SUPREME COURT OF VERMONT

HSBC Bank USA N.A. v. McAllister

2018 VT 9 (Vt. 2018) · No. 2017-092 · Decided January 19, 2018

SUMMARY

The Vermont Supreme Court affirmed the superior court's refusal to confirm a foreclosure-sale bid and its order requiring HSBC Bank USA N.A. to conduct a second sale. The court held that confirmation of a foreclosure sale is a discretionary judicial action and that the superior court may decline confirmation when there are concerns about the fairness or integrity of the sale. It further held that the superior court did not abuse its discretion in ordering a new sale with an explicit in-person bidding requirement.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Skoglund, J.; Reiber, C.J.; Robinson, J.; Eaton, J.; Dooley, J. (Ret.), Specially Assigned
JURISDICTION	Vermont
DECIDED	January 19, 2018
DOCKET	2017-092
DISPOSITION	affirmed
PROCEDURAL POSTURE	Intervenor-appellant Jeffrey C. Riley appealed the superior court's denial of his motion to confirm a foreclosure sale in his favor and its order requiring HSBC Bank USA N.A. to conduct a second foreclosure sale.
STANDARD OF REVIEW	The authority to decline to confirm a foreclosure sale is reviewed de novo as a question of law. The exercise of that authority is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential
PARTIES	Jeffrey C. Riley v. HSBC Bank USA N.A.

TOPICS

foreclosure · real estate · appellate procedure · standard of review · remedies

PRACTICE AREAS

real estate · foreclosure · appellate procedure · remedies

QUESTIONS PRESENTED

1. Whether the superior court had authority, on equitable grounds and under 12 V.S.A. § 4954(a), to decline to confirm a foreclosure sale.
2. Whether the superior court abused its discretion by declining to confirm the sale and ordering a second foreclosure sale with an explicit in-person bidding requirement.

HOLDINGS

1. Under 12 V.S.A. § 4954(a), confirmation of a foreclosure sale is a discretionary judicial action, and the superior court has authority to refuse confirmation and order another sale if the sale did not comply with statutory or foreclosure-judgment requirements or if other circumstances create concern about the integrity and fairness of the sale.
2. The superior court did not abuse its discretion by refusing to confirm the first sale and ordering a second sale with an explicitly stated in-person bidding requirement.

KEY QUOTATIONS

> *"Regardless of whether the superior court holds a hearing, if it finds that the sale was not conducted according to statutory requirements or the foreclosure judgment's requirements—or if it finds that there is another reason to be concerned with the integrity of the sale—it has the authority, in its discretion, refuse to confirm the sale and order another one."* (¶ 7)

> *"It is within the superior court's discretion to consider all factors that it finds relevant and necessary to fulfill the purpose of confirmation orders—ensuring a court reviews the sale and finds it was conducted with fairness and in accordance with the legal requirements."* (¶ 10)

FACTUAL BACKGROUND

The superior court entered a foreclosure judgment in favor of HSBC for the property at issue, with a six-month redemption period that expired on April 29, 2016. HSBC later arranged a public auction and provided its auctioneer with an electronic bid to enter at the auction. At the July 28, 2016 auction, Riley bid $10,000, and the auctioneer entered HSBC's $57,000 bid even though no HSBC representative was physically present. The superior court had concerns about the integrity of the sale, including the low amount of Riley's bid, the absence of an explicit in-person bidding requirement in the foreclosure judgment, and uncertainty regarding HSBC's virtual bid.

PROCEDURAL HISTORY

The superior court entered a judgment of foreclosure and sale in favor of HSBC and, after the redemption period expired, HSBC conducted a public auction through an auctioneer. The auctioneer entered HSBC's bid even though HSBC had no personal representative present. The superior court refused to confirm HSBC's bid, refused to confirm the sale to Riley, and ordered a new foreclosure sale with an in-person bidding requirement. Riley appealed; HSBC did not appeal the refusal to confirm its bid.

DISPOSITION

affirmed

CASES CITED

- Bank of N.Y. Mellon v. Campbell, Nos. 229-4-10 Wrcv, 78-2-12 Wrcv, 568-10-11 Wrcv, 319-5-12 Wrcv, 2013 WL 6631044 (Vt. Super. Ct. Dec. 2, 2013)
- Cenlar FSB v. Malenfant, 2016 VT 93, ¶ 13, 151 A.3d 778
- Quenneville v. Buttolph, 2003 VT 82, ¶ 11, 175 Vt. 444, 833 A.2d 1263
- Vt. Nat'l Bank v. Clark, 156 Vt. 143, 145, 588 A.2d 621, 622 (1991)