Client Alert

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CURRENT ISSUES RELEVANT TO OUR CLIENTS MARCH 19, 2013

2013 Foreclosure Litigation — Bid Amounts at Judicial Sales

One of the last steps in the foreclosure process in Illinois, after a judgment of foreclosure has been obtained and the real property has been sold at auction in a judicial sale, involves obtaining a court order approving and confirming the sale. Lately, defendants have contested confirmation of the judicial sale, arguing that the price obtained at the sale is "unconscionably low."

Section 15-1508(b) of the Illinois Code of Civil Procedure limits a court's discretion to reject a judicial sale to four grounds. *See* 735 ILCS 5/15-1508(b); *see also Mortg. Elec. Registration Sys., Inc. v. Barnes*, 406 Ill. App. 3d 1, 4, 940 N.E.2d 118, 122 (1st Dist. 2012). These include: (1) notice was not given; (2) the terms of the sale were unconscionable; (3) the sale was conducted fraudulently; or (4) justice was otherwise not done. 735 ILCS 5/15-1508(b); *see also Levy v. Broadway-Carmen Building Corp.*, 266 Ill. 279, 288-89 (1937). Foreclosure defendants carry the burden to establish that the judicial sale should not be confirmed.

In Chicago and the surrounding Illinois counties, lenders are required to attach a recent appraisal to their motion to confirm the judicial sale. If the winning bid at the judicial sale does not equal the appraised value, defendants may argue that there are grounds to deny confirmation based on the "unconscionability" and the "justice" grounds described above.

A recent Illinois Appellate Court decision makes clear that arguments of this kind by foreclosure defendants are unavailing. In *NAB Bank v. LaSalle Bank N.A.*, 2013 IL App (1st) 121147 (Jan. 18, 2013), the Illinois Appellate Court confirmed the longstanding principle that the price obtained at a judicial sale is a conclusive measure of the property's value.

In *NAB Bank*, the Court focused on whether the sale price of $20,000 for an undivided half-interest in a single-family home was unconscionably low when compared with the most-recent appraisal. The defendants argued not only that the judicial sale price was too low, but also that because of the low price justice was not done.

The Court explained that "[t]he 'justice clause' provides a narrow window through which courts can undo sales because of serious defects in the actual sale process, and *not* because of alleged errors in the process leading up to the underlying judgment." *NAB Bank*, 2013 IL App (1st) 121147 at ¶ 19 (emphasis added). This means that any issues raised by the defendants must specifically relate to the judicial sale process and not to issues that the defendants may have asserted during the underlying litigation.

The Court confirmed that the "[i]nadequacy of sale price is not a sufficient reason, standing alone, to deny confirmation of a judicial sale." *Id.* at ¶ 20 (citing *Lyons Savs. & Loan Ass'n v. Gash Assoc.*, 189 Ill. App. 3d 684, 689 (1989) (explaining that mere inadequacy of price "is no reason for upsetting a judicial sale)).

The Court noted that forced judicial sales yield a "real price, while appraisals are just forecasts." *Id.* at ¶ 21. As such, it is necessary for the defendants to meet the high burden of showing what was improper about the judicial sale process itself.

Arguments by foreclosure defendants relating to values set forth in a lender appraisal therefore should not prevent confirmation of a judicial sale.

To discuss any of the issues discussed in this Client Alert, please contact Mike Benz (312) 845-2969 or Mark Silverman (312) 845- 3786, or any attorney in our Commercial Litigation Group. Visit us online at www.chapman.com.