

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JAMES R. PALMER,

Appellant,

v.

Case No. 5D20-956

HMG VENTURE PARTNER, LLC,
MMA REALTY CAPITAL, LLC, LISA J.
PALMER, CONNIE JO PAYNE, THOMAS
A. STEFANOS, AND PATRIOT
I REAL ESTATE TRUST,

Appellees.

Decision filed May 7, 2021

Appeal from the Circuit Court
for Orange County,
John E. Jordan, Judge.

Barry Rigby, of Law Offices of Barry
Rigby, P.A., Orlando, for Appellant.

Marie A. Borland, Gregory P. Brown and
Shane T. Costello, of Hill, Ward &
Henderson, P.A., Tampa, for Appellee,
HMG Venture Partners, LLC.

No Appearance for other Appellees.

PER CURIAM.

AFFIRMED.

EDWARDS and NARDELLA, JJ., concur
COHEN, J., concurs specially, with opinion.

COHEN, J., concurring specially.

In this foreclosure case, James Palmer appeals the trial court's order granting in part and denying in part his motion to vacate foreclosure sale, vacate certificate of sale and certificate of title and objection to amount bid. On appeal, Palmer argues that the trial court abused its discretion in failing to grant an evidentiary hearing on his timely objection to the bid amount pursuant to section 45.031(8), Florida Statutes (2019).¹

As a general proposition, mere inadequacy of price standing alone is not a basis for setting aside a judicial sale. U.S. Bank Nat'l Ass'n v. Bjeljac, 43 So. 3d 851, 852–53 (Fla. 5th DCA 2010). As noted in Bjeljac, “when the inadequacy of price is gross and results from any mistake, accident, surprise, fraud, misconduct or irregularity upon the part of either the purchaser or other person connected with the sale, with resulting injustice to the complaining party, equity will act to prevent the wrong result.” Id.

The affidavit challenging the amount of the bid failed to allege any facts (or for that matter, even conclusory allegations) as to any of the factors set out in Bjeljac. The only allegation within the affidavit was that of mistake in

¹ The procedural objection, to wit: that the certificate of title was prematurely issued, was cured by entry of an amended certificate.

the failure to attend the foreclosure sale. There were no allegations of any fraud, misconduct or irregularity relating to the successful bid. The affidavit was wholly inadequate to necessitate an evidentiary hearing.