

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JEFFERSON BANK	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	No. 96-4783
CHARLES ROBERT BLAIR	:	
Defendant.	:	

**MEMORANDUM-ORDER**

**GREEN, S.J.**

**July 28, 1998**

Presently before this court is the Motion of Gulph Road II Associates, L.P. to Fix Fair Value of Real Property at 1271 S. Gulph Road ("Gulph Road Property") and Defendant's Response thereto. Movant, Gulph Road II Associates, L.P., ("Movant") is the successor, by assignment, to the original Plaintiff in this action, Jefferson Bank. The original plaintiff obtained a judgment in mortgage foreclosure against Defendant in an Order of this court dated October 7, 1996 and in the amount of \$351,152.55 plus interest and costs. Thereafter, the judgment was assigned to Movant, who was the successful bidder for the Gulph Road Property at the United States Marshal's Sale. Movant now asks this court to fix the fair market value of the Gulph Road Property at \$165,000.00. In addition to fixing the fair market value, Movant proposes that this court enter a deficiency judgment in its favor and against the Defendant.

Pursuant to Federal Rule of Civil Procedure 69, proceedings on and in aid of execution of a judgment shall be in accordance with the practice and procedure of the state in which the district court is held at the time the remedy is sought. Fed. R. Civ. P. 69. Under Pennsylvania law, where real property is sold

to a judgment creditor in execution proceedings and the price for the property sold is insufficient to satisfy the judgment, the judgment creditor must petition the Court having jurisdiction to fix the fair market value of the property sold in execution upon the judgment. 42 Pa.C.S.A. § 8103(a). After the determination by the court of the fair market value, the debtor will be released and discharged of liability to the judgment creditor to the extent of the fair market value of the property as previously determined by the court, less all prior liens, costs, taxes and municipal claims not discharged by the sale or paid at the distribution on the sale. Id. at subsection (c).

Under the Pennsylvania Rules of Civil Procedure which govern proceedings pursuant to Section 8103 of the Pennsylvania Code relating to deficiency judgments, "[n]o order entered in a proceeding pursuant to these rules shall determine or be deemed to have determined whether any respondent is personally liable to the petitioner." Pa. R. Civ. P. 3286(b). Thus, in a deficiency judgment proceeding brought supplementary to an action de terris or in rem, the deficiency judgment proceeding merely fixes the fair market value of the real property sold and does not impose personal liability on any respondent. See Explanatory Comment, 1996, Pa. R. Civ. P. 3276.

In the present case, the judgment obtained was a judgment in mortgage foreclosure. Under Section 8103 of the Pennsylvania Code, this court may fix the fair value of the property, however, it may not enter a deficiency judgment in favor of Movant and

against Defendant. Movant is seeking to fix the fair market value of the property at \$165,000.00, and Defendant does not dispute the fair market value obtained by Movant. Therefore, this court will fix the fair market value of the Gulph Road Property at \$165,000.00.

Movant claims that at the time of the Marshal's Sale, liened real estate taxes in the amount of \$1,716.72 were due and owing on the Gulph Road property and have been paid by Movant. In addition, unliened 1997 county, township and school taxes, in the aggregate amount of \$1,943.47 were paid by Movant. Finally, the Marshal's costs and commission paid in connection with the Marshal's Sale total \$4,930.61. Therefore, Defendant shall be discharged from liability to the extent of \$156,409.20, which sum represents the fair market value of the Gulph Road premises, less the real estate taxes and costs expended for the Marshal's Sale.

An appropriate Order follows.

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CHARLES ROBERT BLAIR	:	
Defendants.	:	

ORDER

AND NOW, this 28th day of July, 1998, upon consideration of Gulph Road II Associates, L.P.'s Motion to Fix Fair Value of Real Property at 1271 S. Gulph Road and Defendant's Response thereto, IT IS HEREBY ORDERED that:

1. the fair value of the real property located at 1271 S. Gulph Road is fixed at the sum of \$165,000.00 as of December 18, 1997, the date of the United States Marshal's Sale of the premises; and

2. the Defendant shall be released and discharged of liability to Gulph Road II Associates, L.P. to the extent of \$156,409.20, representing the fair market value of the real property less the payment of real estate taxes and costs incurred in selling the property at the U.S. Marshal's sale.

BY THE COURT:

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CLIFFORD SCOTT GREEN, S.J.