

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

FIRSTTRUST BANK,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
CARL D. TEITELMAN,	:	
	:	
Appellant	:	No. 3052 EDA 2013

Appeal from the Order entered on October 4, 2013
in the Court of Common Pleas of Montgomery County,
Civil Division, No. 2012-05474

BEFORE: BOWES, SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED JULY 07, 2014

Carl D. Teitelman ("Teitelman") appeals from the Order denying his Petition to Set Aside Sheriff's Sale. We affirm.

In September 2009, Teitelman entered into a mortgage with FirsTrust Bank ("FirsTrust") to refinance his home. Teitelman defaulted on the mortgage in October 2011.

FirsTrust filed a Complaint in mortgage foreclosure in March 2012, and Teitelman failed to file an Answer. As a result, FirsTrust obtained a default judgment in the amount of \$303,528 in April 2012. A sheriff's sale was held in November 2012, at which a third party purchased Teitelman's home for \$189,100. Subsequently, on December 12, 2012, Teitelman filed a Petition

to Set Aside Sheriff's Sale. Following discovery¹ and a hearing, the trial court denied the Petition.

On appeal, Teitelman raises the following questions for our review:

I. Whether the [trial] court [improperly] denied the Motion to Set Aside the Sheriff's Sale where there was overwhelming evidence that [FirsTrust] had breached its agreement to refinance the premises and not proceed with the [s]heriff's [s]ale through fraudulent misrepresentations and where the property was sold at a grossly inadequate price?

II. Whether the [trial] court improperly denied the Motion for an Extension of [T]ime to [C]onduct Discovery and the Motion to Compel the Depositions of Scott Richmond and Diane Constantine, agents of [FirsTrust] where this discovery was material, relevant and necessary to prove the fraudulent misrepresentations made by [FirsTrust]?

Brief for Appellant at 4.²

A petition to set aside a sheriff's sale invokes the equitable powers of a trial court. The burden of proof rests upon the proponent of the petition to show by clear and convincing evidence that the circumstances warrant relief. The trial court's ultimate disposition of the matter will not be disturbed upon review absent a finding of an abuse of discretion.

Jefferson Bank v. Newton Assocs., 686 A.2d 834, 838 (Pa. Super. 1996).

¹ We note that the trial court provided the parties 60 days to conduct discovery. Teitelman filed a Motion for Extension of Time to Conduct Discovery, which the trial court denied.

² Although Teitelman raises a question about the denial of his Motion to Conduct Depositions, he does not address that claim in his argument. Thus, Teitelman has waived the claim on appeal. **See** Pa.R.A.P. 2119(a) (requiring each issue to be supported with argument and citations to relevant authority); **see also *Commonwealth v. Kopicz***, 840 A.2d 342, 350 (Pa. Super. 2003) (holding that appellant waived his equal protection claim when he failed to provide any meaningful argument as to how sex offenders are discriminated against on a financial basis).

In his first claim, Teitelman asserts that the trial court abused its discretion in failing to set aside the sheriff's sale where he had entered into an oral agreement with FirsTrust to modify the terms of his loan repayment on October 19, 2012. Brief for Appellant at 8-10. Teitelman argues that FirsTrust breached that agreement through fraudulent misrepresentation. ***Id.*** Teitelman claims that pursuant to Pennsylvania Rule of Civil Procedure 3132,³ FirsTrust's alleged fraudulent misrepresentation is sufficient to show proper cause to set aside the sheriff's sale. ***Id.*** at 9.

Here, the alleged modification agreement was made approximately six months after default judgment was entered against Teitelman. See Trial Court Opinion, 12/31/13, at 2. Teitelman has not cited to any pertinent authority that an allegation of a breach of modification agreement, after default judgment has been entered, should be considered in a Petition to Set Aside Sheriff's Sale. ***See*** Pa.R.A.P. 2119(a); ***see also*** Trial Court Opinion, 12/31/13, at 2-3. In any event, Teitelman has failed to establish that FirsTrust breached the modification agreement due to fraudulent misrepresentation. The repayment schedule indicates that Teitelman was required to accept the offer of foreclosure alternative by sending \$10,000 to FirsTrust by October 26, 2012. See Trial Court Opinion, 12/31/13, at 3. Teitelman conceded that FirsTrust did not receive his payment until October

³ "[T]he court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances." Pa.R.C.P. 3132.

29, 2012, at which point the offer had expired and Teitelman could no longer accept. N.T., 10/2/13, at 7; see also Trial Court Opinion, 12/31/13, at 3. Therefore, Teitelman is not entitled to relief on his claim of breach through fraudulent misrepresentation.

Based upon the foregoing, Teitelman failed to demonstrated proper cause to set aside the sheriff's sale. Therefore, the sheriff's sale following Teitelman's mortgage default was appropriate.

Teitelman also claims that his home was sold at a grossly inadequate price, where the appraised value of the property was only \$265,000, yet the mortgage balance was \$303,528. Brief for Appellant at 10; **see also *Vend-a-Matic, Inc. v. Frankford Trust Co.***, 442 A.2d 1158, 1162 (Pa. Super. 1982) (holding that the outstanding mortgage balance must be considered in evaluating the adequacy of the sale price). Teitelman further argues that the sheriff's sale price was grossly inadequate because he was willing to pay FirstTrust more than the default judgment amount in order to stay in his family home. Brief for Appellant at 11.

There is a presumption that the price received at public sale is "the highest and best obtainable." ***Plummer v. Wilson***, 185 A. 311, 314 (Pa. 1936). "[A] sheriff's sale price is grossly inadequate where sale price [is] a small percentage—roughly ten percent or less—of the established market value." ***Bank of America, N.A. v. Estate of Hood***, 47 A.3d 1208, 1212 (Pa. Super. 2012).

Our review discloses that the sale price of Teitelman's home was not grossly inadequate. The purchase price was more than seventy percent of the appraised value. **See *Blue Ball Nat'l Bank v. Balmer***, 810 A.2d 164, 167 (Pa. Super. 2002) (concluding that a purchase price of 76% of the appraised value was proper). Additionally, with regard to the outstanding mortgage balance of \$303,528, the purchase price of \$189,100 was still more than sixty percent of that value. Therefore, we cannot set aside the sheriff's sale due to a grossly inadequate sale price.

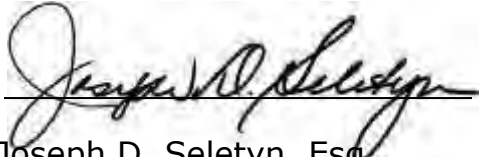
In his second claim, Teitelman asserts that the trial court erred in denying his Motion for an Extension of Time to Conduct Discovery. Brief for Appellant at 12-13. Teitelman claims that the denial of the Motion unfairly prejudiced his right to obtain evidence of fraudulent misrepresentation of the modification agreement. ***Id.*** at 13.

Because we have already determined that the sheriff's sale was appropriate under these circumstances, and that the purported modification agreement would not set aside the sheriff's sale, we need not address the merits of Teitelman's second claim.

Order affirmed.

J-S31037-14

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/7/2014