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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL

APEX REALTY LLC, : July Term 2021  
Plaintiff, :  
v. : No. 2006  
ELVERTA WASHINGTON SQUARE, :  
LLC, : Commerce Program  
Defendant. :  
: Control Nos. 22124649/23019004/  
: 23020085

DOCKETED  
JUL 17 2023  
R. POSTELL  
COMMERCE PROGRAM

**ORDER**

AND NOW, this 17th day of July 2023 upon consideration of Arezzo Sky Capital LTD's Petition to Set Aside Sheriff's Sale and Plaintiff Apex Realty LLC's Response in Opposition, all matters of record and in accord with the attached Opinion, it hereby is **ORDERED and DECREED** that the Petition to Set Aside Sheriff Sale is DENIED.

AND it is further **ORDERED and DECREED** that Petitioner Arezzo Sky Capital LTD's Exceptions filed pursuant to Pa. R. Civ. P. 3136 to the Sheriff's Proposed Schedule of Distribution are DENIED.

AND FURTHER, Petitioner Arezzo Sky Capital LTD's Motion for Alternative Service is DENIED AS MOOT.

BY THE COURT

  
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RAMY I. DJERASSI, J.

210702006-Meridian Bank Vs Elverta Washington Square Llc



21070200600051

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL**

APEX REALTY LLC,	:	July Term 2021
Plaintiff,	:	
v.	:	No. 2006
ELVERTA WASHINGTON SQUARE,	:	
LLC,	:	Commerce Program
Defendant.	:	
	:	Control Nos.22124649//23019004/ 23020085

**OPINION**

The Petition to Set Aside Sheriff Sale, Exceptions to the Sheriff’s Proposed Schedule of Distribution and the Motion for Alternative Service are brought by nonparty Arezzo Sky Capital LTD (“Arezzo”), a junior creditor<sup>1</sup> of Defendant Elverta Washington Square, LLC (“Elverta”).<sup>2</sup> Arezzo challenges the December 6, 2022 Sheriff Sale and the Sheriff’s proposed Schedule of Distribution by collaterally attacking the judgment entered by confession against Elverta by Meridian Bank. For the reasons discussed below, the Petition to Set Aside Sheriff Sale, the Exceptions to the Sheriff’s Proposed Distribution and the Motion for Alternative Service are denied.

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<sup>1</sup> At the time of the Sheriff Sale of December 6, 2022, the existing liens on the Condo Unit were as follows:

1. Apex’s Elverta Mortgage/Confession of Judgment. -July 23, 2021
2. Default Judgment in favor of Rivertown TCI LP against Elverta recorded on October 14, 2021 for \$9,048,865.75. (Exceptions ¶ 56)
3. Foreign Judgment in favor of PC Connection Inc. in the amount of \$2,929,558.69 recorded on May 25, 2022 against Elverta. (Exceptions ¶ 74-75).
4. Arezzo Mortgage dated January 27, 2020 and recorded January 24, 2022.

<sup>2</sup> Arezzo did file a Petition to Intervene in this matter but on March 17, 2023 Arezzo filed a praecipe to discontinue the motion to intervene.

## BACKGROUND

SPM Holdings Trust (“SPM”) is a trust formed under the laws of Nevada. The beneficiary of SPM is Mark Stiffler, and the Trustees are Kenneth Bjorkelo, Investment Trustee and Nevada Trust Company. James Kriss is the Vice President of Nevada Trust Company.<sup>3</sup>

On September 13, 2019, SPM executed in favor of Meridian Bank (“Meridian”) a Promissory Note in the principal sum of \$1,760,000 (“Meridian Loan”).<sup>4</sup> SPM is identified on the Promissory Note as the “Borrower”.<sup>5</sup> On the same date, September 13, 2019, SPM’s Trustees, Mr. Bjorkelo and Nevada Trust Company, executed a Resolution authorizing any Trustee to sign the Promissory Note with Meridian.<sup>6</sup> The Resolution provided in part as follows:

RESOLVED, that the Loan Documents hereby are approved and that any Trustee is hereby authorized, empowered and directed, in the name and on behalf of the Trust, to execute and deliver the Loan Documents in substantially the form presented to the Trustee, with such changes therein, additions thereto, and deletions therefrom, as such Trustee shall approve, such approval to be conclusively evidenced by the execution of the Loan Documents.

