

Joseph O'Connor
Sara Lehman
Am 46320

State of Indiana)
County of Lake)

SS:
93015951

In The Lake Superior Court
County Court Division, Room 3
Crown Point, Indiana

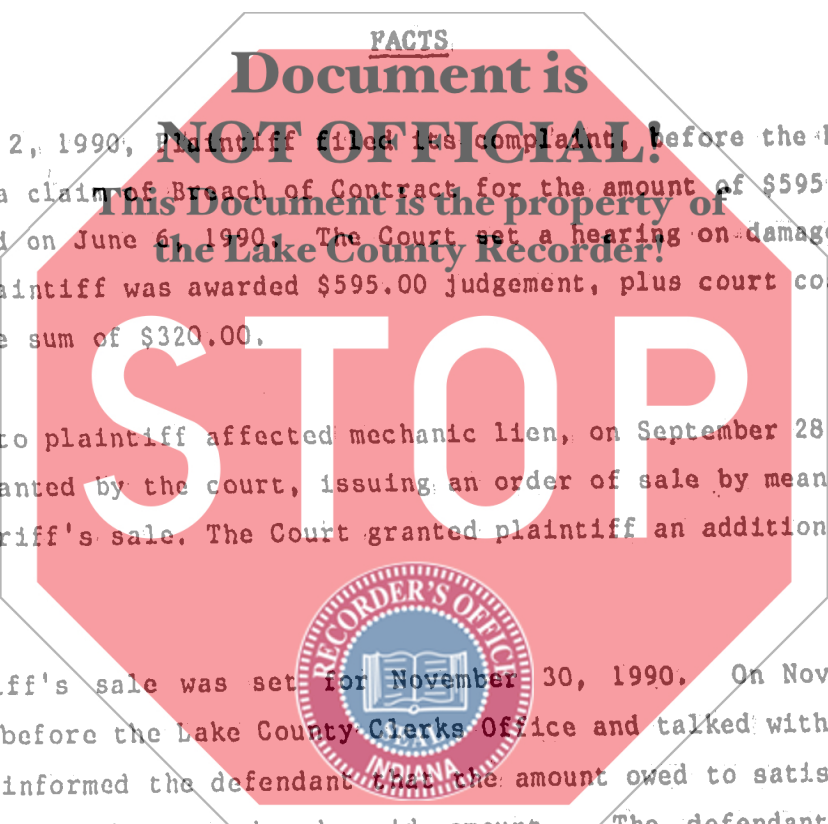
Mirko Kljajic, d/b/a
U-Go Electric
Plaintiff

Cause No.: 45D08-9007-CP-1439

vs.
Dimitri Veljanoski and
Milutin Veljanoski
Defendants

STATE OF INDIANA
LAKE COUNTY
FILED
MAR 12 8 40 AM 1993
SARA LEHMAN
RECORDER

The Court, having taken this matter under advisement, now finds as follows:



1. On May 2, 1990, Plaintiff filed his complaint, before the Honorable Judge Paul D. Stanko for a claim of Breach of Contract for the amount of \$595.00. A default judgment was entered on June 6, 1990. The Court set a hearing on damages for August 23, 1990 wherein the plaintiff was awarded \$595.00 judgement, plus court costs, interest and attorney fees in the sum of \$320.00.

Pursuant to plaintiff affected mechanic lien, on September 28, 1990, an ex-parte motion was granted by the court, issuing an order of sale by means of placing the property up for sheriff's sale. The Court granted plaintiff an additional \$150.00 for attorney fees.

The sheriff's sale was set for November 30, 1990. On November 27, 1990 the defendant appeared before the Lake County Clerks Office and talked with a Michele Cox. At that time, Ms. Cox informed the defendant that the amount owed to satisfy the judgment was \$920.00, in which defendant tendered said amount. The defendant, on two previous occasions paid into the clerk's office the sum of \$50.00 respectfully.

2. The sheriff's sale centers around an original judgment of \$595.00 as a balance due on a service contract of \$2,655.00 for electrical services rendered on defendant's property. Evidence was introduced that the home, which was newly constructed has a value at approximately \$145,000.00. The mechanic's lien was properly recorded and subsequently enforced by Judge Paul D. Stanko.

3. This Court has decided the merit of the original complaint for damages and the decision is hereby corrected and complete cause sale. I hereby certify that the above is a full, true and correct copy of the order of court entered of record in Cause Number 45D08-9007-CP-1439.

Witness my hand and seal of said court
this 5th day of March 1993
by *[Signature]*
Clerk Lake Superior Court

DULY ENTERED FOR TAXATION SUBJECT TO
FINAL ACCEPTANCE FOR TRANSFER

MAR 10 1993

[Signature]
AUDITOR LAKE COUNTY
00561
10200

LEGAL ISSUE

4. The issue before this Court is whether or not the defendant satisfied the judgment prior to the sheriff sale, thereby causing the sheriff's sale to be null and void.

