

IN THE COUNTY COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE  
STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY  
CIVIL DIVISION

RIVERCREST COMMUNITY  
ASSOCIATION, INC.,

CASE NO.: 14-CC-003186

Plaintiff,

DIVISION: I

v.

LUIS LOPEZ and TINA LEONELLI  
LOPEZ,

Defendants.

FILED  
2017 FEB 20 AM 9:41  
HILLSBOROUGH COUNTY, FLA  
COUNTY CIVIL

ORDER DENYING DEFENDANT'S OBJECTION TO SALE  
AND MOTION TO VACATE SALE

THIS MATTER came before the Court at a hearing on January 25, 2017 on Defendant's Objection to Sale and Motion to Vacate ("Defendant's Objection and Motion") filed May 27, 2016. Having reviewed and considered the Defendant's Objection and Motion, the Plaintiff's *Ex-Parte* Motion for Order Denying Objection to Sale and Ordering Issuance of Certificate of Title in Favor of third Party Purchaser ("Plaintiff's Response"), the court file, the testimony of the Defendants, the evidence presented, the arguments of the parties and the third-party purchaser, the applicable law, and being otherwise fully advised, the Court finds:

1. Plaintiff filed this action on February 5, 2014, to foreclose a homeowners association lien based on Defendants' failure to pay annual assessments.
2. At hearing on October 8, 2014, on Plaintiff's Motion for Entry of Summary Judgment and Assessment of Reasonable Attorney's Fees, at which the Defendants were present, the Court granted Plaintiff's Motion. On October 14, 2014, the Final Judgment of Foreclosure was entered.

3. Subsequently, on November 24, 2014, the Plaintiff and Defendants entered into a Joint Stipulation for Settlement. *See* Pl.'s Ex. 1. In the Joint Stipulation for Settlement Agreement, Defendants admitted owing \$4,587.28. *Id.* The parties agreed to settle the matter for \$2,950.00 with the Defendants to repay the debt over the course of an 18-month period beginning with a \$250 payment on November 30, 2014, and 18 monthly payments of \$150.00 beginning December 31, 2014. *Id.* Through the agreement reached in the Joint Stipulation for Settlement the foreclosure sale of the home did not occur in December 2014. However, the Joint Stipulation for Settlement provided that failure to comply with the agreement would be considered a default. *Id.* In the event of a default, the Joint Stipulation for Settlement provided that the Plaintiff "may submit an *ex parte* motion for final judgment for money damages or foreclosure to recover the amounts set out in paragraph one (1) of this Joint Stipulation for Settlement, less any payments made, without further hearings or motions on the matter." *Id.*
4. At the January 25, 2017 hearing, Defendants' testimony confirmed entering into the Joint Stipulation for Settlement with Plaintiff. *See* Hrg. Trans. 11:8–19 & 15:19–25 (Jan. 25, 2017).
5. In June 2015, Defendants breached the settlement agreement by failing to make appropriate payment under the plan. *See* Pl.'s Ex. 1; *see also* Pl.'s *Ex-Parte* Mot. for Entry of Amend. Final Judm. of Foreclosure Due to Defendants' Default of Jt. Stip. for Settle. and Directing Clerk of Ct. to Reopen Foreclosure Case (March 18, 2016). Additionally, Defendants' check issued on August 17, 2015 was dishonored. *See* Pl.'s Ex. 1.

6. On November 23, 2015, Plaintiff forwarded Defendants a letter relative to Defendants' default of the Joint Stipulation for Settlement and provided an opportunity for the Defendants to cure the default. *See* Plaintiff's Exhibit 1. Receipt of this notice is confirmed through Defendant Tina Lopez's response to the November 23, 2015 email enclosing the correspondence. *See* Pl.'s Ex. 2.
7. On March 18, 2016, Plaintiff filed its *Ex-Parte* Motion for Entry of Amended Final Judgment of Foreclosure Due to Defendants' Default of Joint Stipulation for Settlement and Directing Clerk of Court to Reopen Foreclosure Case ("Plaintiff's *Ex-Parte* Motion").
8. On April 19, 2016, the Court entered the Amended Final Judgment of Foreclosure, which set the sale of the property for May 20, 2016. This Amended Final Judgment of Foreclosure shows a copy to the Defendants at 11016 Holly Cone Drive, Riverview, Florida 33659—an address confirmed to be the residence of the Defendants throughout the record and testimony at the January 25, 2017 hearing.
9. On May 27, 2016, subsequent to the sale of the subject property, Defendants, through counsel, timely filed their Objection to Sale and Motion to Vacate Sale. In its Objection and Motion, Defendants cite to Florida cases indicating the ability of courts to vacate judicial sales on the showing of equitable grounds. Defendants allege that continuing efforts to settle the debt exist and Defendants live in the subject property, and request that the sale of the property at 11016 Holly Cone Drive, Riverview, Florida 33569 be vacated.
10. As cited by the parties, the Florida Supreme Court's decision in *Arlt v. Buchanan* set forth a "general rule" related to setting aside a judicial sale indicating that "mere inadequacy of price" is not sufficient. 190 So. 2d 575, 577 (Fla. 1966). The *Arlt* Court

went on to indicate that “where the inadequacy is gross and is shown to result 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.*