RESOLVED, that any Trustee be, and hereby is, authorized, empowered, and directed, in the name and on behalf of the Trust, to take such other actions and to execute, deliver, and file all such further documents certificates, notices, or instruments as may be required, or as such Trustee may deem necessary or appropriate in furtherance of, or in connection with, each of the foregoing resolutions, and to effectuate fully the purposes and intent thereof; and further, that it be and is hereby confirmed, that all such actions taken by such Trustee are taken by such Trustee as representative of the Trust and not in his personal capacity.

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<sup>3</sup> See Apex’s Response in Opposition to Petition to Set Aside Sheriff Sale Exhibit “1” Complaint in Confession of Judgment Exhibit “B” Promissory Note and Exhibit “2” Resolution of SPM Trustees.

<sup>4</sup> See Apex’s Response in Opposition to Petition to Set Aside Sheriff Sale Exhibit “1” Complaint in Confession of Judgment Exhibit “B” Promissory Note

<sup>5</sup> Id.

<sup>6</sup> See Apex’s Response in Opposition to Petition to Set Aside Sheriff Sale Exhibit “2” Resolution of SPM Trustees.

RESOLVED, that any Trustee is authorized to take, on behalf of the Trust, all such other actions as such Trustee, in his sole discretion, considers necessary, desirable, or expedient to carry into effect the purposes of the foregoing resolutions.

RESOLVED, that all actions taken by any Trustee to date in connection with the forging resolutions, or the transactions contemplated thereby, are hereby in all respects confirmed, ratified, and approved. <sup>7</sup>

The Promissory Note was executed on behalf of SPM, the Borrower, by Kenneth Bjorkelo, Investment Trustee. <sup>8</sup>

In addition to the Promissory Note, on September 13, 2019, to induce Meridian to make the Loan to SPM, Elverta Washington Square LLC (“Elverta”) agreed to guaranty and become surety for SPM’s obligations with respect to the Meridian Loan. SPM is the sole member of Elverta. Mr. Bjorkelo, the Investment Trustee of SMP, is also the managing partner of Elverta. <sup>9</sup>

Elverta owns a condominium unit at 210 West Washington Square Unit PH-SE in Philadelphia, Pennsylvania (“Condo Unit”).<sup>10</sup> Prior to the execution of the Meridian Loan, Mid Penn Bank had an existing first lien mortgage on the Condo Unit.<sup>11</sup>

On September 13, 2019, Elverta adopted a resolution approving, authorizing, empowering, and directing Mr. Bjorkelo, the managing partner of Elverta, to execute and deliver the Surety Documents which included the Surety Agreement and Mortgage on the Condo Unit and to take

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<sup>7</sup> See Apex’s Response in Opposition to Petition to Set Aside Sheriff Sale Exhibit “2” Resolution of SPM Trustees.

<sup>8</sup> Id.

<sup>9</sup> See Apex’s Response in Opposition to Petition to Set Aside Sheriff Sale Exhibit “1” Complaint in Confession of Judgment Exhibit “A” Surety Agreement and Exhibit “4” Action by Written Consent of Sole Manager of Elverta Washington Square LLC. See also, Apex’s New Matter and Arezzo’s Response ¶57.

<sup>10</sup> See Apex’s Response in Opposition to Petition to Set Aside Sheriff Sale Exhibit “5” Mortgage.

<sup>11</sup> See Apex’s Response in Opposition to Petition to Set Aside Sheriff Sale Exhibit “1” Complaint in Confession of Judgment Exhibit “A” Surety Agreement.

such action as Mr. Bjorkelo deemed necessary or appropriate.<sup>12</sup> The Resolution signed by Mr. Bjorkelo, the Managing Partner, provides in part as follows:

RESOLVED, that it is advisable and in the best interests of the Company [Elverta] to execute and deliver the Surety Agreement and all documents necessary or desirable in connection with the Surety Agreement, ...

RESOLVED, that the Surety Documents hereby are approved, and that the Managing Partner hereby is authorized, empowered, and directed, in the name and on behalf of the Company, to execute and deliver the Surety Documents in substantially the form presented to the Managing Partner of the Company, with such changes therein, additions thereto, and deletions therefrom as such Managing Partner shall approve, such approval to be conclusively evidenced by the execution of the Surety Documents.

RESOLVED, that the Managing Partner be, and hereby is, authorized, empowered and directed, in the name and on behalf of the Company, to take such other actions and to execute, deliver, and file all such further documents, certificates, notices, or instruments as may be required, or as such Managing Partner may deem necessary or appropriate in furtherance of, or in connection with each of the foregoing resolutions, and to effectuate fully the purposes and intent thereof; and further, that it be and it is hereby confirmed, that all such actions taken by the Managing Partner are taken by the Managing Partner as representative of the Company and not in his personal capacity.

