND PROCEDURAL BACKGROUND

This litigation arises from a default judgment (“Judgment”) awarded to Plaintiff Academy Hills Phase IV Maintenance Corporation (“Academy Hills”) for unpaid Homeowner's Association (“HOA”) fees. Plaintiff is the Homeowners’ Association for homes located in Newark, DE. Defendant Barbara B. Rogers took title to the home (“the Property”) located on February 18, 2005. Defendant Barbara B. Rogers then transferred the Property to herself, Defendant C. Lawler Rogers¹ and Stephanie A. Rogers (then husband and wife) on May 2, 2013. Movants failed to pay HOA fees associated with the Property for a length of time that resulted in a \$3,135.54 bill.

It appears uncontested that C. Lawler Rogers lived at the Property at the time there was a failure to pay HOA fees. Movants have alleged they did not live at the Property at the time. However, Movants remained personally obligated for payment

¹ Now deceased.

of the mortgage, property taxes, and assessments levied by Academy Hills. All Deed recordings for the Property list the Property as the grantees’/grantors’ address. At all times, Movants held their mailing address for the property as the Property and have not presented any alternative address nor any reason for this Court to believe their address had changed. HOA bills were forward to the Property and not paid. There is also the original mortgage on the property totaling around \$300,000 principal balance and a Federal Tax Lien against the Property totaling \$29,726.14. Both interests survived the Sheriff’s sale.

An *in rem* Complaint was filed on February 21, 2022. Notice to all lienholders was mailed by Academy Hills on February 24, 2022. On March 4, 2022, New Castle County Sheriff personally served C. Lawler Rogers at the property, and through C. Lawler Rogers, served Defendant Barbara B. Rogers and Defendant Stephanie A. Rogers. Academy Hills did not receive an answer from any of the Defendants and on April 18, 2022, Academy Hills moved for Default Judgment. Notice of that Motion was sent to Defendants. Academy Hills was asked by this Court to re-notice that Default Judgment Motion, so a second notice was sent to Defendants on April 21, 2022. The Default Judgment Motion was re-noticed again for June 6, 2022, with Defendants sent an additional copy. Defendants failed to attend the Default Judgment Hearing and default judgment was granted on June 6, 2022. Academy Hills filed its Writ of *Levari Facias* on October 24, 2022. The Sheriff’s sale was then

noticed for December 13, 2022. A Notice to all Defendants, as well as “tenant/occupant/resident” were sent by certified mail. Those certified letters were not picked up and were thus returned to Academy Hills’ attorney as “unclaimed.” The New Castle County Sheriff posted the property on November 21, 2022 with notice of the date and time of the Sheriff’s sale, as well as a copy of the Notice to Lienholders.

On December 13, 2022, the Property was sold at public auction by the New Castle Sheriff. The winning bidder was One Pie Investments, LLC (“One Pie”) for \$34,000. The sale was confirmed without opposition on January 20, 2023, and One Pie has recorded its Deed on January 23, 2023, and took title of the Property.

On January 25, 2023, One Pie filed a Petition for Rule and Writ of Possession with the Court, seeking to be given possession of the property.

On January 26, 2023, C. Lawler Rogers filed his Motion to Set Aside Judgment, such this Court construes as a Motion to Set Aside Sheriff’s Sale. He alleged that no notice of the sheriff’s sale was given nor received. This Court scheduled the matter to be heard on March 15, 2023. C. Lawler Rogers passed away on February 1, 2023. Academy Hills and One Pie filed their opposition to C. Lawler Rogers Motion on February 13, 2023.

Movants allege they became aware of the Sheriff's Sale of the Property when taking care of C. Lawler Rogers' estate upon his death. On February 27, 2023, upon discovering C. Lawler Rogers Motion to Set Aside Sheriff's Sale, Movants joined the action and filed a Consolidated Reply to Academy Hills and One-Pie's Opposition.

On March 8, 2023, Movants moved for an Emergency Order Preventing Payoff of First Party Mortgage. The Court heard the parties on the issue and on March 9, 2023, granted Movants' request to prohibit One Pie from paying off or attempting to pay off the existing first party mortgage on the Property.

On March 9, 2023, Academy Hills responded to Movants' Reply and on March 14, 2023, One Pie responded to Movants' Reply. Also on March 14, 2023, just one day before this matter was scheduled to be heard, Wilmington Savings Fund Society ("WSFS"), solely in its capacity as Owner Trustee of CSMC 2018-SP3 Trust ("Trust"), requested a continuance of the hearing. WSFS's continuance request alleges the Trust is the holder of the note and mortgage secured by the Property and it had no notice of the foreclosure proceeds. As such, it requested an opportunity to take a position on the sale of the property subject to its mortgage. The Court denied the continuance request, however, allowed WSFS to participate in the hearing and to submit their position to this Court before the Court rendered decision.

