Filing # 46731625 E-Filed 09/21/2016 01:08:42 PM

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, IN AND FOR COLLIER COUNTY, FLORIDA

21ST MORTGAGE CORPORATION,

Plaintiff,

vs.

MARY JEAN ZISKA, et al.,

Defendants.

CASE NO.: 2015-CA-001170
DIVISION: C

_____/

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S, MARY JEAN ZISKA, OBJECTION FORECLOSURE SALE

COMES NOW the Plaintiff, 21st MORTGAGE CORPORATION, ("Plaintiff") and hereby files this its Response In Opposition to Defendant's, MARY JEAN ZISKA, ("Defendant"), Objection to Foreclosure Sale dated September 12, 2016 as follows:

1. On or about June 29, 2015, Plaintiff filed its mortgage foreclosure action as a result of Defendant's, MARY JEAN ZISKA, failure to comply with certain loan obligations.

2. Thereafter, Defendant, by and through her counsel, filed an Answer and Affirmative Defenses to Plaintiff's Verified Amended Complaint on or about March 16, 2016.

3. On May 6, 2016, an Order setting Non-Jury Trial to be heard on August 5, 2016 was entered.

4. The Non-Jury Trial was held on August 5, 2016 and after the testimony of Plaintiff and Defendant's witnesses, as well as the presentation of competent and substantial evidence, the Court entered a Final Judgment in favor of the Plaintiff setting a Foreclosure Sale to be held on September 1, 2016. The Notice of Sale issued by the Collier County Clerk of Court was entered on August 5, 2016.

5. On September 1, 2016, the subject property was sold to the Plaintiff as the highest bidder.

6. On September 12, 2016, Defendant filed her *pro se* Objection to Foreclosure Sale.

7. Florida case law is clear 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,

FILED: COLLIER COUNTY, DWIGHT E. BROCK, CLERK, 09/21/2016 02:38:42 PM

the foreclosure sale itself. *See Indymac v. Federal Bank, FSB v. Hagan*, 104 So. 3d 1232 (3d DCA 2012). As multiple Courts have noted, the purpose of allowing an objection to a foreclosure sale "is to afford a mechanism to assure all parties and bidders to the sale that there is no irregularity at the auction or any collusive bidding, etc." *Emanuel v. Bankers Trust Co., N.A.*, 655 So.2d 247, 250 (Fla. 3d DCA 1995) (emphasis added); *see also CCC Props., Inc. v. Kane*, 582 So.2d 159, 161 (Fla. 4th DCA 1991) (noting that "the statute's provision for filing objections refers to the objections to the conduct of the sale as provided by the judgment and/or the statute") (emphasis added).

8. Thus, it is well settled that "[i]n order to vacate a foreclosure sale, the trial court must find: (1) that the foreclosure sale bid was grossly or startlingly inadequate; and (2) that the inadequacy of the bid resulted from some mistake, fraud or other irregularity in the sale." *Mody v. Cal. Fed. Bank*, 747 So.2d 1016, 1017–18 (Fla. 3d DCA 1999) (citing *Arlt v. Buchanan*, 190 So.2d 575, 577 (Fla.1966)). At a minimum, then, an objection to a foreclosure sale must allege these facts. *See Indian River Farms v. YBF Partners*, 777 So.2d 1096, 1098 (Fla. 4th DCA 2001) (affirming the trial court's summary denial of the appellant's objections to a foreclosure sale because "the objections did not raise any defect or irregularity with regard to the foreclosure sale itself nor with the inadequacy of price or any allegation that there was a mistake, accident, surprise, misconduct, fraud or irregularity in the sale itself").

9. Here, the Defendant has failed to allege any of those facts, including that the foreclosure sale was grossly or startlingly inadequate or that the inadequacy of the bid resulted from some mistake, fraud, or other irregularity in the sale. As such, Defendant has not plead any legitimate basis for an Objection to Foreclosure Sale.

WHEREFORE, Plaintiff respectfully requests this Court overrule Defendant's Objection to Foreclosure Sale, order the Clerk of Court to issue the Certificate of Title forthwith, and for any other relief this Court deems just and proper.

Dated this 21st day of September, 2016

/s/ Nicole P. Planell
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the forgoing has been served by U.S. Mail and/ or e-mail on this 21st day of September, 2016 on the following:

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