RESOLVED, that the Managing Partner is authorized to take, on behalf of the Company, all such other actions as such Managing Partner, in his sole discretion, considers necessary, desirable, or expedient to carry into effect the purposes of the foregoing resolutions.

RESOLVED, that all actions taken by the Managing Partner to date in connection with the foregoing resolutions, or the transactions contemplated thereby, are hereby in all respects confirmed, ratified, and approved.<sup>13</sup>

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<sup>12</sup>See Apex's Response in Opposition to Petition to Set Aside Sheriff Sale Exhibit "1" Complaint in Confession of Judgment Exhibit "4" Action by Written Consent of Sole Manager of Elverta Washington Square LLC.

<sup>13</sup> Id.

In accordance with the foregoing Resolution, Mr. Bjorkelo executed the Surety Agreement on behalf of Elverta.<sup>14</sup> The Surety Agreement provides in part as follows:

**The surety...is an absolute and unconditional, primary, direct, continuing, and immediate guarantee of payment and not of collectability and shall be valid and binding upon the Surety [Elverta] regardless of any invalidly, irregularity, defect, or unenforceability of any provision of or in the Note or Loan Documents or any other obligation or agreement of the Borrower or the Surety [Elverta] in favor of the Bank...<sup>15</sup>**

On September 13, 2019, as collateral security for the guaranty of payment, Elverta granted Meridian a Mortgage on the Condo Unit as well Assignment of Leases and Rents on the Condo Unit. The Mortgage was signed by Mr. Bjorkelo, Managing Partner of Elverta and recorded on September 17, 2019 with the Philadelphia Department of Records.<sup>16</sup> The Meridian Loan paid off the Mid Penn Loan relieving Mid Penn Bank from its first lien position on the Condo Unit and replacing same with the Meridian Mortgage. The filing of the confessed judgment placed Meridian in priority mortgage holder position on the condo unit.

In May 2021, SPM ceased making its loan payments to Meridian.<sup>17</sup> On July 23, 2021, Meridian initiated this action by filing a complaint in confession of judgment against Elverta Washington Square, LLC (“Elverta”) for money in the amount of \$1,832,316.77.<sup>18</sup>

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<sup>14</sup> See Apex’s Response in Opposition to Petition to Set Aside Sheriff Sale - Exhibit “4” Action by Written Consent of Sole Manager of Elverta Washington Square LLC.

<sup>15</sup> See Apex’s Response in Opposition to Petition to Set Aside Sheriff Sale Exhibit “1” Complaint in Confession of Judgment Exhibit “A” Surety Agreement ¶3 (d).

<sup>16</sup> See Apex’s Response in Opposition to Petition to Set Aside Sheriff Sale Exhibit “5” Mortgage.

<sup>17</sup> Apex’s New Matter and Azerra’s Response ¶58.

<sup>18</sup> Id. at ¶28. Meridian also filed a confession of judgment against SPM. The action filed in this Court is captioned *Meridian Bank v. SPM Holding*, 2107-2012. SPM has not filed a petition to open or strike the confessed judgment.

On July 30, 2021 and August 1, 2021 respectively, Elverta was served with the requisite notice of the Confessed Judgment pursuant to Pa. R. Civ. P. 2958.1.<sup>19</sup> Despite notice of the entry of confessed judgment by Meridian, Elverta did not file a petition to open and/or strike the confessed judgment.<sup>20</sup>

On January 14, 2022, Meridian initiated another action against Elverta by civil complaint in the Court of Common Pleas of Philadelphia County captioned *Meridian Bank v. Elverta Washington Square, LLC*, 2201-1092 alleging breach of contract (“Breach of Contract Action”). This action was filed pursuant to Pa. R. Civ. P. 2981 to conform the judgment confessed in this action for execution.<sup>21</sup>

On March 8, 2022, a default judgment was entered in the Breach of Contract Action against Elverta in the amount of \$1,832,316.97 plus additional post judgment interest as Elverta failed to answer the complaint.<sup>22</sup> On May 23, 2022, the Court in the breach of contract action merged the breach of contact action with this confessed judgment action.<sup>23</sup> On May 26, 2022, the confession of judgment action was updated to reflect the merger of the judgments.<sup>24</sup>

On July 8, 2022, Meridian filed it praecipe to mark the judgment to the use of Apex Realty LLC (“Apex”) reflecting Apex as the assignee of the Confessed Judgment.<sup>25</sup>

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<sup>19</sup> Apex’s New Matter and Azerra’s Response ¶28.

