
# A Lesson in "Buyer's Remorse"

## *Matson v. S.B.S. Trust Deed Network*

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The issue of a lender's authority and right to pursue foreclosure on defaulted residential mortgage loans has become a subject of national interest. The courts are clogged with borrowers asking "does this lender have the right to foreclose on my home?" Another issue making its way through the court system is a third-party buyer's right to rescind their purchase of property at a foreclosure sale. Foreclosed homes tend to be sold at a low price, and therefore purchasers at a trustee's sale are usually looking for a bargain. Whether the purchaser is an investor, looking to flip the property and make a return on their investment, or a homeowner looking to purchase a home that is otherwise outside of their price range, purchasing a foreclosed property is not for the faint of heart. Despite this, purchasers at foreclosure sales often do so on a "shotgun basis," without doing their due diligence, and then when the transaction is not fruitful, buyers attempt to rescind the sale by suing the foreclosing lender, loan servicer, and/or the trustee. In the recent decision in *Matson v. S.B.S. Trust Deed Network*,[1] the California Court of Appeal for the Fourth District held that a party is not entitled to rescission of a nonjudicial foreclosure sale absent evidence of irregularity, fraud, or unfairness in the nonjudicial foreclosure notice and sale proceedings. Therefore, a bad business decision or buyer's remorse is not enough to set aside a sale.

In *Matson*, the borrower defaulted on a junior lien and the beneficiary commenced foreclosure proceedings by recording a Notice of Default and Election to Sell on the property. The beneficiary notified the trustee that a total of $414,501.62 was due on the note and deed of trust, and authorized a flat opening bid of $71,000. Matson, a third party buyer, obtained notice of the potential foreclosure of the property from PropertyRadar. PropertyRadar listed the loan as being in position "1". Matson obtained a profile of the property from a title company about an hour before the trustee's sale, but did not read the full profile. He only verified the amount of the loan and the notice of sale, and believed it was a senior lien foreclosing on the property. Matson attended the trustee's sale, along with other bidders, and ultimately purchased the property for the winning bid of $502,000. Matson subsequently realized that the foreclosing deed of trust was in second position, not first, and there was minimal equity in the property. As a result, Matson was faced with taking a big loss after paying off the 1st lien on his newly purchased property.

The foreclosing trustee recorded the Trustee's Deed Upon Sale ("TDUS") and mailed it to Matson. Matson returned the TDUS with a notice of rejection, and sued the foreclosing beneficiary and trustee in San Diego Superior Court to rescind the sale.

Matson's primary arguments were (1) the inequity of price prejudiced Matson and therefore he was entitled to set aside the nonjudicial foreclosure sale; (2) the trustee's recording of the TDUS after Matson's

*continued on page 18*

attempt to reject it created an irregular sale; (3) the sale was irregular because an employee of the foreclosing lender was surprised at the high price paid for the junior deed of trust; and (4) Matson's unilateral mistake of fact allowed him to set aside the sale.

## Inequity in Price is Not Enough

A party can move, in equity, to set aside a nonjudicial foreclosure sale if there are irregularities in the notice or procedure of the sale.[2] Courts have held consistently that a gross inadequacy of price coupled with even slight unfairness or irregularity is a sufficient basis for setting the sale aside.[3] For instance, if a trustee or auctioneer announces the wrong opening bid at the sale, the sale may be rescinded because such an error is an irregularity in the process.[4] However, where there is no irregularity in the sale process, a great disparity between the sales price and the value of the property alone, is not sufficient to set aside the sale.[5]

