

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

FIRST NATIONAL BANK OF	:	IN THE SUPERIOR COURT OF
PENNSYLVANIA, AS SUCCESSOR OF	:	PENNSYLVANIA
FIRST NATIONAL BANK OF SLIPPERY	:	
ROCK	:	
	:	
	:	
v.	:	
	:	
TODD W. BOOHER, TRINDA L.	:	
BOOHER, AND TODD W. BOOHER AND	:	
MARIAN B. FENNICK, PERSONAL	:	
REPRESENTATIVES OF THE ESTATE OF	:	
PANSIE N. BOOHER, WILLIAM PINEO,	:	
CHAPTER 7 TRUSTEE, AND UNITED	:	
STATES TRUSTEE	:	
	:	
APPEAL OF: TODD W. BOOHER	:	
	:	
	:	No. 782 WDA 2012

Appeal from the Order Entered April 24, 2012,
In the Court of Common Pleas of Lawrence County,
Civil Division, at No. 11374 of 2000, C.A.

BEFORE: DONOHUE, SHOGAN and WECHT, JJ.

MEMORANDUM BY SHOGAN, J.:

FILED: May 10, 2013

Appellant, Todd W. Booher ("Todd"), appeals *pro se* from the order that denied his petition to set aside a sheriff's sale in this mortgage foreclosure action initiated by First National Bank of Pennsylvania ("the Bank"). Upon careful review, we affirm.

In a previous appeal involving these parties, this Court presented the factual and procedural history of this case as follows:

The trial court summarized a portion of the complicated history of this case as follows:

On March 27, 1998, Todd, Trinda Booher[,], collectively, "the Boothers", and Pansie N. Booher executed a mortgage in favor of First National Bank of Pennsylvania ("the Bank") to secure a debt in the amount of \$1,440,000. The Boothers received the proceeds of the mortgage. As collateral for this debt, the Boothers pledged certain real property located in Lawrence County, Pennsylvania. Pansie Booher, acting as a guarantor for the mortgage, entered into a separate mortgage with the Bank pledging real estate located in Hickory and Wilmington Townships, Lawrence County, Pennsylvania. On June 20, 2000, Todd voluntarily filed for bankruptcy.

Subsequently, the Boothers defaulted on the mortgage and the Bank commenced a mortgage foreclosure action on December 13, 2000, against the Boothers, the Estate (Pansie Booher having passed away), and the real estate pledged as security for the mortgage. Then, on May 10, 2002, the trial court entered a verdict in favor of the Bank in the amount of \$1,836,028.92 plus interest.

Trial Court Opinion, 4/4/07, at 2-3 (footnotes omitted).

On August 16, 2002, judgment was entered against the Boothers and the Estate. Upon the entry of judgment, the Bank filed a Praecipe for a writ of execution on the Bank's judgment. However, the Estate filed a timely appeal of the mortgage foreclosure action.¹ Originally, a sheriff's sale of all of the mortgaged property was scheduled to take place on January 14, 2003. However, on January 3, 2003, the trial court stayed the sheriff's sale pending the resolution of the Estate's appeal. On April 16, 2003, the trial court lifted the stay of the sheriff's sale of the Boothers' property, since the Boothers had filed no appeal of the judgment. On September 3, 2003, this Court affirmed the judgment against the Estate, after which the Pennsylvania Supreme Court denied the Estate's Petition for allowance of appeal. ***First National Bank v. Booher***, 835 A.2d 840 (Pa.

Super. 2003) (unpublished memorandum), *appeal denied*, 859 A.2d 769 (Pa. 2004).

¹ The Boohers filed no appeal.

While the Estate's appeal was pending, a sheriff's sale of the Boohers' property was conducted on July 9, 2003. At the sale, the Bank purchased the Boohers' properties for \$6,735.40. On December 23, 2003, the Bank, in accordance with 42 Pa.C.S.A. § 8103, filed a Petition to fix the fair market value of the property at \$221,800.00. On February 17, 2004, the trial court entered an Order granting the Bank's Petition.³ The trial court, however, reserved for a later date its decision as to whether the sheriff's sale on the foreclosed properties precluded the Bank from executing on and selling the mortgaged properties owned by the Estate. Both the Boohers and the Estate filed an appeal of the trial court's Order, but this Court affirmed the Order of the trial court. ***First National Bank v. Booher***, 872 A.2d 1277 (Pa. Super. 2005) (unpublished memorandum).