The Court considered all written submissions received, as well as oral arguments heard on March 15, 2023, in reaching its decision.

The Court asked for clarification on Academy Hills' obligation to execute personal property to satisfy the judgment before execution on real property. Academy Hills asserted it did not have to comply with the requirements of execution on personal property contained in 10 Del. C. § 4901 because Academy Hills proceeded *in rem* against the Property under the procedures set forth in the Delaware Uniform Common Interest Ownership Act ("DUCIOA"), 25 Del. C. § 81-316. However, in opposition, Movants assert pursuant to 25 Del. C. § 81-120, if a planned community existed before the effective date the Act, and the average annual expense of each unit does not exceed \$500, the community is subject only to certain subsections of the Act unless its bylaws and/or declaration are amended. Section 81-316 is not among the sections to which a preexisting community is subjected, therefore, it is the Movants' position Academy Hills could not and cannot proceed with an *in rem* action under § 81-316. One Pie responded that it agreed with Academy Hills analysis, the issue of Title 25's application was not raised previously so it should not be considered now, and the judgment should be voidable not void. Ultimately, One Pie asked this Court to deny the attempts to overturn the judgment and Sheriff's Sale and direct the Writ of Possession.

STANDARD OF REVIEW

This Court has broad discretion to confirm or set aside a sheriff's sale, and the Court's decision will be upheld absent an abuse of discretion.² This Court has an “inherent equitable power to control the execution process.”³ When reviewing a sheriff's sale, it is the Court's responsibility to “protect the affected parties from injury or injustice.”⁴ The Court must not “arbitrarily or capriciously refuse to confirm a sale, where there are no irregularities in the sale proceedings and no fraud, unfairness, or other extraneous matter demonstrating unfairness to one of the interested parties is shown.”⁵ In making its decision, the Court may consider inadequacy of price, “[f]raud, mistake, accident, impropriety, misconduct, surprise or irregularity in the sale process.”⁶

DISCUSSION

As it stands, Movants present the Court with two issues. One is whether there was adequate notice under applicable rules to apprise the interested parties.

² *Burge v. Fid. Bond & Mortg. Co.*, 648 A.2d 414, 420 (Del. 1994) (citing 2 Victor B. Woolley, *Woolley's Practice in Civil Actions*, § 1108 (1906)); *ShIPLEY v. New Castle Cty.*, 975 A.2d 764, 767 (Del. 2009).

³ *LSF9 Master Participation Tr. v. Truitt*, 2017 WL 8787509, at *1 (Del. Super.) (quoting *Burge v. Fid. Bond & Mortg. Co.*, 648 A.2d 414, 420 (Del. 1994)).

⁴ *Id.*

⁵ *Burge*, 648 A.2d at 420.

⁶ *Id.* at 419. (citing 59 C.J.S. Mortgages § 744).

And two, whether the Sheriff's Sale be set aside based on those grounds or any other grounds.

Adequate Notice to Movants

“[Superior Court Civil] Rule 4(f)(4) provides that ‘in a foreclosure proceeding, service is complete upon the return of two consecutive writs along with the certification by the sheriff that he has posted a copy of the alias writ on the subject property and has mailed a copy of the alias writ by both certified mail and first class mail to the last known address of the defendant.’”⁷ In this case and according to the presented evidence, Movants were sent notice to their last known address, the Property. There is no indication Movants address had changed and Movants have not provided any documentation of a change in address. All public records indicate Movants address was the Property.

For the above stated reason, Movants argument that service upon C. Lawler Rodgers did not effectuate service fails. Service at the “dwelling house or usual place of abode” upon someone “of suitable age and discretion then residing therein” is sufficient service under Rule 4(f)(1)(I). Because service was effectuated on C. Lawler, an adult residing in the Property, for Movants and the Property was considered their address, service was sufficient.

⁷ *MidFirst Bank v. Mullane*, 2022 WL 4460810, at *4 (Del. Super. Ct. Sept. 26, 2022) (emphasis in original).

The means by which the Association, or by way of the Association’s counsel, was obliged to provide notice of the sheriff’s sale to Movants and all other interested parties is prescribed by court rule and statute. Rule 69(g) governs notice of a sheriff’s sale of real estate and requires the Association to provide notice to the owner(s) of the Property and lien holder(s) by certified mail and by posting the property.⁸ Under Rule 69(g), “proof of sending notice is required, [but] proof of actual notice is not.”⁹ However, “due process ... does favor [actual notice] whenever possible.”¹⁰ Proof of mailing notice by certified mail has been provided, as well as evidence of the notice being posted to the Property. Academy Hills complied with the notice requirement as to Movants.

Notice Not Adequate to Lienholders

Lienholders/interested parties’ arguments regarding inadequate notice are with merit. According to Del. Code Ann. tit. 25, § 81-316(j)(4), “In the case of foreclosure, the association shall give reasonable notice of its action to all lienholders of the unit whose interest would be affected and to all other persons as would be required under applicable law for the foreclosure of a mortgage on real estate.” As such, if Title 25 applied to this case, lienholders would not be entitled to

⁸ Del.Super. Ct. Civ. R. 69(g).