In *Matson*, there was no dispute that the price paid by Matson was in disparity with the value of the property, which he purchased subject to the senior lien. Therefore, the issue before the court was whether there was any irregularity in the sale notice or procedure, because inequality in price was not enough to set aside the sale. The court concluded that Matson produced no evidence demonstrating an irregularity in the notice or procedure of the sale. The foreclosure was properly noticed, published and cried. The fact that the trustee, not the successful bidder Matson, recorded the TDUS was meaningless, as the sale was complete the moment the winning bid was accepted, making the recording of the TDUS simply a ministerial act. Likewise, Matson's attempt to reject the TDUS after the trustee's sale had no legal effect as the sale was completed upon acceptance of the final bid, and said rejection did not establish irregularity in the sale process for purposes of rescinding the sale. Further, the foreclosing beneficiary's surprise at the high price paid for the junior lien did not establish irregularity of sale. There was no evidence establishing that the beneficiary had taken advantage of Matson's mistake, especially considering that the beneficiary was not aware of the winning bid until after the sale was already completed. Accordingly, Plaintiff failed to prove irregularity, fraud or unfairness in the nonjudicial foreclosure notice and sale proceedings.

Allowing a Buyer to Set Aside a Sale Based on Their Own Mistake is Inconsistent with the Policies Behind the California Nonjudicial Foreclosure Statutes

Matson also argued that his unilateral mistake of fact entitled him to rescind the sale. However, the California non-judicial foreclosure statutes allow a beneficiary to a quick, inexpensive and efficient remedy when a borrower defaults on their note and deed of trust. Allowing a buyer to rescind a sale based on his own bad business decision "would upend the finality of the sale and the statutory intent that a properly conducted sale be final among the parties."[6]

Similarly, Matson attempted to rescind the sale by arguing he had a common-law remedy pursuant to *Donovan v. RRL Corp.*, which allows a party to rescission based upon a unilateral mistake. However, one of the elements required by the holding in *Donovan* is that the plaintiff does not bear the risk of the mistake.[7] A purchaser of property at a foreclosure sale, such as Matson, "bears the risk of mistake when he is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake relates but treats his limited knowledge as sufficient."[8] Matson admitted he had received a property profile from a title company, but did not review it in its entirety before bidding on the property. Therefore, he assumed the risk by bidding on the property with limited knowledge of what he was attempting to purchase. Bidders at foreclosure sales have a duty to conduct their own due diligence before bidding at the sale, and they are not entitled to relief under the common law principle of a unilateral mistake of fact due to their own error in judgment.

## Takeaway from *Matson v. S.B.S. Trust Deed Network*

In conclusion, servicers, beneficiaries and trustees should not be threatened into rescinding a sale to a third-party purchaser based upon the buyer's bad business decision or "buyer's remorse." The purchaser must establish more than inequity in price to establish a basis for rescinding the sale. Absent evidence of irregularity, fraud or unfairness in the nonjudicial sale notice or proceedings, the sale stands.

Wright, Finlay & Zak, LLP specializes in mortgage-related litigation, compliance and regulatory matters for its clients throughout the Western United States, including California, Nevada, Arizona, Washington, Utah and Oregon. If you have any questions regarding this article, please contact Cathy Robinson at *crobinson@wrightlegal.net* or *Robert Finlay at rfinlay@wrightlegal.net.*

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## Endnotes

1 *Matson v. S.B.S. Trust Deed Network,* 2020 WL 1060245 (03/05/2020).

2 *Lona v. Citibank, N.A.,* (2011) 202 Cal.App.4th 89, 103-104.

3 *Biancalana v. TD Services Co.,* (2013) 56 Cal.4th 807, 813.

4 *Biancalana v. TD Services Co.,* (2013) 56 Cal.4th at 818.

5 *Alliance Mortgage Co. v. Rothwell,* (1995) 10 Cal.4th 1226, 1237.

6 *Matson v. S.B.S. Trust Deed Network,* 2020 WL at 6; citing, Moeller v. Lien, (1994) 25 Cal. App.4th 822, 830.

7 *Donovan v. RRL Corp.,* (2001) 26 Cal.4th 261, 282.

8 *Donovan v. RRL Corp.,* (2001) 26 Cal.4th at 283.