

SUPREME COURT OF OHIO

PHH Mortgage Corp. v. Prater

133 Ohio St. 3d 91, 2012-Ohio-3931 (Ohio 2012) · No. 2011-1526 · Decided September 6, 2012

SUMMARY

The Ohio Supreme Court held that constructive notice of a foreclosure sale posted on a sheriff's website is insufficient to satisfy due process when the interested party's address is known or easily ascertainable. A mailed instruction directing the party or attorney to monitor the website does not constitute actual notice of the sale's date, time, and location. The court reversed the judgment affirming the sale and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Lundberg Stratton, J.; O'Connor, C.J.; Pfeifer, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.; McGee Brown, J.
JURISDICTION	Ohio
DECIDED	September 6, 2012
DOCKET	2011-1526
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	PHH appealed from the denial of its motion to set aside a foreclosure sheriff's sale. The Clermont County Court of Appeals affirmed, and the Supreme Court of Ohio accepted discretionary review.
PRECEDENTIAL VALUE	published and precedential
PARTIES	PHH Mortgage Corp. v. Michael S. Prater, Scott A. Wolf

TOPICS

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QUESTIONS PRESENTED

1. Whether constructive notice of a foreclosure sheriff's sale through a sheriff's-office website satisfies due process when the interested party's address is known or easily ascertainable.
2. Whether PHH was entitled to set aside the sheriff's sale because it did not receive mailed notice of the sale's date, time, and location.

HOLDINGS

1. Constructive notice by publication through a sheriff's-office website is insufficient to satisfy due process when a party with a property interest in the foreclosure proceeding has an address that is known or easily ascertainable.
2. PHH's motion to set aside the sheriff's sale should have been granted because the website-based notice did not satisfy due process.

KEY QUOTATIONS

“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” (¶ 9)

“While we are not holding that mail is the only form of notice that would satisfy due process in this instance, we are holding that under the facts of this case, requiring a party to look at a website to find notice of the date, time, and location of a sheriff’s sale is insufficient.” (¶ 18)

“Constructive notice through the Internet, which is more akin to notice by publication in a newspaper, is simply not sufficient or reasonably calculated to provide actual notice to all nondefaulting parties.” (¶ 21)

FACTUAL BACKGROUND

PHH obtained a foreclosure and default judgment against Michael S. Prater. The Clermont County sheriff scheduled the property for sale four times; PHH received mailed notice of the first three sale dates, all of which were withdrawn at PHH's request. Before the fourth sale, the sheriff sent a letter stating that sale information would thereafter be available online rather than mailed to attorneys. The property was sold to Scott A. Wolf, and PHH sought to set aside the sale because it did not receive mailed notice of the fourth sale's date, time, and location.

PROCEDURAL HISTORY

PHH filed a foreclosure action and obtained default judgment and foreclosure. After three scheduled sales were withdrawn at PHH's request, the property was sold at a fourth sheriff's sale. PHH moved to set aside the sale because it had not received mailed notice of the sale's date, time, and location; the trial court denied the motion, and the court of appeals affirmed. The Supreme Court of Ohio reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the trial court for further proceedings consistent with the holding that the website-based notice was constitutionally insufficient.

CASES CITED

- *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313-15, 318 (1950)
- *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798 (1983)
- *Cent. Trust Co., N.A. v. Jensen*, 67 Ohio St. 3d 140, 141, 143, 616 N.E.2d 873 (1993)
- *McCluskey v. Belford High School*, E.D. Mich. No. 2:09-14345, 2010 WL 2696599 (June 24, 2010)

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