

PUBLICATION

Tennessee's Deficiency Statute and Out-of-State Deficiency Judgments

November 01, 2013

We've previously written about Tenn. Code Ann. § 35-5-118, which governs deficiency suits in Tennessee. As explained in that post, a lender is typically entitled to recover its full deficiency unless the foreclosure sales price was "materially less than the fair market value of the property". Tenn. Code Ann. § 35-5-118. But what happens when the foreclosure and deficiency judgment are entered in another state, and the deficiency judgment is simply being collected in Tennessee? That was the issue that one Tennessee appellate court recently faced.

In *BancorpSouth Bank v. Johnson*, No. W2012-00452-COA-R3-CV, 2013 Tenn. App. LEXIS 460, 2013 WL 3770856 (Tenn. Ct. App. July 16, 2013), the defendants had guaranteed a note secured by real property in Arkansas. When the note went into default, the plaintiff creditor obtained an order directing foreclosure, as well as judgments against the guarantors for the full amount of the debt. At the foreclosure sale, the creditor submitted a credit bid and purchased the property. The purchase price was then applied and the judgment reduced accordingly. Thereafter, the plaintiff then initiated a Tennessee action to enroll the Arkansas judgment.

Two of the defendants opposed enrollment of the judgment in Tennessee, arguing that the plaintiff's appraisal of the property exceed its foreclosure bid price by a factor of four. Based on this, the defendants argued that enrollment was improper under the fraud and public policy exceptions to the full faith and credit clause of the U.S. Constitution.

The trial court enrolled the Arkansas judgment, and the Tennessee Court of Appeals affirmed. First, the appellate court found that any "fraud" related to the low bid price would have been intrinsic rather than extrinsic to the judgment, and thus could not be used to collaterally attack the judgment. Second, the Court held that Tennessee's public policy interest in ensuring adequate foreclosure prices, as embodied in § 35-5-118, was not sufficient to outweigh the important policies underlying the full faith and credit clause of the Constitution. Indeed, the court "could find 'no strong public policy of this state that would be implicated in an attempt to enforce a judgment on a debt.'" Accordingly, the Arkansas judgment could be enrolled and enforced in Tennessee, regardless of the low bid price.

In summary, the *BancorpSouth Bank v. Johnson* case demonstrates that Tennessee's deficiency statute will not preclude enforcement of deficiency judgments obtained in other states, even if the foreclosures performed in those other states would otherwise fail to comply with the standards of Tenn. Code Ann. § 35-5-118.