DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Alexander Volynsky v. Park Tree Investments 21, LLC

No. 3D19-2197 · No. No. 3D19-2197 · Decided June 9, 2021

SUMMARY

The Florida Third District Court of Appeal affirmed an order overruling Alexander Volynsky's objections to a judicial foreclosure sale and directing issuance of a certificate of title to the winning bidder. The court held that Volynsky's objections were facially deficient because they identified no sufficient equitable grounds for relief and therefore did not require an evidentiary hearing beyond the opportunity to be heard that he received.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Miller, J.; Emas, C.J.; Lobree, J.
JURISDICTION	Florida
DECIDED	June 9, 2021
DOCKET	No. 3D19-2197
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a non-final order overruling objections to a judicial foreclosure sale and directing issuance of a certificate of title to the third-party purchaser.
STANDARD OF REVIEW	The court reviewed the order overruling post-sale objections for error.
PRECEDENTIAL VALUE	Published Florida Third District Court of Appeal opinion; precedential subject to timely rehearing disposition.
PARTIES	Alexander Volynsky v. Park Tree Investments 21, LLC

TOPICS

foreclosure · appellate procedure · civil procedure · equitable relief · remedies

PRACTICE AREAS

foreclosure · civil procedure · appellate procedure · remedies · real estate litigation

QUESTIONS PRESENTED

1. Whether due process required an evidentiary hearing on Volynsky's post-sale objections to the foreclosure sale.
2. Whether Volynsky's objections were legally sufficient to support equitable relief from the judicial foreclosure sale.

HOLDINGS

1. An evidentiary hearing is not required merely because timely post-sale objections are filed; where the objections are facially deficient and are not supported by facts or proffered evidence sufficient to justify equitable relief, notice and a meaningful opportunity to be heard satisfy due process.
2. A generalized allegation that unspecified court notices were not served is legally insufficient to support equitable relief from a foreclosure sale when the borrower was personally served with the foreclosure action and received notice of the final judgment.
3. A bare assertion that the foreclosure-sale price was less than the property's value, without proof of fair market value or another adequate equitable factor, is legally insufficient to set aside the sale.

KEY QUOTATIONS

> *"The specific parameters of the notice and opportunity to be heard required by procedural due process are not evaluated by fixed rules of law, but rather by the requirements of the particular proceeding."* (at 2)

> *"Under these circumstances, the trial court afforded Volynsky both notice and a meaningful opportunity to be heard, satisfying the essential elements of due process."* (at 5)

FACTUAL BACKGROUND

Volynsky was the borrower in a judicial foreclosure action and was individually served with the foreclosure complaint. He defaulted, and the mortgagee obtained a summary final judgment of foreclosure followed by an advertised public sale at which Jado Group, LLC was the winning bidder. Volynsky's objections asserted generally that unspecified court notices had not been served and that the property was worth considerably more than the sale price, but he supplied no valuation, supporting facts, or anticipated evidence.

PROCEDURAL HISTORY

After being personally served with the foreclosure complaint, Volynsky defaulted, and Park Tree Investments obtained a summary final judgment of foreclosure setting a public sale. Following the advertised sale, at which Jado Group, LLC was the winning bidder, Volynsky filed objections alleging that court notices had not been served and that the property was worth more than the bid. The trial court held a hearing, overruled the objections, ordered issuance of the certificate of title, denied rehearing, and Volynsky appealed.

DISPOSITION

affirmed

CASES CITED

- In Interest of D. B., 385 So. 2d 83, 89 (Fla. 1980)
- Massey v. Charlotte County, 842 So. 2d 142, 146 (Fla. 2d DCA 2003)
- Regner v. Amtrust Bank, 71 So. 3d 907, 908 (Fla. 4th DCA 2011)
- U.S. Bank National Ass'n v. Bjeljac, 43 So. 3d 851, 853 (Fla. 5th DCA 2010)
- Valls v. HSBC Bank USA, N.A., No. 4D20-1984, 2021 WL 1898121 (Fla. 4th DCA May 12, 2021)
- Arsali v. Chase Home Finance LLC, 121 So. 3d 511, 518 (Fla. 2013)
- Moran-Alleen Co. v. Brown, 123 So. 561, 561 (Fla. 1929)
- Venezia v. Wells Fargo Bank, N.A., 306 So. 3d 1096, 1097 (Fla. 3d DCA 2020)