DISCUSSION

5. The Honorable Judge Paul D. Stanko during a prior evidentiary hearing on December 13, 1990 asked Michelle Cox, a deputy clerk, who also was the clerk that handled the transaction with the defendant, to explain the clerks procedure in matters of this nature and her interpretation of the words "to satisfy". During this hearing attorney for defendants, Mr. O'Connor asked the following question:

By Mr. O'Connor: " I obtained a copy of the small claims docket for this case, I think that's one being copied, I'm not sure. I'm just curious on there there's handwritten the words "to satisfy" underneath the payment. Could you tell the Court the significance of that?"

By Miss. Cox: "To satisfy means to satisfy the case has been paid in full according to our records."

The defendant Dimitri Veljanoski stated by affidavit, that he personally appeared before a deputy clerk of the Lake Superior Court to ascertain the remaining balance due upon said order for damages and to pay said amount in full. The small claim docket exhibit A reflects said transaction. Miss Cox, Deputy Clerk indicated in open court that she informed Mr. Veljanoski that the amount due was \$932.00, and that he tendered said amount. Miss Cox subsequently marked the docket sheet, "To Satisfy."

The evidence clearly shows that Mr. Veljanoski, paid \$50.00 on September 27, 1990 and on October 27, 1990, respectfully. That he came into the clerks office in person on November 27, 1990, three days prior to the sheriff sale and inquired as to the amount to satisfy judgment. He paid that amount requested by the Lake Superior Court Small Claims Docket. At no time did he dispute that amount, nor was the \$150.00 additional attorney fees awarded by the court listed on the docket. This Court has within its discretion to set aside any sale in the interest of justice, especially when it appears there is some confusion as to just what occurred pertaining to the sale. Smith V. Federal Land Bank of Louisville, 472 NE 2d 129§ (Ind. App. 1 District 1985)

Lot 6 in Block 1, Quail Meadows, Unit Number 1, in the City of Crown Point, as per plat thereof, recorded in Plat Book 54, page 18, in the Office of the Recorder of Lake County, Indiana.

More commonly known as: 820 Wirtz Road, Crown Point, IN. 46307

This Court recognize the importance of finality in sheriff's sales, and find no fault within the sale itself. However, better communication between the Court, Clerk and the Sheriff's Department would have prevented this sale from taking place. Had the clerk's office received notice as to the additional \$150.00 fee, there is no doubt based on defendant's efforts during the days prior to the sheriff's sale he would have paid the entire amount due.

It is this Courts opinion that the defendant paid the amount requested by the Lake Superior Court Small Claims Docket. At no time did he dispute the amount nor was the \$150.00 additional attorney fees which had been awarded ex-parte on September 28, 1990 ever forwarded to the clerks office to be properly docketed for payment.

This Court finds that the defendant was under no obligation to request that the clerk call the Court or any parties involved in the law suit to ascertain any amount different than that which appears on the court docket. The Trust in behalf of Plaintiff argue that the defendant was placed on notice by counsel forwarding letters to his attention as to the additional \$150.00 amount. However, said notice was never forwarded to the clerks office for proper documentation.

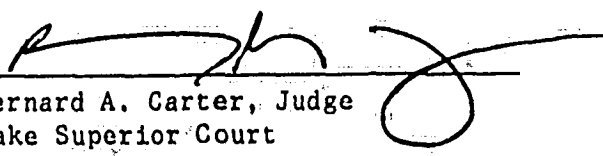
This Court finds that the defendant, relied in good faith on the clerks record as to the balance owed and he paid said amount thinking that was all he had to do to satisfy said judgment.

The defendant was obligated only to follow the request of the Court docket as to the amount owed. The law is clear absence fraud the Courts judgment docket speaks for itself. Bracker v. Pyne, (1982) 130 Ind. 288, 30 NE 21.

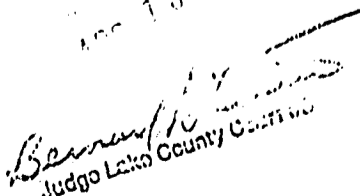
Therefore, this Court finds that the judgment was in fact satisfied and that the sheriff sale conducted on November 30, 1990 was null and void, whereby vested no title in the purchasers.

It's the order of this Court that the sheriff sale be set aside and title vested duly in the defendants, Dimiti Veljanoski and Milutin Veljanoski. Judgment accordingly,

So ordered this 12th day of April 1991.


Bernard A. Carter, Judge
Lake Superior Court
County Division, Room 3

Filed in Open Court
APR 15 1991


Bernard A. Carter
Judge Lake Superior Court