

FOXFIELD AT NAAMAN'S CREEK  
HOMEOWNERS ASSOCIATION

*Plaintiff,*

v.

RAECHELLE EVENTOFF

*Defendant.*

COURT OF COMMON PLEAS  
DELAWARE COUNTY

NO.: CV-2020-006082

**ORDER AFFIRMING PRIOR RULING GRANTING EXCEPTIONS TO THE SHERIFF'S SALE  
SCHEDULE OF DISTRIBUTION**

AND NOW, this <sup>5</sup> day of March, 2024, upon consideration of the parties' arguments advanced in the Motion for Reconsideration of the September 27, 2023 Order (the "Reconsideration Motion") and Memoranda filed by Intervenor Reverse Mortgage Funding, LLC ("Reverse Mortgage"); the Responses in Opposition thereto filed by both Intervenor Mohamed Ahmadat ("Intervenor Ahmadat") and Plaintiff Foxfield at Naaman's Creek Homeowners Association (the "Association" or "Plaintiff"); and having heard oral argument on the Reconsideration Motion on January 11, 2024 (the "January Hearing"); IT IS HEREBY **ORDERED** and **DECREED** that the Court's prior ruling granting exceptions to the Sheriff's Sale Schedule of Distribution<sup>1</sup> are **AFFIRMED** as set forth below.

Under 42 Pa. Cons. Stat. § 5505 (2021), a trial court has broad discretion to modify or rescind an order. This power may be exercised *sua sponte* or invoked pursuant to a party's motion for reconsideration. Haines v. Jones, 830 A.2d 579, 584 (Pa. Super. Ct. 2003). In reviewing motions for reconsideration, courts in the Commonwealth have adopted the standard

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<sup>1</sup> The Court previously considered the issues raised in connection with Plaintiff's Exceptions to the Sheriff's Sale Schedule of Distribution pursuant to Pa. R. Civ. P. 3136(d) and entered an Order, dated September 27, 2023, Granting Exceptions (the "September Order"). See Dkt. No. 72.

routinely applied by federal courts in the Eastern District of Pennsylvania, which states: “Courts should grant [reconsideration] sparingly, reserving them for instances when: (1) there has been an intervening change in controlling law; (2) new evidence has become available; or (3) there is a need to prevent manifest injustice or correct a clear error of law or fact.” Roberts v. Lockman, No. 543 EDA 2014, 2014 WL 10794996, at \*6 (Pa. Super. Ct. 2014) (quoting Evans v. United States, 173 F. Supp. 2d 334, 335 (E.D. Pa. 2001)); Bada v. Comcast Corp., No. 130102242, 2015 WL 5477932, at \*4 (Phila. Ct. Com. Pl. Jan. 21, 2015) (applying the aforementioned standard for reconsideration), aff’d, No. 2479 EDA 2014, 2015 WL 6675399 (Pa. Super. Ct. 2015).

As noted previously, this case arises from an *in rem* default judgment regarding the foreclosure and sale of property previously owned by Raechelle Eventoff (“Eventoff”) at 1702 Magnolia Court, Garnet Valley, Pennsylvania 19060 (the “Property”). After Intervenor Ahmadat successfully bid on the property at the May 20, 2022 Sheriff’s Sale (the “Sale”), the Delaware County Sheriff proposed a Schedule of Distribution, listing Reverse Mortgage as a senior lien that was not divested at the Sale. Plaintiff then filed the Exceptions to the Sheriff’s Sale Schedule of Distribution (the “Exceptions”), supported by Intervenor Ahmadat, requesting that the Court order the Sheriff of Delaware County to amend the Schedule of Distribution, arguing that Reverse Mortgage’s mortgage was divested at the Sale. The Court agreed and ruled that Reverse Mortgage’s interest was divested when it failed to appear at the Sale and ordered that the Sheriff of Delaware County amend the Schedule of Distribution. Through the Reconsideration Motion, Reverse Mortgage requests that the Court reconsider its September Order granting Plaintiff’s Exceptions, arguing that the Court erred in its application of the

Pennsylvania Uniform Planned Community Act's (the "Act") and the effect of improper service and notice under Rule 3129.