³ Todd and Trinda presented no evidence regarding the value of their property.

On or about October 15, 2004, the Estate filed a Petition to mark the judgment satisfied, released and discharged. The trial court denied the Petition on June 9, 2005. This Court subsequently affirmed the trial court's Order. ***First National Bank v. Booher***, 872 A.2d 1277 (Pa. Super. 2005) (unpublished memorandum).

On January 11, 2005, the Estate filed another Petition to mark the judgment satisfied, released and discharged. Once again, the trial court denied the Petition. On appeal, this Court affirmed the Order of the trial court, and the Pennsylvania Supreme Court denied allowance of appeal. ***First National Bank v. Booher***, 907 A.2d 1143 (Pa. Super. 2006) (unpublished memorandum), *appeal denied*, 913 A.2d 633 (Pa. 2006).

During the underlying foreclosure proceedings, the Bank discovered that Todd owned two additional parcels of land. These parcels were not encumbered by the Bank's mortgage and not subject to the mortgage foreclosure proceedings. However, because of Todd's bankruptcy, the parcels were subject to the

jurisdiction of the federal bankruptcy court. The Bank sought to purchase the properties from the bankruptcy trustee. At a subsequent auction, under the auspices of the federal bankruptcy court, the Bank purchased the parcels.⁴ The bankruptcy court entered an order approving of the sale on August 5, 2005.

⁴ The Bank purchased the parcels for \$22,000.00, plus the payment of the real estate taxes and closing costs.

On January 11, 2007, the Estate once again filed a Petition to mark the judgment satisfied, released and discharged. This Petition averred that the Bank had executed on its judgment against the Estate "through a judicial execution sale held in the United States Bankruptcy Court for the Western District of Pennsylvania" Petition to Mark Judgment Satisfied, Released and Discharged, 1/11/07, at ¶ 5. The Estate asserted in its Petition that the Bank had failed to comply with 42 Pa.C.S.A. § 8103, which required the Bank to file a petition to fix the fair market value of the property purchased at the bankruptcy auction. Petition to Mark Judgment Satisfied, Released and Discharged, 1/11/07, at ¶12. The Estate further asserted that pursuant to section 8103 of the Deficiency Judgment Act ("DJA"), it is entitled to have the judgment marked satisfied, released and discharged based upon the Bank's failure to file the requisite petition. *Id.*

On January 18, 2007, the Bank filed an Answer to the Petition denying that the properties purchased in the bankruptcy court proceedings were the subject of the mortgage foreclosure proceedings. Answer to Petition, 1/18/07, at ¶ 5. However, on that same date, the Bank also filed a Motion to [S]trike the Petition filed by the Estate. Motion to Strike, 1/18/07. In its Motion, the Bank asserted that the Petition was filed solely to cause further and unnecessary delay and had no basis in law or fact. *Id.* at ¶ 3-4.

On April 4, 2007, the trial court entered an Order granting the Motion to strike filed on behalf of the Bank. Trial Court Order, 4/4/07. The trial court concluded that section 8103 was not applicable because [(1)] the Bank was not a judgment creditor with respect to the parcels purchased at auction because

they were not covered by the mortgage, and (2) the Bank's purchase of the Booher's property at a bankruptcy auction was not the result of an execution sale. Trial Court Opinion, 4/4/07, at 3-4. The Estate filed a Motion for reconsideration, which the trial court denied. Thereafter, the Estate filed the instant appeal.

First National Bank of Pennsylvania v. Booher, et al, 833 WDA 2007, 951 A.2d 1221 (Pa. Super. filed February 15, 2008) (unpublished memorandum at 1-6), *appeal denied*, 598 Pa. 789, 959 A.2d 930 (2008) (certain footnotes omitted).¹ Ultimately, this Court affirmed the decision of the trial court and stated the following:

In the instant case, the Bank purchased the property at a sale by the bankruptcy trustee, and that sale was not related in any way to the foreclosure proceedings. Accordingly, the provisions of the DJA were not applicable, and the Bank was not required to file a petition to fix the fair market value of the property purchased at the bankruptcy sale. On this basis, we conclude that the Estate's claim is without merit.

Id. (unpublished memorandum at 14).

