

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-093715

10/29/2007

COMMISSIONER VIRGINIA L. RICHTER

CLERK OF THE COURT
A. Sedillo
Deputy

VILLAS EAST FIVE ASSOCIATION INC

CHARLES E MAXWELL

v.

JOSE LUIS ESTRADA, et al.

JOSE LUIS ESTRADA
NO ADDRESS ON RECORD

MINUTE ENTRY

On May 3, 2005, when the first mortgage holder foreclosed on its lien, Plaintiff's lien was extinguished. Therefore, when Plaintiff proceeded with the Sheriff's sale on June 1, 2005, it sold a judgment lien that it knew no longer existed. While a purchaser at a sheriff sale may be charged with investigating the condition of the title being sold, a judgment creditor cannot knowingly execute upon a lien that has been extinguished. As of May 3, 2005, Plaintiff held a judgment that could not be executed against the subject property, but proceeded with a sham sale, hoping to jump out at an unsuspecting buyer with a cry of "Caveat Emptor" and pocket proceeds to which it had no right.

The Court has inherent power to set aside an execution sale. *Johnson v. Jefferson Standard Life Insurance Co.*, 5 Ariz. App. 587,588, 429 P.2d 474, 475.

A court, in the exercise of its equitable powers, has the discretion to set aside a judicial sale where fraud, collusion, mistake, or misconduct casts suspicion on the fairness of the sale. Additionally, it has been said that the courts will set aside a sheriff's sale for fraud, irregularities in the conduct

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of the sale, or for other equitable considerations, and that a purchaser at a judicial or foreclosure sale can have the sale set aside if there was some form of misrepresentation or mistake that creates a prejudicial effect on the purchaser, or other bidders and prospective bidders and in respect to the debtor's interest as well.

46 Am.Jur.2d Judicial Sales §223

The Court has considered the Plaintiff's *Motion for Reconsideration*. No Response has been filed. The Motion is denied.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at <http://www.superiorcourt.maricopa.gov/sshome.html>.