First, Reverse Mortgage correctly notes that the Act's use of the term "first mortgage" does not necessarily mean "purchase money mortgage."<sup>2</sup> In fact, in determining the meaning of "first mortgage", the words and phrases of a statute (here, the Act), should be construed according to their common and approved usage. 1 Pa. C.S. § 1903(a). The common and approved meaning of "first mortgage" means the earliest mortgage on a property.<sup>3</sup> Applying the plain meaning to the present case, the earliest and senior mortgage on the Property is the July 12, 2005 purchase money mortgage.<sup>4</sup> Consequently, Reverse Mortgage's mortgage is not the senior mortgage on the Property and interpreting it as such would involve impermissibly reading words into the Act that are not present.<sup>5</sup> Thus, even if the Court, in error, equated "first

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<sup>2</sup> Specifically, the September Order states that, "[a]lthough the Act does not define the term 'first mortgage' It can be reasonably inferred that the intended meaning is synonymous with 'purchase money mortgage' because it echoes the recording statute and its exceptions in determining priority among secured parties in real property. Mot. Ex. A (September Order) at 3. The Court agrees that, if the legislature intended "first mortgage" to mean only a "purchase money mortgage", it would have expressly stated so.

<sup>3</sup> Black's Law Dictionary defines a "first mortgage" as "[a] mortgage that is senior to all other mortgages on the same property." Black's Law Dictionary (11th ed. 2019).

<sup>4</sup> The September Order summarizes the timeline:

The Association perfected and recorded a statutory lien on the Property on September 7, 2004. On May 26, 2005, Ms. Eventoff obtained a purchase money mortgage on the Property (the "First Mortgage"), which was recorded on July 12, 2005. Subsequently, on March 30, 2011, Ms. Eventoff obtained two additional mortgages on the Property from Bank of America and the Secretary of Housing and Urban Development, both of which were recorded on April 26, 2011. Bank of America satisfied the First Mortgage on May 18, 2011. Ms. Eventoff fell behind on her dues to the Association in December 2015. Following the Court's entry of a default judgment in favor of the Association on June 3, 2021, a Sheriff's Sale took place on May 20, 2022, at which Mr. Ahmadat bid successfully on the Property.

See Mot. Ex. A at 1-2.

<sup>5</sup> Reverse Mortgage also proffered a policy argument at the January Hearing that "first" means "first of record" at the time installments are due. Otherwise, as argued by Reverse Mortgage, refinancing would never be possible. However, Foxfield noted that there are safeguards that exist for mortgage companies that mitigate the unintended consequences that concern Reverse Mortgage. Specifically, mortgage companies often have a mortgage rider in situations where there is refinancing for a second or subsequent mortgage. In such situations, when there is a delinquent balance owed to a homeowner's association, the association can reach out to the mortgage holder and

mortgage" with "purchase money mortgage" in the September Order, the outcome is the same: Reverse Mortgage's interest is still subordinate to the Association's lien, and it was rightfully divested at the May 20, 2022 Sheriff's Sale when it failed to appear.

The Court recognizes certain procedural deficiencies under Rule 3129 with respect to the sale of the Property.<sup>6</sup> However, the Court observes that the *purpose* of Rule 3129 is to

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ask for payment according to the terms of their mortgage rider. Therefore, mortgage companies can pay the association what is owed in order to protect their own land and prevent the association from proceeding with foreclosure.

<sup>6</sup> Plaintiff failed to list Reverse Mortgage in its Affidavit in accordance with Rule 3129.1:

(a) No sale of real property upon a writ of execution shall be held until the plaintiff has filed with the sheriff the affidavit required by subdivision (b) and the notice required by Rule 3129.2 has been served.