¹ We observe that this matter has been before this Court in five previous appeals. ***First National Bank of Slippery Rock v. Booher, et al***, 1517 WDA 2002, 835 A.2d 840 (Pa. Super. filed September 3, 2003) (unpublished memorandum), *appeal denied*, 580 Pa. 690, 859 A.2d 769 (2004); ***First National Bank of Slippery Rock v. Booher, et al***, 550 & 551 WDA 2004, 872 A.2d 1277 (Pa. Super. filed January 25, 2005) (unpublished memorandum); ***First National Bank of Pennsylvania v. Booher, et al***, 1180 WDA 2005, 907 A.2d 1143 (Pa. Super. filed July 17, 2006) (unpublished memorandum), *appeal denied*, 591 Pa. 664, 916 A.2d 633 (2006); ***First National Bank of Pennsylvania v. Booher, et al***, 833 WDA 2007, 951 A.2d 1221 (Pa. Super. filed February 15, 2008) (unpublished memorandum), *appeal denied*, 598 Pa. 789, 959 A.2d 930 (2008); ***First National Bank of Pennsylvania v. Booher, et al***, 2052 & 2053 WDA 2009, 34 A.3d 217 (Pa. Super. filed September 7, 2011) (unpublished memorandum), *appeal denied*, ____ Pa. ____, 40 A.3d 1237 (2012).

In April of 2008, the property in question was conveyed to Todd from the Estate and recorded in May of 2008. In October of 2008, the trial court entered an order, which lifted the stay of the sheriff's sale that had been issued in January of 2003. A sheriff's sale was then scheduled for January of 2009. The day before the scheduled sheriff's sale, Todd and the Estate filed a motion to strike the writ of execution. The trial court denied the motion to strike the writ and directed that the property proceed to sheriff's sale. Todd and the Estate filed another appeal. On September 7, 2011, this Court affirmed the trial court, and a subsequent petition for allowance of appeal filed with the Pennsylvania Supreme Court was denied on March 13, 2012. ***First National Bank of Pennsylvania v. Booher, et al***, 2052 & 2053 WDA 2009, 34 A.3d 217 (Pa. Super. filed September 7, 2011) (unpublished memorandum), *appeal denied*, ___ Pa. ___, 40 A.3d 1237 (2012).

Because it was determined that the Estate lacked standing, and Todd did not have the benefit of an automatic *supersedeas*, the property proceeded to sheriff's sale while the previous appeal was pending. It is undisputed that on January 7, 2010, the Bank purchased the property at the sheriff's sale for \$51,003.32.

On February 3, 2010, Todd filed a petition to set aside the sheriff's sale pursuant to Pennsylvania Rule of Civil Procedure 3132. The Bank filed an answer in opposition to the petition to set aside the sheriff's sale. The

Bank further filed a motion to deny the petition to set aside the sheriff's sale. In an order dated April 24, 2012, the trial court denied the petition to set aside the sheriff's sale and ordered that, should an appeal be filed from the order, an appeal bond in the amount of \$1,000,000.00 be posted. Todd then filed the instant appeal.²

In his *pro se* brief, Todd presents the following issues for our review:

WHETHER IT IS AN ABUSE OF DISCRETION FOR THE COURT TO ORDER THAT IF A DEFENDANT APPEALS HE MUST POST A ONE MILLION DOLLAR BOND WHERE NO ONE HAD YET ASKED FOR A STAY, NO APPEAL HAD YET BEEN FILED AND NO EVIDENCE WAS TAKEN

WHETHER IT WAS ABUSE OF DISCRETION FOR THE TRIAL JUDGE TO DECIDE THAT AN ALLEGATION OF GROSS INADEQUACY OF SALE PRICE HAD ALREADY BEEN DECIDED AND DID NOT WARRANT AN EVIDENTIARY HEARING WHERE THE ISSUE WAS BEFORE THE COURT ON A PETITION TO SET ASIDE SHERIFF'S SALE AND THAT ISSUE HAD NEVER BEEN RAISED BEFORE

WHETHER THE HEIRS OF A DECEASED MORTGAGOR ARE THE REAL OWNERS OF THE PROPERTY AND THEREFORE REQUIRED TO BE NAMED AS DEFENDANTS IN A MORTGAGE FORECLOSURE IN ORDER TO TAKE THEIR INTEREST IN THE PROPERTY

