

## **Oklahoma Real Estate Foreclosure – Case Summary**

Shannon Davis, a leading real estate attorney in Tulsa Oklahoma, recently obtained an order issued by the Court of Civil Appeals of the State of Oklahoma reversing a trial court decision denying a bank's motion for deficiency judgment following foreclosure of a real estate mortgage.

Following is a summary of the case and the decision on appeal. Following entry of a judgment foreclosing a real estate mortgage on behalf of the Bank, Bank purchased the subject property at Sheriff's Auction for Five Hundred Sixty Thousand Dollars (\$560,000.00), an amount equal to 2/3rds of the Sheriff's appraised value. Thereafter Bank sought a deficiency judgment in an amount equal to the difference in the amount of its Nine Hundred Twelve Thousand Seven Hundred Twenty-Three and 85/100 Dollars (\$912,723.85) judgment, and the market value of the property foreclosed.

At trial, Bank's expert appraised the property at Six Hundred Sixty One Thousand Dollars (\$661,000.00), and Defendant/Homeowner's expert valued the property at Eight Hundred Seventy Five Thousand Dollars (\$875,000.00). Over Bank's objection the trial court also considered Defendant/Homeowner's opinion as to value; statements third parties had made to Defendant/Homeowner as to value; and took judicial notice of the Sheriff's Appraisal.

Following trial on the merits, the court determined: (1) Bank fixed the value of the property by calculating its bid at 2/3rds of the amount the property was appraised by the Sheriff's appraisers; (2) Bank greatly contributed to the amount of the deficiency when it entered into a previous loan modification with Defendant/Homeowner; and, (3) Bank obtained a property worth more than Nine Hundred Thousand Dollars (\$900,000.00) of which the original obligation was Eight Hundred Twenty-Nine Thousand Five Hundred Dollars (\$829,500.00). The trial court denied Bank's Motion for Deficiency.

Issues raised on appeal included:

1. The trial court improperly considered Defendant/Homeowner's opinion as to the value of the property.
2. The trial court improperly took judicial notice of the Sheriff's Appraisal.
3. The trial court improperly considered Defendant/Homeowner's testimony regarding two previous appraisals done on the property.
4. The trial court committed reversible error in determining that Bank fixed the value of the property by calculating its bid at 2/3rds of the amount the amount the Sheriff's Appraisal.
5. The trial court committed reversible error in determining that Plaintiff contributed to the amount of the deficiency when it entered into a loan modification agreement with Defendant/Homeowner.
6. The trial court committed reversible error in determining the value of the property was in excess of Nine Hundred Thousand Dollars (\$900,000.00).

In its unpublished opinion, the Court of Appeals reversed the trial court's decision, holding that the trial court erred as a matter of law by failing to make a determination of the market value of the mortgaged premises, and by failing to enter a post-judgment deficiency judgement. The Court of Appeals also determined that: (1) the loan modification was not relevant in a post-judgment deficiency proceeding; (2) the trial court's finding that the property value exceeded \$900,000.00 was against the clear weight of the evidence; (3) it was proper to allow Homeowner/Defendant to testify as to his opinion of the value of the property, but that his testimony was diminished by his self-interest and his unsuccessful attempt to sell the property, and was contradicted and outweighed by both parties' certified appraisers; (4) the trial court could

properly take judicial notice of the Sheriff's Appraisal; and (5) Defendant/Homeowner's testimony regarding what previous appraisers told him the property was worth was inadmissible hearsay.

A copy of the Court of Appeals Opinion can be found at:

<http://www.oscn.net/dockets/GetCaseInformation.aspx?db=appellate&number=113504>