

Bankruptcy Case Update: A Flawless Foreclosure is Not Preference

PUBLISHED ON

February 13, 2017

There is a division among bankruptcy courts across the country as to whether a properly conducted sheriff sale can be considered a "preference," but Pennsylvania courts continue to send a clear message:

They can't.

In the Western District of Pennsylvania, in a case the attorneys at [Barley Snyder](#) were monitoring, a judge recently held that a sheriff sale [can't be reversed or avoided by way of a preferential transfer action](#). That continues the streak where western Pennsylvania courts have continued to side with creditors when it comes to preference actions arising from sheriff sales rather than debtors, even though courts in other states have sided with debtors.

The facts of the case were undisputed. The individual debtor owned a home that she claimed was worth \$200,000. It was subject to a first mortgage in favor of Capital One and a second mortgage held by Fifth Third Bank. Capital One commenced foreclosure for non-payment and obtained a default judgment. At a July sheriff sale, Fifth Third purchased the home for \$90,000, with the bank's deed issued in August. The home's former owner did not participate in or object to the foreclosure action and sale, conceding she was behind on her mortgage payments and the foreclosure proceedings were completed in full compliance with the applicable law.

The debtor filed her Chapter 11 bankruptcy case October 2 and promptly filed suit seeking a determination that Fifth Third's purchase was an avoidable preference in the amount of \$80,000. Specifically, the debtor alleged the sheriff's sale met the criteria for a preference since it was a transfer, the transfer occurred within 90 days of her petition, the debtor was insolvent at the time of sale, the transfer was made to satisfy an antecedent debt and that it allowed Fifth Third to secure more than it would have if the case was filed under Chapter 7. The court granted Fifth Third's motion to dismiss the case even though the former homeowner appeared to meet the conditions for a preferential treatment.

Applying rationale from the U.S. Supreme Court decision in [BFP v. Resolution Trust Co.](#) alongside prior decisions from the Western District, Judge Carlotta Bohm found that Fifth Third could not and did not receive more [under the qualifications of the law](#) since it purchased the property at a regularly-conducted, non-collusive sheriff's sale. The court's determination essentially said properly conducted sheriff's sales are not, and will not, be considered a preference.

For more information on adversary actions in bankruptcy cases or to discuss esoteric bankruptcy issues, please contact Joseph P. Schalk in [Barley Snyder's Finance & Creditors' Rights Group](#).