

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SUSQUEHANNA BANK,
Plaintiff

vs.

JOHN L. CAUSER and
LILA L MURRAY
Defendants

:
: **No. 06-01619; 05-01314**
:
: **CIVIL ACTION – LAW**
:
:
:
: **Defendant’s Omnibus Motion for**
: **Equitable Relief**

ORDER

AND NOW, this ____ day of July 2007, the Court **DENIES** Defendants’ Omnibus Motion for Special Equitable Relief.

The Court finds the motion in untimely filed. Judgment was entered on mortgage foreclosure against Defendants on September 22, 2005. Notice of the Sheriff sale was provided on September 27, 2005 for the date of January 5, 2005.

Defendants retained Attorney Jason Mazzei to file Bankruptcy and stay of the Sheriff sale, Mr. Mazzei filed for bankruptcy on January 5, 2006, right before the scheduled sale. Defendants did not appear for the sheriff sale on January 5, 2006. In light of the Bankruptcy Petition, the Sheriff stayed the sale and orally announced continuance of the sale to April 7, 2006.

On March 2, 2006, Plaintiff Susquehanna Bank filed a motion with the Bankruptcy Court for relief from the stay. Defendants received a copy of this motion. The Bankruptcy Court entered an order on March 21, 2006 lifting the stay.

The sale proceeded on April 7, 1006, and neither Defendants nor their attorneys appeared. The Bank did not send a new notice to Defendants for the April 7, 2006

sale pursuant to Pa.R.Civ.P. 3129.3(b), which indicates that if a sale is stayed or continued to a date certain within one hundred thirty days (130) of the scheduled sale, notice of which sale was given as provided by Rule 3129.2, and public announcement, including new date is indicated at the time of the continued sale, new notice is not required.

The Bank successfully bid on the property on April 7, 2006, and a representative of the Bank, Jim Seltzer went to the premises on the afternoon of April 7 to see if Defendants still occupied the premises. In fact, Defendants were in the premises and Mr. Seltzer informed them of the sale and advised them to talk to their attorney.

Defendant Lila Murray testified she called her attorney's office and they told her they would file a motion or petition to set aside the sheriff sale. Ms. Murray acknowledged she received notice of the Bankruptcy Court's lifting the stay, but she claimed she received this after April 7 despite the order being entered on March 21, 2006. She also claimed she did not understand the order.

Defendants claim their bankruptcy attorney, Mr. Mazzei let them down in not filing a motion to set aside the sale and that they waited months relying upon his representation. Mr. Seltzer had additional conversations with Defendants and advised them to talk to someone other than the bankruptcy attorney.

Ms. Murray testified she met with Attorney Daniel Rheam on August 6, 2006. She also consulted with Attorney E. J. Rymysz, but neither took the case. On December 23, 2006, Defendants were served with ejectment papers by the Bank and they called Attorney Mazzei's office and were told the office did not file a motion to set aside the sheriff sale. Subsequently, Defendants contacted Attorney Jeff Yates who filed the motion before the Court on February 1, 2007, nine (9) months after Defendants learned of the sheriff sale on

April 7, 2006.

While the Court is sympathetic to Defendants' dilemma, it feels it must deny their petition as untimely. The Court believes Defendants had appropriate notice under Pa.R.Civ.P. 3129.2 and 3129.3(b). Further, Pa.R.Civ.P. 3132, which speaks to setting aside a sheriff sale, allows a motion to be filed "before" delivery of the Sheriff's deed, which was delivered on April 28, 2006, in the instant case

The Court also is not sure what practical benefit setting aside the sheriff sale would accomplish. The Bank has been willing to sell the property back to the Defendants for a reasonable price. The Bank agreed to continue the hearing on this motion on March 29, 2007, to allow Defendants to obtain financing to repurchase the home. See the Court's Order dated March 29, 2007. The Court also has delayed issuing this decision allowing Defendants additional time to obtain the financing. Judgment was entered almost two (2) years ago back in September 2005. Thus, it seems that even if Defendants were granted the relief they want, it would be just another delay of this long running situation.

While Defendants may have a legal basis to file a claim against their bankruptcy attorney if their testimony is true, such situation should not prejudice Plaintiff.

By The Court,

Kenneth D. Brown,
President Judge

cc: Work file
Gary Weber, Esquire (Lycoming Reporter)
Robin Read, Esquire
Jeffrey Yates, Esquire