

FILED
San Diego Superior Court

AUG 29 2012

Clerk of The Superior Court
By N. Damron

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
APPELLATE DIVISION

TDR SERVICING LLC,)	Appellate Division No.: 37-2010-00200020
Plaintiff (s) and Respondent(s),)	Trial Court Case No.: 37-2010-00042429
v.)	(Central Division, County Courthouse)
ROBERT SMITH, et al,)	
Defendant(s) and Appellant(s).)	

ORDER

This is an appeal from a final judgment in an unlawful detainer action of the San Diego County Superior Court, The Honorable Cindy Davis, Commissioner. The judgment of possession is reversed as to Appellant Smith, and remanded for factual determination of Smith's status as bona fide tenant under the federal Protecting Tenants in Foreclosure Act. The judgment is affirmed as to Appellant Crawford.

As to Appellant Smith, the trial court's decision is erroneous as a matter of law. The trial court incorrectly ruled that Appellant Smith, due to his sub-tenant status, was not a "bona fide tenant" pursuant to the federal Protecting Tenants in Foreclosure Act of 2009 ("PTFA"), Pub.L. No. 111-22, § 702, 123 Stat. 1660 (2009). Moreover, the record does not presently contain substantial evidence to affirm on grounds Smith was not a bona fide tenant.

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1 The fair market value for the entire premises was \$1800, but the trial court specifically stated
2 that \$500 “may be market for a room”. [Ad Hoc Reporter’s Transcript (“AHRT”) 45:19-47:18.] The
3 record does establish Smith had access to one bedroom and specified common areas of a two-
4 bedroom residence. There is no evidence concerning whether the shared areas constituted all non-
5 bedroom premises. [Clerk’s Transcript, 0002; AHRT 22:10-28; AHRT 25:1-10.] However, the
6 conflicting evidence concerning whether there was a written lease from 2005, or an oral agreement
7 [AHRT 22:6:18, 24:1:12; 25:11-26:6; 31:4-44:3], coupled with evidence that Smith had never been
8 observed on the property by the landscaper who visited the property weekly for fifteen years [AHRT
9 34: 1-19], called in to question whether Smith was a renter at all.

10 The trial court shall not be precluded from taking any and all evidence deemed germane to its
11 determination of Smith’s bona fide tenant status and as to any defenses. (See, e.g., PTFA definition:
12 “(b) Bona Fide Lease or Tenancy–For purposes of this section, a lease or tenancy shall be considered
13 bona fide only if (1) the mortgagor or the child, spouse, or parent of the mortgagor under the
14 contract is not the tenant; (2) the lease or tenancy was the result of an arm's length transaction;
15 and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market
16 rent for the property or the unit's rent is reduced or subsidized due to a Federal, State or local
17 subsidy.” (Sec. 702, Effect of Foreclosure on Pre-existing Tenancy).) Nor shall the trial court be
18 precluded from considering the location of the premises in determining the fair market value of the
19 room.

20 In the event the trial court determines that Smith qualifies as a bona fide tenant, the trial court
21 shall determine the appropriate remedy. (*Munoz v. McMillan* (4th Dist., Div. 3, 2011) 195 Cal.App.4th
22 648, 657.)

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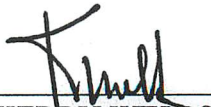
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1 As to Appellant Crawford, Crawford did not appear at trial. [AHRT 42:13-17.] It appears the
2 title issues were resolved in a separate civil action. Substantial evidence supports the trial court's
3 ruling that Respondent was a bona fide third-party purchaser at auction. The trial court properly ruled
4 that issues of title were to be addressed in a concurrent civil case. (*Crawford v. Secured Servicing,*
5 *Inc., Unifund Financial Group, Inc., TDR Servicing LLC as Trustee for Point Loma Trust # 5095 et*
6 *al.*, SDSC Case No. 37-2010-00083400-CU-OR-CTL.) [AHRT 32:5-15.]

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8 Dated: 8/29/12


GEORGE W. CLARKE
Presiding Judge, Appellate Division


KERRY WELLS
Judge, Appellate Division


GALE E. KANESHIRO
Judge, Appellate Division

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