
Trustee Has No Duty to Seek out Junior Lien Holders Following Foreclosure Sale

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In *Banc of America Leasing & Capital, LLC v. 3 Arch Trustee Services, Inc.* (2009) 180 Cal. App.4th 1090, defendant 3 Arch Trustee Services (“Arch”) properly conducted a nonjudicial foreclosure. After Arch recorded notices of default and sale, a creditor recorded an abstract of judgment against the property owner. The creditor later transferred the judgment to Banc of America Leasing & Capital (“BofA”). A month later, the property was sold at a foreclosure sale, conducted by Arch, and there were excess sale proceeds. Three months later, Arch remitted the excess proceeds to the former property owner.

BofA filed suit claiming Arch owed a duty to pay excess proceeds to junior lien holders. The trial court agreed with BofA and awarded it damages in the amount of the excess proceeds, plus interest. Arch appealed claiming it had no duty to BofA. The appellate court agreed, and reversed the judgment, holding Arch had no duty to search out junior lien holders to remit excess proceeds.

The court reasoned that, “[t]he rights and powers of trustees in nonjudicial foreclosure proceedings are ‘strictly limited and defined by the contract of the parties and the statutes.’ Thus, a trustee owes no duty to provide notices to any person unless the trust deed or the statute specifically provides for such notice.” The court went on to hold that under Civil Code section 2924b, BofA, as a judgment lien holder, was not entitled to automatically receive a notice of default or notice of sale. Additionally, BofA did not record a statutory request for notice.

Further, the court stated that under section 2924j, when there are excess sale proceeds, a trustee must notify those persons who would have been entitled to receive a copy of the notice of default; i.e., those that are automatically entitled to receive such notice and those that recorded a statutory request for notice. Anyone who receives a notice from the trustee, must submit a written claim to the trustee and the trustee distributes the excess proceeds in order of priority of the claims.

The court concluded “[i]t cannot be overlooked the Legislature included in section 2924j a specific mechanism for how a trustee must notify, collect claims, prioritize, and distribute the surplus funds to junior lien claims. If the trustee was obligated to also locate, notify, and distribute payments to all possible judgment creditors . . . , the Legislature would have spelled out these additional duties when discussing the trustee’s other duties. . . . Since BofA did not request special notice, did not receive notice, and did not make a claim, the trustee had no duty to determine its priority among the other junior liens to distribute funds to it.”

In sum, the court reaffirmed that a trustee’s duties in a nonjudicial foreclosure are strictly governed by Civil Code sections 2924-2924k and are limited to only those obligations spelled out in the statutes. The court refused to impose additional obligations on trustees.