DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

QUEST SYSTEMS, LLC,

Appellant,

v.

SALEH FAR and A HOME OF MY OWN, LLC,

Appellees.

No. 2D22-1545

February 8, 2023

Appeal pursuant to Fla. R. App. P. 9.130 from the County Court for Hillsborough County; Frances Maria Perrone, Judge.

Christopher Hixson of Segal & Schuh Law Group, P.L., Clearwater, for Appellant.

Sami Thalji and Melissa Thalji of Florida Consumer Lawyers, Tampa, for Appellee Saleh Far.

No appearance for Appellee A Home of My Own, LLC.

LABRIT, Judge.

Quest Systems, LLC (Quest), appeals an order vacating a judicial sale in a foreclosure action. Appellee Saleh Far was the highest bidder at the sale, but after learning that a superior mortgage encumbered the property, he objected and moved to vacate the sale. Mr. Far argued that he was unaware of the mortgage before the sale and that an alleged fraudulent scheme prevented him from making an informed decision.

But Mr. Far didn't present any evidence explaining how the alleged scheme influenced his decision to bid on the property or inhibited his ability to discover the mortgage before the sale. Consequently, we reverse the order vacating the sale.

Background

The property in dispute is a townhome that has been subject to at least three foreclosure actions. In 2013, mortgage holder MTGLQ, L.P. (MTGLQ), and the homeowner's association (HOA) filed foreclosure actions against the townhome's former owner. Although the record is light on facts, it appears undisputed that the HOA obtained title to the property through a judicial sale while MTGLQ's foreclosure action remained pending. The HOA then assigned title to Bonafide Properties, LLC (Bonafide).[1]

Years later, on the same day, February 15, 2022, two events involving the property occurred: (1) Bonafide deeded the property to Quest via a quitclaim deed, and (2) A Home of My Own, LLC (AHMO), sued Quest to foreclose an equitable lien against the property. It is unclear from the record which event occurred first—the quitclaim deed to Quest or the filing of AHMO's complaint—but the timestamp on AHMO's complaint reflects an 8:51 a.m. filing time.

In its complaint, AHMO alleged that Quest owned the property in dispute, that Quest owed AHMO $24,820, and that Quest would not have acquired the property without those funds. Based on these allegations,

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[1] The lack of record evidence related to Bonafide's acquisition of the property is unsurprising. *See Bonafide Props. v. Wells Fargo Bank, N.A.*, 198 So. 3d 694, 696–97 (Fla. 2d DCA 2016) (Altenbernd, J., concurring) (explaining the "innovative procedure" that limited liability companies use to acquire properties at foreclosure sales and how the record "never tell[s] us the rest of the story" in those situations).

AHMO asked the trial court to impose an equitable lien, set a date by which Quest had to repay the funds, and schedule a foreclosure sale if Quest did not meet the deadline.

Within hours of AHMO filing its complaint, AHMO and Quest stipulated to entry of a final judgment of foreclosure. With the stipulation, AHMO and Quest submitted an agreed final judgment which the trial court entered on February 16, 2022—the day after Quest had acquired the property.

At the ensuing judicial sale, Mr. Far was the highest bidder and the clerk issued a certificate of sale confirming the sale to him. Within ten days, Mr. Far filed his motion to vacate. Mr. Far alleged that when he deposited the sales funds with the clerk, the clerk advised him of MTGLQ's mortgage and pending foreclosure action. Mr. Far allegedly was unaware of these facts before he bid on the property.

Mr. Far also asserted that Quest, AHMO, and others had fraudulently schemed to quickly force the sale and obtain a windfall of surplus funds before MTGLQ could hold a foreclosure sale of its own. Mr. Far heavily relied on the timing of the quitclaim deed to Quest and the rapid resolution of AHMO's foreclosure action as evidence of the alleged fraudulent scheme. But Mr. Far presented no evidence linking this alleged scheme to his decision to bid on the property or his lack of knowledge of MTGLQ's mortgage. Mr. Far also presented no evidence as to whether he researched the property before bidding on it or what he found—or was unable to find—if he did. Quest and AHMO raised this lack of evidence below. In response, Mr. Far submitted a short affidavit verifying the allegations of his motion and averring (without any supporting facts) that "quick transfers" and "schemes to hide the

ownership of the property" had prevented him from making a fully informed decision.

At a hearing on Mr. Far's motion, the trial court granted the motion without explanation and entered an unelaborated order vacating the sale and directing the return of the sale funds to Mr. Far. Quest timely appealed the order pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(C)(ii). Quest argues that the order is unsupported by competent substantial evidence, and we agree.

