

Maritime Update: Houseboat Creditor Pursues Deficiency Judgment

ATTORNEYS

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On January 24, 2019, the U.S. District Court for the Eastern District of Kentucky in the case *Regions Bank v. Lenox*, denied a creditor's effort to secure a deficiency judgment against a houseboat owner. This case illustrates the importance of presenting sufficient evidence to establish that a sale of collateral is "commercially reasonable."

A. Background

In June 2006, Regions Bank ("Regions") loaned Steven Lenox ("Lenox") \$465,000 to purchase a 100-foot Fantasy houseboat. Lenox granted Regions a security interest in the houseboat. In July 2014, Regions repossessed the houseboat after Lenox defaulted and sold it for \$287,500.

Lenox filed suit against Regions for violating the Fair Credit Reporting Act ("FCRA"). He alleged that Regions repossessed the houseboat prematurely and sold it. Lenox applied for a subsequent loan with a different lender and learned that Regions had reported that his loan was charged off and \$10,942 was past due. Lenox further alleged that the sale of the collateral was not commercially reasonable.

Regions filed a counterclaim against Lenox alleging that it sold the houseboat in a commercially reasonable manner and that Lenox still owed Regions \$140,682.32. Lenox dismissed his suit against Regions. Regions filed a motion for summary judgment to obtain a deficiency judgment.

B. Discussion

Generally, the question of what is "commercially reasonable" is a question of fact. Regions had the burden of proving that its post-repossession sale of the houseboat conformed with reasonable commercial practices among houseboats dealers.

Several factors used to determine commercial reasonableness include the type and condition of the collateral, normal commercial practices in disposing of the collateral, the time and place of the sale, the amount of advertising, the number of bids solicited and the purchase price received.

Lenox argued that Regions' motion should be denied because it did not: 1) establish that the sale was advertised, 2) show who or how many people attended the sale, or 3) establish that the sale was conducted in a recognized market for the sale of houseboats. Lenox further maintained that there was no pre-sale appraisal or support for "staggering" repossession expenses. Regions presented an affidavit from its Assistant Vice President of Consumer Collections.

The Court held that Regions failed to establish the standard of reasonable commercial practices among houseboat dealers and that Region's actions complied with such practices. The Court also found that genuine issues of fact remained as to whether the storage charges, repossession expenses and auction fee were reasonable. The Court denied Region's motion, and the case will proceed to trial.

C. Why is This Important?

1. A motion for summary judgment is a procedural tool that can be used by a creditor or debtor to end litigation and/or resolve certain issues prior to trial.
2. A creditor that understands how to develop evidence of "commercial reasonableness" through affidavits and/or deposition testimony has a superior chance of prevailing on a motion for summary judgment to secure a deficiency judgment.
3. A creditor should consider what is legally required to preserve its right to secure a deficiency judgment against a debtor before selling collateral.