

[Cite as *Kest v. Appelhans*, 2002-Ohio-2826.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Ray T. Kest, as
Treasurer of Lucas County,
Ohio

Court of Appeals No. L-02-1016

Trial Court No. TF-00-1586

Appellee

v.

John J. Appelhans, et al.

DECISION AND JUDGMENT ENTRY

Appellants

Decided: June 7, 2002

* * * * *

Julia R. Bates, Lucas County Prosecuting
Attorney, Suzanne Cotner Mandross and Carol
Bruggeman, Assistant Prosecuting Attorney,
for appellee.

John G. Rust, for appellants.

* * * * *

KNEPPER, J.

{¶1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that denied appellants' motion to vacate an order of foreclosure. Pursuant to 6th Dist.Loc.App.R. 12(C), this court sua sponte assigns this case to the accelerated calendar.

{¶2} The record indicates that appellee filed a complaint for foreclosure for the nonpayment of real estate taxes on October 17, 2000. Service of the complaint and summons was attempted on John J. Appelhans, owner of the property, by certified mail at his last known address but was returned by the

U.S. Post Office marked "unclaimed." Service of the complaint then was attempted by ordinary mail at the same address but was subsequently returned to appellee marked "Return to Sender." Service also was attempted on appellant Li'Mes Industries, c/o John J. Appelkans, at two other addresses. The record further indicates that appellee filed an "AFFIDAVIT FOR CONSTRUCTIVE SERVICE" with a legal notice for same and that service was made by publication in the Toledo Legal News once each week for three consecutive weeks beginning January 18, 2001. Proof of publication was filed on February 12, 2001. On June 7, 2001, appellee filed a motion for default judgment and judgment was granted on July 9, 2001. An order of sale was journalized on October 12, 2001. On October 23, 2001, appellants filed a motion to vacate the order of sale and on December 13, 2001, the trial court denied the motion.

{¶3} On appeal, appellants assert that they did not receive notice of the date and time of the sheriff's sale of their property. This court notes at the outset that appellants, in their motion to vacate, stated that John Appelkans returned to the property for a garage sale held on October 4, 5, and 6, 2001 and found out that the property was going to be auctioned soon. Appelkans stated in his motion that he immediately called his attorney and the Lucas County Treasurer's Office and learned that the sale was set for October 12, 2001. Clearly, appellants had actual knowledge of the sale before it took place. We further find, after a thorough review of the record, that service by publication was completed properly. Accordingly, appellant's

sole assignment of error is not well-taken.

{¶4} On consideration whereof, this court finds that substantial justice was done the party complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellants.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, J.

JUDGE

James R. Sherck, J.

JUDGE

Richard W. Knepper, J.
CONCUR.

JUDGE