² Rather than file the required appeal bond with the trial court, Todd filed a petition for *supersedeas*, requesting the trial court to stay further proceedings pending this appeal. On July 20, 2012, the trial court granted Todd's petition but failed to condition the *supersedeas* on the filing of a security bond. On September 5, 2012, the Bank sought to modify the terms of the trial court's *supersedeas* to require an appeal bond. The Bank's application was denied on October 16, 2012. The Bank has since renewed its request with this Court by filing an application for modification of *supersedeas* seeking to have Todd file an appeal bond in the amount of \$1,000,000.00. In light of our ultimate disposition in this matter favoring the Bank, we deny its pending application for modification of *supersedeas*.

Appellant's Brief at 4 (verbatim).³

Initially, Todd argues that the trial court erred in ordering that "an appeal bond in the amount of \$1,000,000.00," would be due "[s]hould an appeal be taken" from the order of April 24, 2012. Todd contends that the trial court abused its discretion in ordering the posting of an appeal bond before an appeal or any party had requested a stay.

As we have previously stated, our courts cannot "decide moot or abstract questions, nor can we enter a judgment or decree to which effect cannot be given. As a general rule, an actual case or controversy must exist at every stage of the judicial process, and a case that was once 'actual' may be rendered moot by a change of facts." **Sayler v. Skutches**, 40 A.3d 135, 143 (Pa. Super. 2012), *appeal denied*, ___ Pa. ___, 54 A.3d 349 (2012) (quoting **Richards v. Trimbur**, 374 Pa. Super. 352, 543 A.2d 116, 119 (Pa. Super. 1988), *appeal denied*, 522 Pa. 620, 563 A.2d 888 (1989)).

³ We note that, during the course of oral argument in this matter, Todd again alleged that the Bank failed to give him proper credit for the land he sold. We presume that Todd is referencing the parcels of land purchased by the Bank out of Todd's bankruptcy action. As this Court held in a previous proceeding, "the Bank purchased the property at a sale by the bankruptcy trustee, and that sale was not related in any way to the foreclosure proceedings." **First National Bank of Pennsylvania v. Booher, et al**, 833 WDA 2007, 951 A.2d 1221 (Pa. Super. filed February 15, 2008) (unpublished memorandum at 14), *appeal denied*, 598 Pa. 789, 959 A.2d 930 (2008). Thus, we decline to revisit this issue in this appeal. We reach this conclusion especially in light of the fact that Todd has not presented this claim in the "statement of questions involved" portion of his appellate brief filed with this Court. **See** Appellant's Brief at 4.

We observe that subsequent to the trial court's order of April 24, 2012, Todd filed an application for *supersedeas* with the trial court. On July 20, 2012, the trial court granted Todd's request. As the trial court stated in its opinion, dated October 16, 2012:

The April 24, 2012 Order of Court from which [Todd] has appealed required [Todd] to post an appeal bond if he elected to file an appeal from that Order. Thereafter, this Court granted [Todd's] Petition for Supersedeas and entered a stay pending the outcome of the appeal.

Trial Court Opinion, 10/16/12, at 3. Thus, Todd did not post an appeal bond as instructed in the order of April 24, 2012, currently on appeal. Consequently, the subsequent action of the trial court, which essentially lifted the appeal bond necessary for filing the instant appeal, has rendered the question raised by Todd's issue moot. Accordingly, we will not proceed with any further discussion of the trial court's actions pertaining to the ordering of an appeal bond prior to the filing of an appeal.

In his second issue, Todd argues that the trial court erred in its determination regarding his petition to set aside the sheriff's sale based on a gross inadequacy of the sale price. Essentially, Todd contends that the trial court should have held a hearing into the sale price paid by the Bank at the sheriff's sale. Todd believes that the prevailing bid of \$51,003.32, placed by the Bank at the sheriff's sale, was inadequate, especially in light of the Bank's admission in its answer to the petition to set aside.