⁹ *1880 Superfine Lane Condo. Ass'n v. McCollister*, 2020 WL 58295, at *2 (Del. Super. Jan. 6, 2020) (emphasis in original).

¹⁰ *Shipley v. New Castle Cnty.*, 975 A.2d 764, 767 (Del. 2009).

notice because their liens remained intact, making their interests unaffected. For reasons set forth below, the foreclosure procedures of Title 25 do not apply, therefore, this Court must apply foreclosure proceedings of Title 10. As such, “holders of lien on the real estate which is the subject to [the sheriff’s] sale who have acquired such liens at least thirty (30) days prior to the sheriff’s sale” are required to be given seven (7) days’ notice before the sale of the property.¹¹ Notice was not given to lienholders, therefore, Academy Hills failed to give adequate notice to lienholders under the required notice requirements.

Sheriff’s Sale Price Not Grounds for Set Aside

It is a well-established rule in Delaware that mere inadequacy of price, standing alone, is an insufficient ground for setting aside a judicial sale.¹² A sheriff’s sale may be set aside, however, when the sales price is so grossly inadequate that it shocks the conscience of the court.¹³ This determination is largely dependent upon the particular circumstances of the individual case.¹⁴ A decisional standard has evolved in the Superior Court, however, which requires special judicial scrutiny where a property sold at the sheriff’s sale fails to secure a bid which represents at least fifty percent of its fair market value (“50% test”). If the fair market value of

¹¹ Del. Super. Ct. Civ. R. 69(g)

¹² 2 Woolley’s Delaware Practice, supra, § 1121.

¹³ *Id.*

¹⁴ *Id.*

the property is over twice the sales price, the price is considered to be grossly inadequate, shocking “the conscience of the court,” and justifying the setting aside of the sale.¹⁵ Under these facts, we do not have a mortgagor foreclosing upon the Property, instead, we have a homeowner’s association forcing the sale for unpaid HOA fees. So, unlike a typical sheriff’s sale, no other interests are being extinguished by the sale of the home. Therefore, in following the reasoning for fair market value, we must consider the mortgage and federal tax lien which remains in place. Taking the liens into consideration, as well as determining One Pie paid \$34,000 for the Property encumbered with over \$330,000 in liens, that is worth approximately \$600,000, does not lead the Court to believe the price One Pie paid is grossly inaccurate. These facts do not shock the conscious of this Court. And as such, the Sheriff’s sale will not be set aside on this ground.

Academy Hills Cannot Utilize 25 Del. C. § 81-316

Pursuant to 25 Del. C. § 81-120, if a planned community existed before the effective date of DUCIOA, and the average annual expense of each unit does not exceed \$500, the community is subject only to certain subsections of DUCIOA unless its bylaws and/or declaration are amended pursuant to § 81-121 in order to become DUCIOA compliant. Section 81-316 is not among the sections to which a

¹⁵ *Id.*; *Central National Bank*, 51 A.2d at 858; *Home Beneficial Life Insurance Co. v. Blue Rock Etc.*, Del.Super., 379 A.2d 1147, 1149 (1977).

preexisting community is subjected. DUCIOA became effective on September 30, 2009. Magness Construction Co. established the Academy Hills declaration of restrictions on February 5, 1999, incorporated Academy Hills in 2001, and conveyed the common areas to Academy Hills on January 31, 2002. The current annual assessment is \$240. Academy Hills falls within the purview of § 81-120.

The bylaws currently posted on the Academy Hills Phase IV website (enclosed as Exhibit 2) are from 2002, prior to the effective date of DUCIOA. Academy Hills has presented nothing demonstrating an amendment to its bylaws allowing it to proceed in an *in rem* action under § 81-316, nor does the website contain any indication that the original 2002 bylaws currently posted are not in full force and effect in their original pre-DUCIOA version.

In the absence of an amendment, § 81-316 is inapplicable to Academy Hills under the clear terms of § 81-120 and Academy Hills cannot proceed with an *in rem* action under § 81-316.

Academy Hills cannot utilize foreclosure under the DUCIOA statute to avoid the responsibility of levying personal property under 10 Del. C. 4901 because without seeking protection under DUCIOA, this Court must apply standard foreclosure procedures found in Title 10. As such, Academy Hills had an obligation

to attempt to levy personal property before proceeding to a sheriff's sale. Because this procedure did not occur, the sheriff's sale is set aside.

CONCLUSION

For the foregoing reasons, Movants' Motion to Set Aside Sheriff's Sale is **GRANTED.**

IT IS SO ORDERED.

/s/ Calvin L. Scott

Judge Calvin L. Scott, Jr.