(b) The affidavit shall set forth to the best of the affiant's knowledge or information and belief as of the date the praecipe for the writ of execution was filed the name and address or whereabouts of

(1) the owner or reputed owner of the real property and of the defendant in the judgment; and

(2) every other person who has any record lien on that property; and

(3) every other person who has any record interest in that property which may be affected by the sale; and

(4) every other person who has any interest in that property not of record which may be affected by the sale and of which the plaintiff has knowledge.

If the name and address or whereabouts of the persons in subparagraph (1) through (4) cannot be reasonably ascertained, the affidavit shall so state.

Pa. R. Civ. P. 3129.1. Additionally, Plaintiff failed to mail notice to Reverse Mortgage pursuant to Rule 3129.2:

(c) The written notice shall be prepared by the plaintiff, shall contain the same information as the handbills or may consist of the handbill and shall be served at least thirty days before the sale on all persons whose names and addresses are set forth in the affidavit required by Rule 3129.1.

(1) Service of the notice shall be made

(iii) upon each other person named in the affidavit by the plaintiff by ordinary mail at the address set forth in the affidavit with the return address of the plaintiff appearing thereon. The plaintiff shall obtain from the U.S. Postal Service a Form 3817 Certificate of Mailing. Service shall be complete upon mailing. If the mail is returned the validity of the service shall not be impaired and the sale shall proceed at the time fixed in the notice.

*notify a mortgagee of a pending sale.* Even if notice requirements are not strictly followed, a property sale will not be set aside if the mortgagee is aware of the impending sale. See In re Tax Claim Bureau of Lehigh Cnty. 1981 Upset Tax Sale Properties, 507 A.2d 1294, 1297 (Pa. Commw. Ct. 1986) (holding that a petitioner who had had actual notice of the date and time of a postponed sale was not entitled to have a sale set aside because he had failed to receive the formal notice required by the statute); see In re Tax Sale of 2003 Upset, 860 A.2d 1184, 1191 (Pa. Commw. Ct. 2004) (same). Here, Reverse Mortgage, *by its own admission*, had *actual notice* of the sale through email.<sup>7</sup>

As such, the Court did not commit manifest error in its September Order or in sustaining Plaintiff's Exceptions, and its prior ruling granting the Exceptions is **AFFIRMED**.



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KELLY D. ECKEL, J.

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Pa. R. Civ. P. 3129.2.

<sup>7</sup> Specifically, Reverse Mortgage represents that "Plaintiff [ . . . ] *sent [Reverse Mortgage] the Notice of Sale via email only.*" See Reverse Mortgage's Mem. at 14 (emphasis added). Further, at the January Hearing, Reverse Mortgage conceded that there were email exchanges with counsel about whether the Sheriff's Sale would proceed. Therefore, it defies credulity to suggest that Reverse Mortgage did not know about the sale when the evidence suggests it was most certainly aware of it and simply chose inaction.

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,  
PENNSYLVANIA OFFICE OF JUDICIAL SUPPORT**

**RULE OF CIVIL PROCEDURE NO. 236**

Foxfield at Naaman's Creek Homeowners Association,  
Plaintiff

v.

No. CV-2020-006082

Raechelle Eventoff,  
Defendant.

NOTICE IS GIVEN UNDER PENNSYLVANIA RULE OF CIVIL PROCEDURE NO. 236 THAT AN  
ORDER IN THE ABOVE CASE HAS BEEN ENTERED ON 03-06-2024.

SIGNED            2024-03-05

PER                Judge Kelly D Eckel

**TIME AND LEGAL LIABILITY DO NOT PERMIT THE OFFICE OF JUDICIAL  
SUPPORT TO GIVE DOCKET INFORMATION BY TELEPHONE.**

**NO EXCEPTIONS!**

PUBLIC ACCESS INFORMATION: [www.co.delaware.pa.us](http://www.co.delaware.pa.us)

CC: MICHELLE J CUNNINGHAM, ESQ, MATTHEW C STONE, LESLIE J RASE, ESQ,  
DANIEL S BERNHEIM, III, JONATHAN J BART, Raechelle Eventoff

«DisplayName»            CV-2020-006082

«Address»

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