In his appellate brief, Todd states the following:

[The Bank's] answer to this allegation is: "The allegations in Paragraph 61 of the Petition to Set Aside Sheriff's Sale challenges the \$51,003.32 sale price of the Property at the January 7, 2010 Sheriff's Sale as being grossly inadequate. At the sale, the Bank, which holds a judgment/lien against the property in the amount of approximately \$2,556,399.36, was the successful bidder on the Property and the sales price represents the Bank's "costs" related to executing against the Property." This is an admission of the allegation, the word denied is not used. (RR p. 50a) In fact [the Bank's] own statement proves that the sale price was grossly inadequate. The Banks [sic] claims to hold a judgment against the property of "approximately" \$2,556,399.36. The sale price of \$51,003.32 is less than 2% of the judgment amount.

Appellant's Brief at 12.

Pennsylvania Rule of Civil Procedure 3132 governs petitions to set aside sheriff's sales, and provides as follows:

Upon petition of any party in interest before delivery of the personal property or of the sheriff's deed to real property, the 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.

Our Supreme Court has long held that a petition to set aside a sheriff's sale is governed by equitable principles. ***Doherty v. Adal Corp.***, 437 Pa. 109, 111, 261 A.2d 311, 313 (1970). Equitable principles are applied to sheriff's sales because "[t]he purpose of a sheriff's sale in mortgage foreclosure proceedings is to realize out of the land, the debt, interest, and costs which are due, or have accrued to, the judgment creditor." ***Kaib v. Smith***, 684 A.2d 630, 632 (Pa. Super. 1996). Moreover, we are mindful

that the petitioner has the burden of proving circumstances warranting the exercise of the trial court's equitable powers. ***Bornman v. Gordon***, 527 A.2d 109, 111 (Pa. Super. 1987), *appeal denied*, 517 Pa. 620, 538 A.2d 874 (1988). As a general rule, the burden of proving circumstances warranting the exercise of the court's equitable powers is on the applicant, and the application to set aside a sheriff's sale may be refused because of the insufficiency of proof to support the material allegations of the application, which are generally required to be established by clear evidence. ***Id.*** This Court will not reverse the trial court's decision absent an abuse of discretion. ***Id.*** An abuse of discretion occurs where, for example, the trial court misapplies the law. ***Bank of America, N.A. v. Estate of Hood***, 47 A.3d 1208, 1211 (Pa. Super. 2012) (citing ***Warmkessel v. Heffner***, 17 A.3d 408, 413 (Pa. Super. 2011)).

Likewise, we have long stated that "gross inadequacy" between the fair market value and the successful bid is grounds for setting aside a sheriff's sale. ***Scott v. Adal Corp.***, 509 A.2d 1279, 1283 (Pa. Super. 1986). The courts have traditionally looked at each case on its own facts. ***Id.*** It is for this reason that the term "grossly inadequate price" has never been fixed by any court at any given amount or any percentage amount of the sale. ***Id.*** Furthermore, it is well settled that the price received at a duly advertised public sale is the highest and best price obtainable. ***Bank of***

America, N.A. v. Estate of Hood, 47 A.3d at 1211 (citing ***Blue Ball Nat'l Bank v. Balmer***, 810 A.2d 164, 166-167 (Pa. Super. 2002)).

Our review of the record reflects that Todd failed to offer any evidence of “gross inadequacy” or otherwise establish his claim. Petition to Set Aside Sheriff Sale, 2/3/10, (certified record entry no. 189) at 6. Rather, Todd simply makes the following bald allegations in his petition to set aside the sheriff’s sale:

Inadequacy of Price

61. The sale price of \$51,003.32 was grossly inadequate.

62. Inadequacy of Price constitutes proper cause for relief under Rule 3132 for setting aside an execution sale.

Id. ¶¶ 61 & 62 (emphasis in original). Todd has presented no material allegations as to the fair market value of the property sold at the sheriff’s sale. Without any assertion of the fair market value of the property, we cannot conclude that the trial court abused its discretion in refusing to exercise its equitable powers and set aside the sheriff’s sale. Hence, we are constrained to conclude that Todd’s claim lacks merit.

In his final issue on appeal, Todd attempts to argue that the Bank did not name the real owner of the property in the mortgage foreclosure action. Todd contends that the heirs of the Estate are the real owners of the property and were required to be named as defendants in the mortgage

foreclosure. In effect, this is the latest iteration of an issue previously raised by Todd and found to lack merit by this Court on appeal.

