

Fairways at Black Lake v. Robert Hill, 16LC-0337

Hearing: Application for Order for Sale of Dwelling

Date: December 7, 2017

Fairways at Black Lake Owners Association, Inc. (Plaintiff) obtained a \$19,065.89 judgment against Robert Hill and Colin Hill (Defendants) in this action for the payment of monetary penalties. Plaintiff now seeks authority from the Court to sell Defendants' real property located at 563 Woodgreen Way in Nipomo, California. There is no opposition from Defendants.

On September 1, 2017, Plaintiff filed its application for order of sale of dwelling. On September 15, 2017, the Court issued an OCS re: Sale of Dwelling requiring that the judgment debtors Robert Hill and Colin Hill appear and show cause why an order for sale should not be made in accordance with the judgment creditor's application. [CCP § 704.770(a)] (*Schwartz & Ahern, California Practice Guide, Enforcing Judgments and Debts*, 6:772)

At least 30 days prior to the OSC, the debtor must be served with the OSC, the application for order of sale, and the official notice of hearing form. [CCP §704.770(b)(1)] Plaintiff has filed a proof of service confirming that Defendants were personally served with the application, the OSC, and notice of hearing. On November 9, 2017, this Court held a hearing on the OSC and counsel for Defendant appeared and requested a continuance in order to file an opposition. The Court continued the hearing to December 7, 2017. To date, no opposition has been filed.

Prior to the issuance of an order for sale of the dwelling, the Court must determine the amount of any homestead exemption and the fair market value of the dwelling. [CCP § 704.780(b)] According to Plaintiff's application, no homestead exemption or disabled veteran's exemption has been recorded. Plaintiff states that based on Robert Hill's age the available homestead exemption is \$175,000 and the only lien on the property is a deed of trust in the amount of \$304,886.18. On June 23, 2017, the property appraised for \$535,000. As such, Plaintiff concludes there is more than \$55,000 available after sale to satisfy Plaintiff's judgment.

Plaintiff's application satisfies the requirements of CCP §704.760 and Defendants were properly and timely noticed of the hearing on the application pursuant to CCP §704.770. The application is granted; Plaintiff shall prepare an order in compliance with CCP §704.780(b).