<sup>20</sup> Id. at 29.

<sup>21</sup> Id. at 30.

<sup>22</sup> Id. at 32.

<sup>23</sup> Id at 33.

<sup>24</sup> Id. at 34.

<sup>25</sup> Id. at 35.

On July 14, 2022, Apex issued a writ of execution for the Condo Unit. The Sheriff scheduled a sale of the Condo Unit for October 4, 2022. On September 30, 2022, Azerro contacted Apex and requested that the Sheriff Sale scheduled for October 4, 2022 be postponed as Azerro claimed its mortgage dated January 27, 2020 and recorded January 24, 2022 had priority over Apex's confessed judgment because the Promissory Note issued to SPM was void *ab initio*. The Sheriff Sale was postponed and rescheduled for December 6, 2022.<sup>26</sup>

On December 5, 2022, Arezzo filed a motion to stay the December 6, 2022 Sheriff Sale but the filing was rejected by the Court on the morning of the sale.<sup>27</sup> Arezzo did not refile the Motion to Stay Sheriff Sale nor participate in the Sheriff's Sale on December 6, 2022 as a bidder to protect its interests in the Condo Unit.<sup>28</sup> On December 6, 2022, the Condo Unit sold at Sheriff's Sale to Apex as the foreclosing party for a credit bid equal to the highest third party bid of \$1,500,000 and as a result there were no proceeds for distribution to junior creditors.<sup>29</sup>

On December 22, 2022, Arezzo filed this Petition seeking to set aside the Sheriff Sale pursuant to Pa. R. Civ. P. 3132. On January 19, 2023, the Sheriff filed its acknowledgment of deed. On January 24, 2023, Arezzo filed Exceptions to the Sheriff's Proposed Schedule of distribution as well a Motion for Alternative Service seeking leave to serve the Exceptions on another creditor Rivertown TCI LP by alternative means. In addition, to the foregoing petitions and motion, Arezzo has indexed a *lis pendens* against the Condo Unit which Apex seeks to strike and Azerro filed a motion for judgment on the Pleadings.

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<sup>26</sup> Apex's New Matter and Azerra's Response ¶¶63-64.

<sup>27</sup> *Id.* at 39.

<sup>28</sup> *Id.* at 40.

<sup>29</sup> *Id.* at 36.



## DISCUSSION

### I. Petition to Set Aside Sheriff Sale

A petition to set aside a sheriff's sale is grounded in equitable principles and is addressed to the sound discretion of the hearing court. The burden of proving circumstances warranting the exercise of the court's equitable powers rests on the petitioner, as does the burden of showing inadequate notice resulting in prejudice, which is on the person who seeks to set aside the sale.<sup>30</sup>

Pennsylvania Rule of Civil Procedure 3132 provides:

Upon petition of any party in interest before delivery of the personal property or of the sheriff's deed to real property, the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances.

Hence, a petition to set aside a sheriff's sale may only be granted when the petition is filed before the sheriff's delivery of the deed."<sup>31</sup> However, there is an exception to this time bar. A sheriff's sale may be set aside after delivery of the sheriff's deed based on fraud or lack of authority to make the sale.<sup>32</sup> With respect to this Petition, it is not clear from the record if the Sheriff has delivered the deed to Apex.<sup>33</sup> However, whether delivery of the deed was effectuated by the Sheriff is of no significance to the ultimate disposition of the Petition to Set Aside the Sheriff Sale because the confessed judgment gave Apex the authority to execute on the judgment and sell the Condo Unit at Sheriff Sale.

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<sup>30</sup> *GMAC Mortg. Corp. of PA v. Buchanan*, 929 A.2d 1164, 1167 (Pa. Super. 2007).

<sup>31</sup> *First Union Nat. Bank v. Estate of Shevlin*, 897 A.2d 1241, 1246 (Pa. Super.2006) (quoting *Deutsche Bank Nat'l Co. v. Butler*, 868 A.2d 574, 578 (Pa. Super.2005)).

<sup>32</sup> *LSF8 Master Participation Trust v. Petrosky*, 271 A.3d 1288, 1291 (Pa. Super. 2022).

<sup>33</sup> The parties state that the deed has not be transferred. Apex New Matter and Azerro Response in Opposition ¶38. The docket reflects that the Sheriff acknowledged the deed on January 19, 2023.

