

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

CITIFINANCIAL MORTGAGE COM- )  
PANY, f/k/a ASSOCIATES HOME ) C.A. No. 02L-02-011 JTV  
EQUITY SERVICES, successor by reason )  
of merger with AVCO FINANCIAL SER- )  
VICES OF DOVER, INC., )  
)  
Plaintiff, )  
)  
v. )  
)  
THOMAS B. EDGE and )  
TAMMY L. EDGE, )  
)  
Defendants. )

*Submitted: December 10, 2003*

*Decided: March 8, 2004*

Janet Z. Charlton, Esq. Young, Conaway, Stargatt & Taylor, Wilmington, Delaware. Attorney for Plaintiff.

Dominic J. Balascio, Esq., Hudson, Jones, Jaywork & Fisher, Dover, Delaware. Attorney for Defendants.

*Upon Consideration of  
Defendant's Motion For Reargument*

**DENIED**

**VAUGHN, Resident Judge**

**ORDER**

Upon consideration of the defendants' motion for reargument, the plaintiff's opposition, and the record of the case, it appears that:

1. This is a mortgage foreclosure action. At a Sheriff's sale held on September 5, 2002, the plaintiff, Citifinancial Mortgage Company ("Citifinancial"), the foreclosing mortgagee, bid the property in for \$55,000, the only bid made. The full amount of the mortgage debt and costs, however, was only \$40,533.03. The sale was duly confirmed as a matter of course without objection. An appraisal done by Citifinancial shortly after the sale showed that the fair market value of the property was approximately \$15,000. Citifinancial sold the property November 15, 2002 for that sum, thus taking a significant loss on the debt. On November 6, 2002, shortly before that sale, the defendants informed the plaintiff that its bid price created a surplus of almost \$15,000 (\$55,000 minus \$40,533.03), which they expected Citifinancial to pay to them.

2. Citifinancial refused to do so and filed a motion to correct the bid price and Sheriff's return to show a bid of \$40,533.03. The defendants filed a motion to compel Citifinancial to pay the surplus. In an opinion dated November 12, 2003, the Court denied the defendants' motion and granted the plaintiff's motion.<sup>1</sup>

3. In that opinion, the Court noted that the Superior Court has broad, equitable power to control judicial sales to protect parties from injustice.<sup>2</sup> The

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<sup>1</sup> *Citifinancial Mortgage Co. v. Edge*, 2003 Del. Super. LEXIS 371 (Del. Super. 2003).

<sup>2</sup> *Id.*; *Burge v. Fidelity Bond and Mortgage Company*, 648 A.2d 414 (Del. 1994).

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Court reasoned that this power included the authority to grant relief from a confirmed Sheriff's sale where necessary to avoid injustice because of mistake or other just cause. The Court concluded that the decision to bid \$55,000, rather than \$40,533.03, was an error in bidding instructions. The Court further concluded that a result which required Citifinancial to pay the defendants a "surplus" of approximately \$15,000 because of this error would clearly be unjust.

4. The defendants have now filed a motion for reargument.

5. "Under Delaware law, reargument will usually be denied unless it is shown that the Court overlooked a precedent or legal principle that would have controlling effect, or that it has misapprehended the law or the facts such as would affect the outcome of the decision."<sup>3</sup> A motion for reargument should not be used merely to "rehash the arguments already decided by the court."<sup>4</sup>

6. In their motion for reargument, the defendants reargue some contentions made when the motions were originally considered. They also add new ones. The reargued contentions are that Citifinancial waived any right to relief by not acting prior to confirmation; that Citifinancial's failure to move for relief prior to confirmation constituted unexcused delay; that the Court's power to set aside a Sheriff's sale is limited to the period before confirmation occurs; that Citifinancial's

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<sup>3</sup> *Monsanto Co. v. Aetna Cas. And Sur. Co.*, Del. Super., C.A. 88-JA-118, Mem. Op. At 2, Ridgely, P.J. (Jan. 14, 1994) (quoting *Wilshire Restaurant Group, Inc. v. Ramada, Inc.*, Del. Ch., C.A. No. 11506, Let Op. At 2, Jacobs, V.C. (Dec. 1990)).

<sup>4</sup> *McElroy v. Shell Petroleum, Inc.*, 1992 Del. LEXIS 449.

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problem was the result of its own avoidable, unilateral mistake; that Citifinancial had unclean hands; and that the Court failed to have the plaintiff account for and return \$3,936.75 paid during foreclosure by the defendants.

7. As to this last contention, neither the defendants' original motion nor their motion for reargument seem to contain any particularized reason as to why the sum of \$3,936.75 should be repaid. The Court does not perceive any legal basis for requiring Citifinancial to return that sum. It is not entirely clear to the Court whether the \$3,936.75 referred to is credited into the amount of the judgment, or not. Although the plaintiff moved to have its bid corrected to reflect the full amount owed on the mortgage, which, at least arguably, legally erased the debt, in fact a substantial balance on the debt has gone unpaid. Under these circumstances, the Court is not persuaded that the plaintiff should be required to return \$3,936.75 or any other amount paid on the debt during foreclosure. The other rearguments submitted by the defendants were duly considered and addressed in the Court's November 12, 2003 decision. No grounds for granting reargument exists as to these restated contentions.

8. The defendants also assert new arguments, to-wit: that the Court applied the wrong standard of review by applying a summary judgment standard to the cross-motions; that the Court should have applied a "preponderance of the evidence" standard; that "the integrity of the entire Sheriff's sale process will be compromised because an otherwise open and fair bidding process will be frustrated by allowing disgruntled bidders, who later discover that they overvalued the property sold, to mount successful challenges to the Sheriff's sale"; and that the

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Court's reliance on the appraised value is misplaced and a bidder assumes the risk of value.

9. The value of the property had nothing to do with the Sheriff's sale in this case and had no bearing on Citifinancial's conduct in connection with the Sheriff's sale. It is relevant only because it is one of the factors which explains why it is unreasonable and unjust to expect Citifinancial to pay money to the defendants. After carefully reviewing the defendants' new arguments, the Court concludes that none of them satisfy the standard for reargument set forth in paragraph five above.

10. Therefore, the defendants' motion for reargument is ***denied***.

**IT IS SO ORDERED.**

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Resident Judge

oc: Prothonotary  
cc: Order Distribution  
File