Service

Case Problems

UNC School of Government
Judicial College Course
Foreclosure for Clerks

Service

Question 1.

BB&T holds a note and deed of trust on a home located in Johnston County. Tardie, the mortgagor, fails to make payments and BB&T asks Attorney Wilson, the trustee, to foreclose. Wilson files a foreclosure proceeding, and the Clerk holds a hearing on February 28. At the hearing, the clerk notes that the notice of hearing was filed on February 5. The clerk reviews the affidavit of service and sees that Wilson delivered a copy of the Notice of Hearing to the Johnston County sheriff who went to the property, determined no one was home, and posted the property on February 8th. There is also evidence that Wilson attempted to serve Tardie at her home on February 9th via certified mail, return receipt requested. However, the mail was unclaimed.

- At the hearing on the foreclosure, Tardie is not present. The trustee asks the court to enter the order authorizing sale. Do you determine this constitutes a reasonable and diligent effort to serve Tardie?

Question 2.

Frank and Susie are the borrowers under a note signed in favor of SunTrust. The note is secured by a lien on a building owned by Frank's company, Frank's Franks LLC. Frank's Franks LLC is a guarantor of the loan. Frank and Susie default on the note and SunTrust instructs Attorney Wilson to file the foreclosure proceeding. At the hearing, the clerk reviews the Affidavit of Service filed by Wilson and sees that Wilson did not serve Frank's Franks. Frank and Susie were served with personal service by the sheriff 20 days prior to the hearing. They appear at the hearing and argue that the foreclosure cannot proceed because Wilson did not serve Frank's Franks. Wilson states that the holder does not intend to pursue a deficiency against Frank's Franks since the company's only asset is the building so he didn't bother trying to serve the company.

- Do you require service on Frank's Franks?

Question 3.

At the hearing for Frank and Susie, Charles Chaplin, Martha Washington and Tom Berger appear. Charles is an attorney who represents BB&T. BB&T has a second lien on the property. He objects to the foreclosure because he states that BB&T is a record owner who is entitled to notice. However, Attorney Wilson only sent BB&T a copy of the Notice of Hearing by first class mail. Martha Washington is also an attorney. She represents Harvy's Hardwood Flooring. Harvy did work for Frank on the property and Frank never paid him. She said that she filed a lien against the property on their behalf and should have received notice of the hearing. She states that she even recorded a Request for Notice with the Register of Deeds. She found out about the hearing because she was at the courthouse with Charles and he told her he was there for the Frank's Franks hearing. She objects to the foreclosure based on lack of notice. Tom Berger objects to the foreclosure because he says that he purchased the building from Frank's Franks the week before the hearing. He has a copy of the signed deed in his hand that was recorded 8 days ago and waives it in your face hysterically.

- How do you rule with regard to Chaplin, Washington and Berger?

§ 45-21.16. Notice and hearing.

(b) Notice of hearing shall be served in a manner authorized in subsection (a) upon:

(1) Any person to whom the security interest instrument itself directs notice to be sent in case of default.

(2) Any person obligated to repay the indebtedness against whom the holder thereof intends to assert liability therefor, and any such person not notified shall not be liable for any deficiency remaining after the sale.

(3) Every record owner of the real estate whose interest is of record in the county where the real property is located at the time the notice of hearing is filed in that county. The term "record owner" means any person owning a present or future interest in the real property, which interest is of record at the time that the notice of hearing is filed and would be affected by the foreclosure proceeding, but does not mean or include the trustee in a deed of trust or the owner or holder of a mortgage, deed of trust, judgment, mechanic's or materialman's lien, or other lien or security interest in the real property. Tenants in possession under unrecorded leases or rental agreements shall not be considered record owners.