

## CNO, Posting Details of Sheriff's Sale on Website Does Not Give Required Notice of Sale to Party With Interest in Foreclosed Property (9.6.12)

In a decision announced today, The Supreme Court of Ohio held that when the address of a party with a property interest in a foreclosure proceeding is known or easily ascertainable, a county sheriff cannot meet his constitutional obligation to provide notice of a sheriff's sale of the foreclosed property by sending a letter to the party's attorney directing the attorney to monitor the sheriff's website for a listing of the date, time and location of the sale.

The court's 7-0 decision, authored by Justice Evelyn Lundberg Stratton, reversed a ruling by the Twelfth District Court of Appeals

The case arose from an April 2009 sheriff's sale of a foreclosed Clermont County property owned by PHH Mortgage Corporation. After PHH foreclosed on the property in 2008, the Clermont County sheriff had set but then cancelled three prior sale dates for the property at the request of PHH. On each of those occasions the sheriff mailed a written notice to PHH's attorney stating the date, time and location of the scheduled sale.

The notice of the third scheduled date of sale was accompanied by a letter from the sheriff titled "Sheriff Property Sales Information." The letter indicated that "(i)n an effort to control the ever-increasing costs, effective December 31, 2009, the Clermont County Sheriff's Office will be discontinuing the practice of sending sheriff sales property advertisements to attorneys. Information about sheriff sales will be available online at [www.clermontsheriff.org](http://www.clermontsheriff.org)."

The property was subsequently scheduled for sale a fourth time with a target date of April 6, 2010. Information regarding the new sale date, time and location were posted on the sheriff's website, but no written notice was mailed to PHH or its attorney. The sheriff's sale went forward on April 6, 2010, at which time the property was purchased by Scott A. Wolf.

PHH moved the court overseeing the foreclosure action to declare Wolf's purchase of the property void on the basis that PHH was an interested party and had not received proper notice of the April 6 sheriff's sale, thereby preventing it from participating to protect its interest in the property. After conducting a hearing, the trial court denied PHH's motion and declared the sale

final. PHH appealed, and the Twelfth District Court of Appeals affirmed the judgment of the trial court. PHH sought and was granted Supreme Court review of the Twelfth District's ruling.

Writing for a unanimous Supreme Court in today's decision, Justice Stratton pointed to the U.S. Supreme Court's 1950 holding in *Mullane v. Central Hanover Bank & Trust Co.* that "an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Justice Stratton wrote "The *Mullane* court held that notice by newspaper publication was insufficient as to beneficiaries whose place of residence was known. The court concluded that '[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. ... Where the names and post office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency.'

"In 1983, the United States Supreme Court further refined notice analysis in *Mennonite Bd. of Missions v. Adams* ... when it considered what was adequate notice to a mortgagee of the impending tax sale of the mortgaged property. The court held that '[w]hen the mortgagee is identified in a mortgage that is publicly recorded, constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known available address, or by personal service.'

Justice Stratton also cited the Supreme Court of Ohio's 1993 decision in *Central Trust Co., N.A. v. Jensen*, in which this court held that notice by publication to a person with a property interest in a proceeding is insufficient when that person's address is known or easily ascertainable.

Although Wolf asserted in this case that the letter sent by the sheriff to PHH's attorney gave PHH "actual notice" that the date and time of the property sale would be available on the sheriff's website, Justice Stratton noted that "what Wolf refers to as actual notice is really notice of a change in the procedure of how notice would be given, not actual notice of the time, date, and location of the sheriff's sale. Instead of receiving notice by the traditional method of mail, PHH was required by the new notice procedure to continually monitor the sheriff's website in

order to glean the information. Wolf is confusing notice of the change in procedure with actual notice.”

“(T)he new (Clermont County) Internet notice procedure shifts the burden of notification from the sheriff’s office to the persons to whom the notice is directed. Rather than sending notice by mail to those parties whose names and addresses are known, the new notice system of the sheriff’s office transfers the burden to the parties to take active steps to research and monitor the information. While we understand the interest in using technology to conserve resources, we find that notice by Internet posting is more akin to publication in a newspaper, and due process demands more in this instance.”

“Constructive notice through the Internet, which is more akin to notice by publication in a newspaper, is simply not sufficient or reasonably calculated to provide actual notice to all nondefaulting parties. ... Accordingly, we hold that constructive notice by publication to a party with a property interest in a foreclosure proceeding via a sheriff’s office website is insufficient to constitute due process when that party’s address is known or easily ascertainable. We reverse the judgment of the court of appeals denying PHH’s motion to set aside the sheriff’s sale.”

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2011-1526. PHH Mtge. Corp. v. Prater, Slip Opinion No. 2012-Ohio-3931.

Clermont App. No. CA2010-12-095, 2011-Ohio-3640. Judgment reversed.

O’Connor, C.J., and Pfeifer, Lundberg Stratton, O’Donnell, Lanzinger, Cupp, and McGee Brown, JJ., concur.

Opinion: <http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2012/2012-Ohio-3931.pdf>

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