

**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.

September , 1998

Presently before the court is the unopposed Motion of Gulph Road II Associates, L.P. (“Movant”), for Reconsideration of the court’s Order dated July 28, 1998. In that Order, the court fixed the fair value of the real property located at 1271 S. Gulph Road, King of Prussia, Pennsylvania (“Gulph Road Premises”) at \$165,000 and released the Defendant from liability to the extent of \$156,409.20. The court did not enter a deficiency judgment against Defendant as a deficiency judgment proceeding brought supplementary to an action de terris or in rem merely fixes the fair market value of the real property sold and does not impose personal liability on any respondent. See Pa. R. Civ. P. 3276, Explanatory Comment, 1996; Pa. R. Civ. P. 3286(b).

Movant now comes before the court requesting that judgment in rem be entered in the amount of \$230,395.16, the resulting deficiency as of December 18, 1997, together with continuing interest, costs and attorney’s fees. Movant claims that in its Reply Memorandum, which was not before the court when the court entered its July 28 Order, Movant disavowed any intention to obtain a personal judgment against Defendant and stated its intention only to secure a deficiency judgment in order to execute proceedings against the real property located at 1500 West Chester Pike, Haverford, Pennsylvania (“the Haverford Premises”). As this court did not consider Movant’s intention to obtain a judgment in rem when it considered Movant’s Motion to

Fix Fair Value, Movant's Motion for Reconsideration will be granted, and the court will consider whether Movant is entitled to a judgment in rem in order to execute on the Haverford Premises.

On July 3, 1996, Plaintiff commenced the above-captioned matter to recover a judgment against Defendant for Defendant's failure to pay sums due and owing under a promissory note. Said promissory note was secured by a mortgage on the Gulph Road Premises and a mortgage on the Haverford Premises. In the original Complaint in Mortgage Foreclosure, Plaintiff Jefferson Bank ("Plaintiff") sought a mortgage foreclosure against the Gulph Road Premises only, not the Haverford Premises. Plaintiff Jefferson Bank filed an uncontested Motion for Summary Judgment on the Complaint, and the parties stipulated to the entry of a judgment in mortgage foreclosure. By Order dated October 7, 1996, the court approved said stipulation and granted a judgment in mortgage foreclosure in favor of Plaintiff Jefferson Bank. Thereafter, the judgment was assigned to Movant.

Neither the stipulation between the parties nor the October 7 Order of the court specified whether the judgment in mortgage foreclosure applied to the Gulph Road Premises, the Haverford Premises or both. However, as Plaintiff only sought a mortgage foreclosure against the Gulph Road Premises in its original Complaint and there is no mention of the Haverford Premises in the original Complaint, this court concludes that the judgment in mortgage foreclosure referred to in the stipulation and October 7 Order applies only to the Gulph Road Premises. This conclusion is also supported by the fact that on October 16, 1997, Plaintiff executed the mortgage foreclosure on the Gulph Road premises, but did not attempt to execute on the Haverford Premises.

Movant now attempts to obtain a deficiency judgment in rem in order to execute on the

Haverford premises. A motion to fix fair value of property merely allows the court to fix the fair value of the property and release and discharge the debtor of liability in that value less certain costs related to the property. See 42 Pa. Cons. Stat. Ann. § 8103; Pa. R. Civ. P. 3276, Explanatory Comment, 1996. Movant has failed to offer any legal support for its argument that the motion to fix fair value is an appropriate vehicle to obtain a deficiency judgment in rem in order to execute on a property which is not the subject of the original complaint or judgment in mortgage foreclosure. Therefore, Movant's request to obtain a deficiency judgment in rem in order to execute on the Haverford premises will be denied.

An appropriate Order follows.

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ORDER

AND NOW, this day of September, 1998, upon consideration of the Motion of Gulph Road Associates, L.P. for Reconsideration of the court's Order dated July 28, 1998, IT IS HEREBY ORDERED that:

1. The Motion for Reconsideration is GRANTED.
2. Movant's request that this court enter a judgment in rem is DENIED.
3. This court's Order dated July 28, 1998 remains in full force and effect.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.