

Minnesota Court Allows One Foreclosure Bid for Multiple Parcels

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Some Minnesota sheriffs are challenging single-bid foreclosure sales of real estate consisting of multiple tax parcels each assigned with a different tax parcel ID. The servicing industry universally prefers placing a single bid at sale. In the instance of unrelated or non-adjoining parcels, Minnesota has long required separate foreclosure sales of “separate and distinct farms or tracts.” Minn. Stat. § 580.08 (2016).

Earlier Case Law

In 2013, the Minnesota Court of Appeals created uncertainty by “voiding” a foreclosure sale of two non-adjoining parcels (two residential homes located in different counties) where the lender submitted one bid for both parcels. *Hunter v. Anchor Bank, N.A.*, 842 N.W.2d 10 (Minn. Ct. App. 2013). The court ruled that “[i]f separate parcels of mortgaged property are not sold separately at a foreclosure sale, the foreclosure sale is void ...” *Id.* at 17. Historically, Minnesota attorneys relied on a “voidable” standard where an interested party was required to raise an objection to the single bid at the time of sale. *Willard v. Finnegan*, 44 N.W. 985, 986 (Minn. 1890).

Since *Hunter*, title examiners/insurers are closely scrutinizing multiple parcel foreclosures, and some sheriffs have refused to hold the sale unless the lender submits multiple bids where the mortgage property consists of land assigned with two or more tax parcel IDs. Longstanding case law resolves the “separate and distinct” determination on a case-by-case basis and generally allows single bids where the parcels are adjoining, contiguous, or the manner of use is as a single parcel. The *Hunter* decision ignored Minnesota Supreme Court decisions on the void vs. voidable determination. Thus, real estate practitioners now take a cautious view of the multiple parcel issue in the absence of any direction from the Minnesota Supreme Court.

Recent Appellate Decision

The Minnesota Court of Appeals recently ruled in favor of a lender on a separate parcels case under § 580.08 that more closely follows the historical approach of looking to the manner of the use of multiple parcels and whether the parcels are adjoining and contiguous. *Leeco, Inc. v. Cornerstone Bank*, No. A16-1875, 2017 WL 2836097 (Minn. Ct. App. July 3, 2017).

The subject real estate in *Leeco* was a lakeshore property consisting of four separate tax parcels. A lake

cabin straddled the line separating two of the parcels, and three of the four parcels would have been considered unbuildable if owned separately due to applicable zoning ordinances. The four tax parcels had been treated as a single tract of land by both parties in the past, and were sold together with one bid, over the objection of the mortgagor at the sale. The trial court and the appellate court reasoned that the parcels did NOT constitute separate and distinct parcels, and therefore one bid at foreclosure sale was appropriate and proper under Minn. Stat. § 580.08.

Conclusion

The takeaway for the industry is to be aware that local counsel will spot the potential challenge created by multiple tax parcel IDs early in the process, and provide the servicer with information to make an informed decision prior to sale. In most instances, local counsel will recommend proceeding to sale with a single bid, depending on the county and circumstances. For servicers wishing to take a more conservative approach (or for a close-call), seeking a court order requiring the sheriff to accept one bid for multiple parcels is an available option — through either a quick declaratory judgment action or judicial foreclosure. In Sherburne and Washington counties, the sheriff and county attorney will informally make a determination upon request of local counsel, and likely without the need for a court order.

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