

**SUPERIOR COURT**  
**OF THE STATE OF DELAWARE**

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 N. KING STREET, SUITE 10400  
WILMINGTON, DELAWARE 19801  
(302) 255-0669

Submitted: March 17, 2004  
Decided: July 30, 2004

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Re: *Aurora Loan Services, Inc. v. Lizzie J. Huggins,*  
*C.A. No. 00L-10-045J-FSS*

Dear Counsel:

This is the decision following the February 20, 2004 evidentiary hearing and supplemental submissions. In essence, the question presented is whose name must the sheriff put on the deed for a property recently sold at a sheriff's sale. The entity that put up most of the purchase price has intervened and asks for the deed in

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its name. One of the two people who bid on the property and made the down payment insists that the winning bidders are the owners and the deed is theirs.

## I.

For present purposes, this case began at a sheriff's sale on September 9, 2003, when Amaka Comfort, nee Nawkaihe, and her son made the high bid on 2313 Carter Street, in Wilmington. Comfort and her son, hereafter Buyers, bid \$15,500. After the gavel fell, the buyers put up a ten percent, earnest money deposit, which the sheriff's representative, Mr. Chris McBride, accepted. The court finds that when they bid on the property, Buyers intended to take title in their own names, as co-tenants.

The problems began after the sale, when Comfort realized that she would not be able to pay the balance due. Apparently, her son had decided not to contribute to the purchase. In any event, Comfort brought the problem to the attention of a friend and advisor, John Idasetima. Based on Comfort's and Idasetima's testimony, the court finds that Comfort and Idasetima agreed to form a partnership in order to acquire the property and renovate it.

The court finds it is more likely that Idasetima put up the money in return for equity, rather than merely as a loan. There is no evidence that Comfort and Idasetima discussed loan terms, such as collateral, interest rate and repayment schedule. Moreover, there is independent evidence that the parties informally agreed to form a partnership under the name "JBC General Contractors." JBC is an acronym derived from Comfort's, Idasetima's and his wife's first names. Although the JBC partners did not sign documents or register their fictitious name, they opened a joint bank account on September 23, 2003 and they obtained a business license.

On October 1, 2003 the JBC partners went to the sheriff's office and paid the balance due on the property, using a check from their joint account. The court is

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easily satisfied that the balance was provided by the partnership. In fact, McBride issued a receipt for the balance using the partnership's name.

The present problem ripened after the sheriff received the property's purchase price. At that point, the sheriff had to prepare a deed and it was unclear as to what name(s) it would bear. On the one hand, McBride knew that the buyers had submitted the winning bid and made the deposit. On the other hand, McBride believed that the JBC partnership had put up the balance of the purchase price. When McBride raised the issue, Comfort acknowledged the partnership's involvement and at McBride's insistence, she said she would provide assignments from Buyers in favor of the JBC partnership. It was understood by Comfort, the Idesetimas, the JBC partnership and the sheriff that once the sheriff had both assignments, the deed would be issued to the JBC partnership.

To make a long story short, any assurances notwithstanding, the sheriff has not received an assignment from Buyers in favor of the JBC partnership. To the contrary, Comfort eventually insisted that the deed be made out in the Buyers' names.

## II.

In deciding this case, the court has two, overarching concerns. First, the integrity and reliability of New Castle County's deed records must be maintained. Second, the sheriff of New Castle County cannot be put in the middle of property disputes. The sheriff must conduct sheriff's sales and issue deeds in a consistent and reliable way.

As provided above, the Carter Street property was properly exposed to sale and it was sold by the sheriff to the Buyers on September 9, 2003. The Buyers acquired equitable title in the property when they made the high bid and provided the

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required deposit.<sup>1</sup> At that point, moreover, no one besides the Buyers had a prospective interest in the property. The partnership came into being after the sheriff's sale.

Although the sheriff learned that a party other than the Buyers had acquired some interest in the property after the sheriff's sale, and that the balance of the purchase price was provided by someone other than the Buyers, neither of them has relinquished his or her interest in writing, and Comfort's son has not even relinquished his interest verbally. As far as the sheriff knows for certain, the JBC partnership is a stranger to Comfort's son and he still expects to receive a sheriff's deed in due course. By the same token, when the JBC partners gave their check to the sheriff before receiving the Buyers' assignments, the partnership took the risk that one or both of the Buyers would renege.

The court has some authority to order the sheriff to correct mistakes on deeds.<sup>2</sup> Nonetheless, the court cannot extinguish the son's interest in the property on the record presented. Nor can it reform the transaction. As a matter of law, the Buyers bought the property. They bid on it in their names and the sheriff has been paid. They have not assigned their interests. Meanwhile, the Intervenor has nothing in writing to establish that it is entitled to a deed in its name.

For the future, the court strongly suggests that unless the sheriff has the

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<sup>1</sup> V. Woolley, 2 *Woolley on Delaware Practice* § 1148 (citations omitted) (1906); see also *Goldstein v. Mayor and Council of the City of Wilmington*, 447 A.2d 423 424 (Del. 1982) (citations omitted).

<sup>2</sup> Woolley at § 1144 (upon petition, court has authority in some instances to grant order authorizing the sheriff to correct a mistake and make a deed to the proper party.)(citations omitted).

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proper paperwork in hand, the sheriff should not accept money from anyone other than the winning bidder. In this instance, for example, the sheriff should have cautioned the erstwhile partners at the outset that the sheriff would not accept the partnership's check for the balance, unless the Buyers provided their assignments or unless the JBC partnership agreed in writing that the sheriff would title the deed in the Buyers' names. That would have brought this matter to a head and prevented litigation.

### III.

In any event, for the foregoing reasons, the Intervenor's Motion to Title Sheriff's Deed to JBC General Contracting is ***DENIED*** and the Motion to Intervene is ***DISMISSED***. The sheriff, however, shall not issue a deed to the Buyers for thirty (30) days from this order's date. That will allow the JBC partnership, or the Idesetimas, a grace period during which they can take other steps to protect their interests, if they choose.

**IT IS SO ORDERED.**

Very truly yours,

FSS/lah  
pc: Robert T. Aulgur, Jr., Esquire