**A. The Surety Agreement and the Mortgage are valid and enforceable documents and Meridian was authorized to Confess Judgment.**

Azerro argues that the Condo Unit was sold on an invalid confessed judgment lien based on an invalid note and therefore the sale should be set aside. In essence, Azerro challenges Meridian's authority to confess judgment against Elverta. The Rules of Civil Procedure provide that relief from a judgment by confession shall be sought by a petition to strike off the judgment or to open the judgment.<sup>34</sup> Here, Elverta, the party against whom the judgment was confessed, never challenged the confessed judgment and therefore the lien of the confessed judgment was not annulled or impaired. It is well settled that a judgment rendered by a court having jurisdiction of parties and subject matter, unless reversed or annulled in some proper proceeding, is not open to contradiction or impeachment, in respect of its validity, verity, or binding effect, by parties or privies, in any collateral action or proceeding in the absence of fraud or collusion.<sup>35</sup> Hence, Azerro's attempt to collaterally attack the judgment by confession against Everta in this Petition to Set Aside the Sheriff Sale without alleging fraud or collusion fails.

Notwithstanding the foregoing, Azerro's attempt to set aside the Sheriff Sale fails on the merits. Azerro collaterally attacks the confessed judgment against Elverta arguing that the Meridian Promissory Note signed by SPM, a Nevada Trust, is void because SPM is not a legal entity capable of borrowing money and therefore all the Loan Documents, including the Surety Agreement and the Mortgage are void. Therefore, Meridian did not have authority to confess judgment. The Court does not agree.

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<sup>34</sup> See, Pa. R. Civ. P. 2959 (a).

<sup>35</sup> *Mangold v. Neuman*, 371 Pa. 496, 91 A.2d 904, 906 (1952) (noting that "[i]t is a rule of law of general application that a judgment properly entered is not subject to collateral attack [ ]").

Here, the instrument used to confess judgment against Elverta was not the Meridian Promissory Note signed by SPM, but rather, the Surety Agreement signed by Elverta. Additionally, with respect to the Mortgage, Elverta, not SPM, is the owner of the Condo Unit upon which Meridian recorded the Mortgage. The Meridian Promissory Note is not relevant here as Meridian filed the confessed judgment against Elverta based on the Surety Agreement and Mortgage. Pursuant to the terms of the Surety Agreement, Elverta is obligated to Meridian “regardless of any invalidity, irregularity, defect, or unenforceability of any provision of or in the Note or Loan Documents...”.<sup>36</sup> Hence, notwithstanding whether the Meridian Promissory Note is valid and enforceable, this confession of judgment which relies upon the Surety Agreement and Mortgage is valid and enforceable.<sup>37</sup>

In the alternative, Azerro argues that the Surety Agreement and Mortgage are not valid because a Trustee of SPM did not sign these respective documents. Absent from the record is any evidence that a Trustee of SPM was required to sign the Surety Agreement and Mortgage. Nor is there any reason to believe that a Trustee’s signature is necessary as Elverta is the fee owner of the Condo Unit. In fact, the record contains a corporate resolution of Elverta authorizing the managing partner to sign the Surety Agreement and Mortgage. As the managing partner of Elverta signed the Surety Agreement and the Mortgage as authorized by the corporate resolution, the Surety Agreement and the Mortgage are valid and enforceable.<sup>38</sup>

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<sup>36</sup> See Apex’s Response in Opposition to Petition to Set Aside Sheriff Sale Exhibit “I” Complaint in Confession of Judgment Exhibit “A” Surety Agreement ¶3 (d).

<sup>37</sup> While the validity of the Meridian Promissory Note need not be addressed by this Court to resolve this petition, the Court notes that there was performance under the Loan, Meridian funded the Loan pursuant to the Promissory Note and SPM did make payments as required under the subject Promissory Note.

<sup>38</sup> In support of its arguments that the Loan Documents in this matter are invalid, Azerro relies upon prior loan documents with Mid Penn Bank as an example of how valid and enforceable loan

**B. There is no evidence that the Sale Price was grossly inadequate.**

Azerro also avers that the Sheriff Sale price of \$1.5 million was grossly inadequate.

