

IN THE COUNTY COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

PLAINTIFF HOMEOWNERS ASSOC., INC.,
Plaintiff,

Case no. 200X-CC-XXXX-0

v.

XXX DEFENDANT, JR.,
Defendant,

Div. 73

v.

XXXXX PURCHASER,
Third Party Purchaser at foreclosure sale

FINDINGS UPON LEGAL RESEARCH

THIS CASE involves a dispute over the proceeds of a foreclosure sale. Mr. Purchaser purchased the subject property at the foreclosure sale subsequent to a final judgment in relation to Homeowner Association fees. According to argument of counsel thus far, Mr. Purchaser may have been a purchaser who did not realize that he would have to pay the superior mortgage on the property to take clear title. He bid enough to pay the Homeowner's Association lien of \$3,057.99 leaving a surplus of \$58,855.03. Then he found out that there was a first mortgage in the amount of \$106,409.06 on the property which had to be paid prior to him being able to perfect his title to the property. He paid the first mortgage. Now he cites *Montoro v. Maloney*, 580 So.2d 822 (Fla. 5th DCA 1991) for the proposition that he is entitled to be equitably subrogated due to his payment of the first mortgage. Defendant Carlos Marin cites *Jelic v. Sears Mortgage Corp.*, 614 So.2d 1149 (Fla. 4th DCA 1993) for the proposition that purchasers at foreclosure sales are not entitled to share in surplus proceeds from the sale, because they did not own the equity of redemption at the time of the sale.

The undersigned judge has conducted some legal research and wishes to furnish the parties with some additional citations which may be pertinent:

Horne v. Smith, 368 So.2d 392 (Fla. 1st DCA 1979) held that a trial court erred by giving purchasers credit for the balance due on the first mortgage at the time of foreclosure of a second mortgage. The purchasers acquired title subject to the first mortgage. The Court said that "A purchaser at a mortgage foreclosure sale is presumed to have made allowances for prior liens in making his bid."

Patron v. American National Bank of Jacksonville, 382 So.2d 156 (Fla. 5th DCA 1980) held that where the mortgagee who bought property at foreclosure sale could have considered an outstanding tax lien on the property at the time of the sale and could have reduced its bid commensurately, it was error for the trial court to order receivership funds to cover the cost of

the tax lien. The Court said that “Ordinarily, a purchaser at judicial sale takes title subject to any liens and encumbrances, including taxes accruing prior to the consummation of the sale,” and “It has been held that payments made to reduce indebtedness on a prior mortgage by a foreclosure purchaser cannot be recovered by the purchaser from the mortgagor,” citing *Horne v. Smith, supra.*

Hieber v. Florida National Bank, 522 So.2d 878 (Fla. 3rd DCA 1988) held that subrogation was not available to purchasers of mortgaged property who applied part of purchase price to discharge senior mortgage while under mistake of fact as to existence of a junior lien, where the junior lien was of record.

Disbursement of Surplus Proceeds From a Foreclosure Sale *The Urban Myth of the Race to the Courthouse*, 78 Aug. Fla. B.J. 45, stated that “In several cases the third-party purchaser has moved for a share of the surplus as compensation for payment of these taxes or other debts. The law, however, provides that only lienors or the holder of the right of redemption (usually the mortgagor) are entitled to the surplus. Any other distribution of surplus is unlawful. It appears to be settled beyond all question that one claiming a surplus or the right to share in a surplus resulting from a sale under foreclosure must either own the equity of redemption at the time of the sale or must be one then holding a lien or vested right in the property.... If third-party purchasers do not want to pay outstanding taxes or other remaining debts, their only option is to reduce their bids accordingly. They will not otherwise be compensated.”

Having conducted this research for the past several hours, the undersigned wished to share it with the attorneys, in hopes that it may facilitate a more speedy resolution to this case than has occurred thus far. If either attorney finds case law or other authority which is pertinent to the legal question at issue, the judge would appreciate the opportunity to read it prior to the anticipated evidentiary hearing.

THESE FINDINGS ENTERED this xxrd day of August, 200x in chambers at Orlando, Orange County, Florida.

DEB SAMMONS BLECHMAN
Orange County Judge

I HEREBY CERTIFY that a true copy of the foregoing was furnished by US Mail this _____ day of August, 200x to: Xxxxx Xxxx, Esq., P.O. Box xxxxx, Orlando, Fl. 328xx-xxxx; and to Xxxx X. Xxxx, Esq., 00 N. Orange Ave., Suite 000, Orlando, Fl. 32801.

Judy Ball, Judicial Assistant