Discussion

We review orders setting aside judicial sales for abuse of discretion. *See Skelton v. Lyons*, 157 So. 3d 471, 473 (Fla. 2d DCA 2015) (citing *Sulkowski v. Sulkowski*, 561 So. 2d 416, 418 (Fla. 2d DCA 1990)). To set aside a sale, a litigant must "allege one or more adequate equitable factors and make a proper showing to the trial court that they exist." *Arsali v. Chase Home Fin. LLC*, 121 So. 3d 511, 518 (Fla. 2013) (citing *Ohio Realty Inv. Corp. v. S. Bank of W. Palm Beach*, 300 So. 2d 679 (Fla. 1974)). These equitable factors can include "gross inadequacy of consideration, surprise, accident, or mistake imposed on complainant, and irregularity in the conduct of the sale." *See Sulkowski*, 561 So. 2d at 418 (quoting *Moran-Alleen Co. v. Brown*, 123 So. 561, 561 (Fla. 1929)).

In addition, "the law is well-established that an objection to a foreclosure sale must be directed toward conduct that occurred at, or was directly related to, the foreclosure sale." *Venezia v. Wells Fargo Bank, N.A.*, 306 So. 3d 1096, 1097 (Fla. 3d DCA 2020). And the rule of caveat emptor generally applies. *U.S. Bank Nat'l Ass'n v. Rios*, 166 So. 3d 202, 210 (Fla. 2d DCA 2015). Thus, a purchaser at a judicial sale "takes title subject to defects, liens, incumbrances, and all matters of which he [or she] has notice, *or of which he [or she] could obtain knowledge in the*

exercise of ordinary prudence and caution." *Id.* (quoting *Cape Sable Corp. v. McClurg*, 74 So. 2d 883, 885 (Fla. 1954)).

The operative premise of Mr. Far's motion was that he lacked notice of MTGLQ's mortgage when he bid on the property. But Mr. Far didn't connect the dots—he presented no evidence connecting his alleged lack of notice to anything that occurred at, or related to, the foreclosure sale. Mr. Far likewise did not demonstrate that Quest's alleged scheme influenced his decision to bid on the property or precluded him from discovering MTGLQ's mortgage. There also was no argument or suggestion that MTGLQ's mortgage was not recorded or that MTGLQ's foreclosure action was not a matter of public record. Mr. Far's lack of knowledge of MTGLQ's superior mortgage, without more, was not enough to vacate the sale.

Can Financial, LLC v. Niklewicz, 307 So. 3d 33 (Fla. 4th DCA 2020), is instructive. There, a third-party purchaser objected to a foreclosure sale after learning that a superior mortgage encumbered the property and was the subject of separate foreclosure proceedings. *Id.* at 34. The trial court set aside the sale on the basis that a unilateral mistake had occurred. *Id.* at 35. Our sister court reversed because no competent substantial evidence "support[ed] a finding that equitable grounds existed for vacating the foreclosure sale." *Id.* at 37. After reiterating that "a purchaser at a junior lien foreclosure sale takes the property subject to the superior lien," *id.* at 36, the Fourth District reviewed the equitable grounds that would justify setting aside a sale and concluded that the buyer's evidence—which showed only his inexperience and failure to investigate the property—satisfied none of them, *id.* at 36–37. The court concluded that "[b]ecause the [p]urchaser's failure to investigate the status of the property before purchasing it at a foreclosure sale was

attributable solely to the [p]urchaser, the [p]urchaser did not demonstrate adequate grounds to vacate the foreclosure sale." *Id.* at 34.

The same is true here. While the purchaser's objections in *Can Financial* were predicated on different claims than Mr. Far presented, the trial court's ruling in this case rested on a similar lack of evidence. "A trial court abuses its discretion when there is no competent substantial evidence to support its findings." *Id.* at 35; *see also Sulkowski*, 561 So. 2d at 418 (reversing order setting aside judicial sale because no substantial competent evidence supported "a finding that cause existed to set aside the sale"). Likewise, and perhaps because of the dearth of evidence to support setting aside the sale, the trial court made no findings at the hearing or in its written order as to the grounds supporting its decision. "[W]hen the trial court does not make findings regarding the existence of cause and the record is silent on any facts showing such cause, we will reverse." *Skelton*, 157 So. 3d at 473 (citing *Sulkowski*, 561 So. 2d at 418).

Because Mr. Far presented no competent substantial evidence of any ground that would support setting the sale aside and because the trial court made no findings regarding the existence of any such grounds, the trial court abused its discretion by setting the sale aside. Accordingly, we reverse the order vacating the sale and remand for further proceedings consistent with this opinion. On remand, the trial court shall ensure compliance with the procedures set forth in section 45.031(4)–(7), Florida Statutes.

Reversed and remanded.

VILLANTI and SLEET, JJ., Concur.

Opinion subject to revision prior to official publication.