

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

21st MORTGAGE CORPORATION, /Plaintiff,

vs.

Case Number:15-1170CA-HDH

MARY JEAN ZISKA; ET AL, /Defendants.

REPORT AND RECOMMENDATIONS OF THE MAGISTRATE DENYING DEFENDANT'S OBJECTION TO SALE

ATTENDANCE:

Attendance table with checkboxes for Plaintiff, Defendant, Court Reporter ECR, Attorney for Plaintiff, Attorney for Defendant, and Clerk of Court.

This cause has come on to be heard before Magistrate David C. Friedman on October 25, 2016, pursuant to the Defendant's Pro se Objection to Sale. The Magistrate has jurisdiction pursuant to the Florida Rules of Civil Procedure, 1.490, et seq. The Court finds that an Order of Referral for the matters heard by the Magistrate was served upon the parties and that no party made a timely objection to the referral. This Court being otherwise advised, the following Findings of Fact and Conclusions of Law are made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1. The Objections to Sale which is before the Court were filed on September 12, 2016 by Mary Jean Ziska. Defendant's Objection does not present grounds to cancel sale.
2. The Objection to Sale cannot be used as a substitute for direct appeal or post-judgment relief, or to complain about defense counsel's strategy.
3. The Objection presented no grounds attaching any irregularity in the conduct of the judicial sale.
4. At the time the Objections were filed and at the time of the hearing, counsel of record for the Defendant Ziska was still attorney of record.

5. Although the Objections to sale and the Objections to Magistrate are legal nullities, the Court listened to statements made by Defendant Ziska and her mother, who is her legal guardian in a related Collier County incapacity case.
6. The Court has jurisdiction to hear the Objection to Sale and rules:
 - a. The Objections are legal nullities.
 - b. Alternatively, no legal grounds attacking any irregularities in the sale were presented in the Objections and the law does not permit a sale to be cancelled without presentation of a legal basis to disapprove of a properly conducted judicial sale.

RECOMMENDED ORDER OF THE MAGISTRATE

Based upon the above-stated Findings of Fact and Conclusions of Law, the Magistrate submits the following Recommended Order for the approval of the Court:

- A. Defendant's Objection to Sale is OVERRULED and the sale is confirmed.
- B. Upon filing of the Order Adopting this Report, the Clerk of Court shall issue Certificate of Title to the successful bidder.

PLEASE READ CAREFULLY (Language in Bold is Required by Fla. R. Civ. P. 1.490):

IF YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE MAGISTRATE, YOU MUST FILE EXCEPTIONS IN ACCORDANCE WITH FLORIDA RULE OF CIVIL PROCEDURE 1.490(i). YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS OR YOUR EXCEPTIONS WILL BE DENIED. A RECORD ORDINARILY INCLUDES A WRITTEN TRANSCRIPT OF ALL RELEVANT PROCEEDINGS. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED IF NECESSARY FOR THE COURT'S REVIEW.

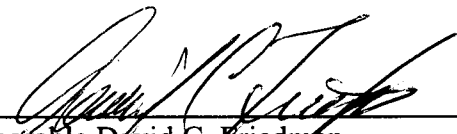
The hearing before the Magistrate was electronically recorded by the Court. A party may request an electronic certified copy of the proceeding on CD, at that party's expense, and may then have the recording transcribed, at that party's expense. Providing the Court with a copy of the CD, instead of a certified written transcript, is insufficient for review by the Court of exceptions. Media request forms, procedures, and fees, and a list of approved Transcriptionists are available on the Court's website, www.ca.cjis20.org, or

by calling the Court's Electronic Court Reporting Department at 239-533-8207. However, if the below box is checked, one of the parties elected to retain, at that party's own expense, a live Court Reporter who was present for the purpose of creating the official record of the proceeding. Accordingly, any request for a transcript of the proceeding must be submitted to that Court Reporter.

- A live Court Reporter created the official record of the proceeding, and that Court Reporter's name and address is as follows:

All parties have not waived the ten day period in which to file exceptions to the Report and Recommendations of the General Magistrate.

Dated: October 25, 2016

BY: 

Honorable David C. Friedman
Magistrate, Twentieth Judicial Circuit

cc:

Nicole Planell, Esq.

Linda Yerger, Esq.

Hamilton Mikes, P.A.

✓ The Strand Master POA, Inc.
c/o Cambridge Property Mgt.
2335 Tamiami Trail N., Ste. 402
Naples, FL 34103

✓ The Club at the Strand, L.C.
c/o Salvatori, Wood & Buckel, P.L.
9132 Strada Place, Fourth Floor
Naples, FL 34108

10/25/16
RP