11. The Florida Supreme Court has more recently clarified that the *Arlt* decision did not establish a definitive test or factors required for setting aside a judicial foreclosure sale, but rather “provides[s] guidance about why the trial courts’ broad discretion to weigh the equities that were presented in those cases should have been upheld.” *See Arsali v. Chase Home Finance LLC*, 121 So. 3d 511, 514–516 (Fla. 2013). The *Arsali* Court indicated that

[o]ur decisions show that we have consistently held that the mere allegation of any single factor or any specific combination of factors is insufficient for litigants to prevail in an action seeking a set aside of a judicial foreclosure sale. Instead our previous decisions have consistently required that litigants allege one or more adequate equitable factors **and make a proper showing to the trial court that they exist in order to successfully obtain an order that sets aside a judicial foreclosure sale.**

*Id.* at 518 (emphasis added). Further, the Court in *Arsali* held “that proof of an inadequate bid price is not a necessary requirement in an action to set aside a foreclosure sale.” *Id.* at 520.

12. The Second District Court of Appeal has indicated that “the substance of an objection to a foreclosure sale under section 45.031(5) *must be directed toward conduct that occurred at, or which related to, the foreclosure sale itself*” and that the purpose of an objection under section 45.031 is to ensure that there are not irregularities in the sale. *U.S. Bank National Association v. Rios*, 166 So. 3d 202, 210 (Fla. 2d DCA 2015) (emphasis in original) (internal citations omitted).

13. To the extent that Defendants' argument related to a lack of notice of Plaintiff's *Ex-Parte* Motion filed March 18, 2016 is alleged to be the irregularity in the sale, the Court finds that the Joint Stipulation for Settlement between the parties clearly set forth the procedure for obtaining a Final Judgment and sale upon default by the Defendants. Plaintiff was entitled to proceed with the foreclosure case and scheduling of a foreclosure sale in this matter.
14. The Court notes that the "Certificate of Service" on Plaintiff's *Ex-Parte* Motion filed March 18, 2016 indicates that Plaintiff provided notice of the *Ex-Parte* Motion to Defendants. Defendant, Luis Lopez's testimony confirms that the address listed on the Certificate of Service is in fact the Defendants' address. *See* Hrg. Transc. 9:5–21 (Jan. 25, 2017). Although Defendants indicate that they did not receive Plaintiff's *Ex-Parte* Motion, the evidence and testimony provided in this matter was insufficient to overcome the prima facie proof of service as stated by the Certificate of Service. *See* Fla. R. Jud. Admin. 2.516(f).
15. Further, although Defendants' testimony and counsel's argument at the hearing alludes to an inadequacy of the sale price in this matter, the evidence and testimony presented is not sufficient to make such a showing.
16. Defendants also argue that their breach of the Joint Stipulation for Settlement is explained by their misunderstanding involving the effect of a separate class action lawsuit involving Bush Ross on their Joint Stipulation for Settlement and the payments due in this case.

17. Defendants credit stopping payments under the Joint Stipulation for Settlement with the receipt of mail regarding a class action lawsuit against Bush Ross, but Defendants' testimony does not indicate the date on which Defendant received the class action lawsuit notice or date Defendants stopped payment under the Joint Stipulation for Settlement. *See* Hrg. Transcript 11:20–12:25 & 16:6–8 (Jan. 25, 2017). The evidence presented reflects that the administrator distributed notice of the class action settlement on October 19, 2015. *See* Pl.'s Ex. 3. The evidence also reflects that the Defendants' initial breach of the Joint Stipulation for Settlement occurred in June 2015, prior to the class action notification. As such, confusion over the applicability and effect of the class action settlement on Defendants' repayment plan could not have been the cause of the initial breach.

18. Further, while, as noted above, there are situations in which a foreclosure sale can be vacated; however, a misunderstanding of a party's legal obligations does not provide a sufficient reason to overturn a foreclosure sale. *See Aegis Properties of South Florida, LLC v. Avalon Mater Homeowner Association, Inc.*, 37 So. 3d 960, 961–962 (Fla. 4th DCA 2010). Defendants' misunderstanding of their obligations under the Joint Stipulation for Settlement in light of developments in the Bush Ross class action lawsuit does not provide a sufficient basis upon which to overturn the foreclosure sale in this matter.

19. Defendants have not shown a legal or equitable basis upon which to vacate the foreclosure sale in this action.

Based on the foregoing, it is therefore **ORDERED and ADJUDGED** that Defendant's Objection to Sale and Motion to Vacate Sale filed May 27, 2016 is hereby **DENIED**. The Clerk of Court may issue the Certificate of Title in this matter.

**DONE AND ORDERED** in Chambers, at Tampa, Hillsborough County, Florida, this

17 day of February, 2017.

  
**HONORABLE JOELLE ANN OBER**  
County Court Judge

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