

IN THE CIRCUIT COURT,
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA

CASE NO.: 16-2009-CA-13624

DIVISION: CV-C

U.S. BANK, N.A., etc.

Plaintiff,

v.

REBECCA TROCHE,

Defendants,

_____ /

**ORDER GRANTING MOTION TO SET ASIDE SALE
AND JUDGMENT OF FORECLOSURE**

This cause came before the court on the Motion to Set Aside Sale and Judgment of Foreclosure filed by Defendant Rebecca Troche. The court's file, and uncontroverted evidence show:

1. Summary Final Judgment of Foreclosure was entered without opposition on January 13, 2010, pursuant to which a foreclosure sale of Ms. Troche's home was conducted on March 16, 2010. ABC REAL ESTATE & FINANCE, LLC ("Bidder") was the successful bidder at the sale.
2. Ms. Troche filed a timely objection to the sale on March 25, 2010 together with an affidavit and a motion to set aside the sale and the judgment of foreclosure.
3. Ms. Troche was induced not to oppose the motion for summary final judgment or attend the hearing on that motion or the foreclosure sale by the representations of Plaintiff that the foreclosure case would be paused pending review of her loan modification application and that no

sale would take place.

4. Plaintiff sent correspondence to Ms. Troche indicating it was reviewing her application for loan modification, including a letter dated March 8, 2010 (Defendant's Exhibit 1) (eight days before the scheduled sale date) and a letter dated April 28, 2010 (Defendant's Exhibit 2), more than a month after the sale had taken place, requesting more documentation. Each letter indicated that Plaintiff would "continue processing" Defendant's workout request if a response was received within ten days thereof.

5. Ms. Troche received notice of the hearing on the summary judgment motion and notice of the sale date. Upon receipt of each notice she telephoned Plaintiff and was told there would be no hearing or sale, as the foreclosure was paused pending the workout application.

6. Upon receipt of the Certificate of Sale, Ms. Troche telephoned Plaintiff and was told that the sale had taken place by "mistake." Representatives of Plaintiff made this admission of mistake to Ms. Troche in three separate telephone calls.

Upon consideration of the evidence, the Court's file, and arguments of counsel, the Court finds that:

1. The final summary judgment and sale of Ms. Troche's home were not intended by Plaintiff, but took place as a result of mistake or negligence of Plaintiff or its counsel.

2. It is not prudent for a homeowner to rely on the telephonic representations of a foreclosure plaintiff in the face of legal documents that contradict those representations. However, it is not the fault of the homeowner when inadequate communications between the plaintiff and its counsel result in the completion of a sale by mistake.

3. The mistake shown in this case is sufficient basis for setting aside judgment and sale of foreclosure. Coastal State Mortgage Corp. v. Commonwealth S & L Ass'n of Florida, 497 So. 2d 917 (Fla. 3rd DCA 1986); Bennett v. Ward, 667 So.2d 378, 382 (Fla. App. 1st 1995); Elliott v. Aurora Loan Servs., LLC, 35 Fla. L. Weekly D 785, 2010 Fla. App. LEXIS 4496 (Fla. App. 4th Apr. 7, 2010).

WHEREFORE, it is ORDERED:

1. The judgment of foreclosure dated January 13, 2010 and recorded at Book 15128, Page 1186-1192 of the Duval County Public Records be, and is, VACATED;
2. The foreclosure sale conducted on March 16, 2010 in this cause be, and is, SET ASIDE;
3. The Clerk of Court is directed to remit to Bidder the full amount deposited by Bidder, without deduction of documentary tax stamps, certificate fees, or any other charge;
4. The costs and fees of Bidder will be borne by Plaintiff subject to this Court's consideration of timely application for payment thereof, or agreement of the parties.

DONE AND ORDERED in chambers, Jacksonville, Florida, on the date shown below.

ORDER ENTERED

MAY 18 2010

/s/ L. HALDANE TAYLOR

Date

Circuit Judge

cc: Wendell Finner, Esquire
Douglas Zahm, Esquire
Teresa M. Kenney, Esquire