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MD Court of Special Appeals: Greentree Series V, Inc. v. Hofmeister

5 May 2015

In a matter of first impression, the Maryland Court of Special Appeals held in *Greentree Series V, Inc. v. Hofmeister* that the word "or" in Md. Rule 14-305(g) was to be read literally to give a trial court an either/or option, thus precluding the trial court from granting both options in relief. The Rule in question states that when a purchaser at foreclosure defaults, the trial court "may order a resale at the risk and expense of the purchaser or may take any appropriate action." Greentree was the winning bidder at foreclosure, put down a deposit, but then failed to close. The trial court ordered the resale of the property, but also ordered that Greentree's entire deposit was forfeited per the terms of the foreclosure ad. Greentree was the winning bidder at the second foreclosure sale, at a significantly higher bid price, and eventually (after defaulting again) closed. Greentree demanded its first deposit back in full. The trial court denied Greentree's request, and the Court of Special Appeals, in a unanimous panel opinion by retired Judge Salmon, reversed. The Court first reasoned that the forfeiture could not be sustained under contractual law since it functioned as a penalty, not as a proper liquidated damages clause (although that finding may have been different had the second bid price not been higher), and Greentree's defaults did not amount to unclean hands. The Court then held that the plain language of Md. Rule 14-305(g) gave the trial court two mutually exclusive options upon Greentree's default, and thus did not give the trial court the power to order a resale *and* forfeit Greentree's deposit. If the second foreclosure sale resulted in a lower sale price, then the seller would be entitled only to that portion of the deposit that would make it whole. A link to the April 29, 2015 opinion is here.

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TAGGED: foreclosures, Greentree Series V Inc. v. Hofmeister, Maryland Court of Special Appeals. MD Appeals, real estate