We are mindful that the law of the case doctrine “refers to a family of rules which embody the concept that a court involved in the later phases of a litigated matter should not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter.” **Zappala v. James Lewis Group**, 982 A.2d 512, 519 n.6 (Pa. Super. 2009) (quoting **Commonwealth v. Starr**, 541 Pa. 564, 664 A.2d 1326 (1995)). “The doctrine is designed to promote judicial economy, uniformity of decision making, protect the settled expectations of the parties, maintain the consistency of the litigation and end the case.” **Gateway Towers Condo. Ass’n v. Krohn**, 845 A.2d 855, 861 (Pa. Super. 2004) (quoting **Peden v. Gambone Bros. Dev. Corp.**, 798 A.2d 305 (Pa. Cmwlth. 2002)). However, departure from the law of the case doctrine is allowed in exceptional circumstances such as where there has been an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous and would create a manifest injustice if followed. **George v. Ellis**, 911 A.2d 121, 125 (Pa. Super. 2006), (citing **Commonwealth v. Viglione**, 842 A.2d. 454 (Pa. Super. 2004)).

Our review of the record reflects that, in the most recent memorandum decision authored by this Court involving these parties, Todd presented the following issue for our review:

DID THE COURT ERROR [sic] IN DETERMINING THAT THE ENTRY OF "BOOHER, TODD W., REPRESENTATIVE" AND "BOOHER, PANSIE ESTATE OF" INSTEAD OF "TODD W. BOOHER AND TODD BOOHER PERSONAL REPRESENTATIVES OF THE ESTATE OF PANSIE N. BOOHER" IN THE JUDGMENT INDEX ARE SUFFICIENT TO FORECLOSE ON A PROPERTY THAT WAS MORTGAGED BY PANSIE N. BOOHER AND FORECLOSED UPON AFTER HER DEATH BECAUSE A MORTGAGE IS AGAINST THE PROPERTY AND NOT THE INDIVIDUAL OWNERS?

First National Bank of Pennsylvania v. Booher, et al, 2052 & 2053 WDA 2009, 34 A.3d 217 (Pa. Super. filed September 7, 2011) (unpublished memorandum at 3), *appeal denied*, ___ Pa. ___, 40 A.3d 1237 (2012). In addressing this issue, this Court summarized Todd's argument as follows:

Appellants last argue that the entries in the judgment index were not sufficient to foreclose upon the property that was mortgaged by Pansie N. Booher. Basically, Appellants claim there was not a proper judgment entered against either Todd W. Booher or the fiduciaries of the Estate of Pansie N. Booher. Appellants assert that, because there was no proper judgment, there was no execution against their interest in the property. Appellants' Brief at 21-25.

First National Bank of Pennsylvania v. Booher, et al, 2052 & 2053 WDA 2009 (unpublished memorandum at 10). Thereafter, this Court addressed the merits of the issue and concluded that there was no merit to the claim.

Id. at 12. Specifically, this Court stated the following:

Assuming for the sake of argument that the judgment index was incorrectly noted with regard to the listing of names, our

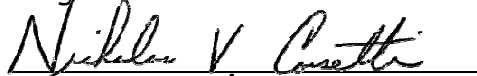
review of the record reflects that, in its mortgage foreclosure action, First National named Todd W. Booher, Trinda L. Booher and Todd W. Booher and Marian B. Fennick, personal representatives of the Estate of Pansie N. Booher, as the defendants. **Thus, First National properly named the personal representatives of the Estate, along with other parties in the mortgage foreclosure action.** At the conclusion of the non-jury trial, judgment was entered in favor of First National. It is undisputed that all parties were aware of the judgment rendered in favor of First National. Indeed, as discussed previously in this memorandum, Appellants brought multiple appeals over the course of several years challenging the judgment rendered in favor of First National. To argue that Appellants lacked actual notice of the judgment in favor of First National would be disingenuous. Accordingly, because Appellants had actual notice of the judgment in favor of First National in the mortgage foreclosure proceedings, there is no merit to their claim that the judgment index is improper and precludes a sheriff's sale of the property.

Id. (unpublished memorandum at 12) (emphasis added).

Because a panel of this Court has previously determined the essential merits of this issue, *i.e.*, whether the Bank improperly named defendants in the mortgage foreclosure action, we are precluded from revisiting the claim in the instant appeal. ***Zappala, Gateway Towers Condo Ass'n.***

Application for modification of *supersedeas* denied. Order affirmed.

Judgment Entered.



Deputy Prothonotary

Date: 5/10/2013