

RENDERED: March 28, 2003; 2:00 p.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2001-CA-000878-MR

TERESA ASHBY

APPELLANT

APPEAL FROM BULLITT CIRCUIT COURT  
v. HONORABLE THOMAS WALLER, JUDGE  
ACTION NO. 97-CI-00861

FIFTH THIRD BANK  
OF KENTUCKY, INC.;  
WAYNE R. ASHBY;  
PUBLIC FINANCE CORPORATION;  
AND JAMES H. GANN

APPELLEES

### OPINION

### AFFIRMING

\*\* \*\* \* \* \*

BEFORE: COMBS AND GUIDUGLI, JUDGES; AND JOHN D. MILLER, SPECIAL JUDGE.<sup>1</sup>

GUIDUGLI, Judge: Teresa Ashby ("Ashby") appeals from a summary judgment of the Bullitt Circuit Court in a foreclosure proceeding instituted by Fifth Third Bank of Kentucky, Inc. ("Fifth Third"). We affirm the summary judgment.

---

<sup>1</sup> Senior Status John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

The facts are not in controversy. Fifth Third was the holder of a mortgage and note executed by Ashby and her ex-husband ("the Ashbys"). The loan amount was approximately \$328,000. In late 1997, the Ashbys defaulted on their obligation to Fifth Third under the note. On December 18, 1997, Fifth Third filed a foreclosure action in Bullitt Circuit Court.

During the pendency of the foreclosure proceeding, Ashby received an offer from a third party to purchase the parcel for \$200,000. Ashby, through counsel, informed Fifth Third of the offer. Fifth Third made no response.

The action continued, and on March 19, 2001, Fifth Third was awarded a summary judgment in the amount of \$364,171.55 plus interest. To satisfy the judgment, the parcel was ordered sold. Pursuant to this order, the parcel was later sold for \$270,000.

Ashby now appeals from the summary judgment and order of sale.<sup>2</sup> She argues that Fifth Third breached an implied covenant of good faith and fair dealing with her by failing to respond to the third party's offer to purchase the parcel for \$200,000. While she acknowledges that the parcel was ultimately sold for more than the third-party offer she received, she argues that Fifth Third's failure to accept the \$200,000 offer resulted in her exposure to fees, costs, and interest. As such,

---

<sup>2</sup> Ashby's ex-husband is not a party to this appeal.

she seeks relief from that portion of the deficiency judgment as to fees, costs, and interest between the date of filing and the deficiency judgment. She goes on to argue that the trial court improperly granted Fifth Third's motion for summary judgment because she presented the trial court with a justiciable issue supported by the facts and the law.

We have closely studied the record and the law, and find no error in the trial court's entry of summary judgment. Ashby's argument appears to be premised on the assertion that Fifth Third was duty-bound to accept the \$200,000 offer. We are aware of no basis in law for this conclusion, and Ashby cites no authority for the proposition that a mortgagee breaches an implied covenant of good faith and fair dealing when it refuses to accept an offer that is substantially less than the amount of the note. Furthermore, it is clear that had Fifth Third accepted the \$200,000 offer, Ashby's deficiency balance would have been much greater than it now is.

We find no error on the issue of whether summary judgment was properly rendered. The Ashbys defaulted on the note, the foreclosure action was instituted on the basis of that default, and Fifth Third was under no duty to respond to, much less accept, an offer of sale that was substantially less than the note amount. The summary judgment was properly rendered,

Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807  
S.W.2d 476 (1991), and we find no error on this issue.

For the foregoing reasons, the judgment and order of  
sale of the Bullitt Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Russell Lloyd  
Louisville, KY

BRIEF FOR APPELLEE, FIFTH  
THIRD BANK:

Brian E. Chapman  
Cincinnati, OH