Where a sale is challenged based upon the adequacy of the price our courts have frequently said the following:

that mere inadequacy of price standing alone is not a sufficient basis for setting aside a sheriff's sale. However where a "gross inadequacy" in the price is established courts have found proper grounds exist to set aside a sheriff's sale. *Capozzi v. Antonoplos*, [ ] 201 A.2d 420, 422 ( [Pa.] 1964). The courts have traditionally looked at each case on its own facts. *Scott v. Adal Corp.*, [ ] 509 A.2d 1279, 1283 ( [Pa. Super.] 1986). "It is for this reason that the term 'grossly inadequate price' has never been fixed by any court at any given amount or any percentage amount of the sale." *Id.* Further, it is presumed that the price received at a duly advertised public sale is the highest and best obtainable. *First Federal Sav. & Loan Assoc. v. Swift*, [ ] 321 A.2d 895 ( [Pa.] 1974).<sup>39</sup>

Here, the Condo Unit sold at Sheriff's Sale to Apex as the foreclosing party for a credit bid equal to the highest third party bid of \$1,500,000. Azerro has not alleged any notice deficiencies with the Sale's advertisement or that that any procedural irregularities occurred during the Sale. Azerro's issue appears to be solely with the price. It avers that Meridian had an appraisal of the property back in 2019 of \$2.75 million and that at a hearing it would produce testimony from a qualified appraiser that the Condo Unit as of December 6, 2022, the date of the sale, the Condo Unit was worth more than \$2.75 million and therefore the sale price is less than 50% of the value of the Property. (Petition to Set Aside Sheriff Sale ¶ 39). Azerro did not attach any evidence to its Petition to support its claim.

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documents should be executed. Mid Penn's loan documents are not relevant to instant issues before this Court nor are they authoritative on how to properly execute documents. Here, corporate resolutions exist giving SPM Trustees and the Managing Partner of Elverta authority to execute the Loan Documents.

<sup>39</sup> *Provident Nat. Bank, N.A. v. Song*, 832 A.2d 1077, 1081, ¶ 8 (Pa. Super. 2003)

Based on the Azerro's averments, this Court does not find any reason to disturb the sale price based on Azerro's purported claim of inadequacy. The sale price of \$1.5 million is presumptively the highest and best obtainable price.<sup>40</sup> Moreover, there is no evidence that the sale price is a small percentage of the Condo Unit's value based on Azerro's claimed value. At best, Azerro avers that the Condo Unit could potentially be valued at \$2.75 million. The \$1.5 million sale price obtained at Sheriff Sale is greater than 10% of Petitioner's purported market value (\$275,000).<sup>41</sup> Based on the foregoing, the Court does not find that the sale price is grossly inadequate.

**II. Azerro's Exceptions to the Sheriff's Proposed Schedule of Distribution is Denied and the Motion for Alternative Service is Moot.**

Azerro filed Exceptions to the Sheriff's Proposed Schedule of Distribution pursuant to Pa. R. Civ. P. 3136. Azerro argues that its Mortgage be given as a matter of law and equity the highest priority and relies upon the reasons stated in its Petition to Set Aside the Sheriff Sale as support. As this Court did not find Azerro's reasons in its Petition to Set Aside Sheriff Sale persuasive, Azerro's Exceptions are also denied for the same reasons set forth supra. Apex's lien remains in first position. Additionally, as the Sheriff Sale did not generate proceeds greater than \$1.5 million, there is no reason to decide whether Azerro's priority position should be prioritized over the other creditors.

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<sup>40</sup> *Blue Ball Nat. Bank v. Balmer*, 810 A.2d 164, 167, (Pa. Super.2002) citing *First Federal Sav. & Loan Assoc. v. Swift*, 457 Pa. 206, 321 A.2d 895 (1974) (the rule is that the price obtained at a sheriff's sale is presumptively the best price obtainable).

<sup>41</sup> Pennsylvania courts have concluded that a sheriff's sale price is grossly inadequate where the sale price reflects only a small percentage---defined as roughly ten percent or less---of the established market value. See *Bank of America, N.A. v. Estate of Hood*, 47 A.3d 1208, 1212 (Pa. Super. 2012) (citations therein omitted).

Lastly, the Motion for Alternative Service is moot. The motion for alternative service sought to serve the Sheriff Exceptions upon Riverton TCI, LP, a judgment holder, by regular mail. However, since the Court has denied the Exceptions and because the Sheriff Sale did not generate sufficient funds to pay Meridian and the other judgment creditors, leave to serve the Exceptions by alternative service is Moot.

#### **CONCLUSION**

For the foregoing, reasons, the Petition to Set Aside Sheriff Sale and the Exceptions to the Sheriff's Proposed Distribution are Denied. Additionally, the Motion for Alternative Service is Moot.

**BY THE COURT**



**RAMY I. DJERASSI, J.**