THE ELUSIVE FORECLOSURE JUDGMENT LIEN

(PARTS I AND II OF II PARTS)

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(PART I OF II PARTS)

What advice would you give your client (either the creditor or the owner) in the following circumstances:

{Hint: Remember the "one judgment rule"}

1. Owner#1 is the holder of title to Firstacre and is unashamedly delinquent on a promissory note secured by a recorded mortgage on Firstacre held by Creditor#1.

2. Creditor#1 aggressively secures and enters a foreclosure judgment (post-1978) against Owner#1 determining liability and the amount owed on the promissory note (*in personam),* and also ordering the sale of Firstacre (*in rem).*

3. Creditor#1 optimistically records the Foreclosure Judgment (pursuant to 12 O.S. §706) in the county land records, because Owner#1 owns additional land, Secondacre, in such county.

4. After the Foreclosure Judgment is recorded in the county land records, but before a Deficiency Order is entered, Owner#1 quickly deeds Secondacre to Owner#2.

5. The Foreclosure Judgment is enforced by the conduct of a special execution sheriff's sale of Firstacre, and, in a timely way, Judgment Creditor#1 seeks and receives from the court a Deficiency Order, under 12 O.S.§686, with this Deficiency Order being promptly recorded in the county land records.

6. Creditor#1 issues general execution against Secondacre seeking to have it sold to satisfy the balance due under the Foreclosure Judgment as reflected in the Deficiency Order.

7. Owner#2, rather upset, files a suit against Creditor#1 to quiet title against the Foreclosure Judgment lien, and to have a temporary restraining order and a

permanent injunction issued halting the impending sheriff's sale of Secondacre.

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According to Mehojah v. Moore, 1987 OK CIV APP 43, 744 P.2d 222 ("approved for publication by the Supreme Court"), (opinion by Stubblefield):

1. "[T]he law [12 O.S. 1981 §686] is clear that a plaintiff in a foreclosure action may not generally execute upon the property of the judgment debtor until after the sheriff's sale of the foreclosed property and the determination and entry of a deficiency judgment." (¶8)

2. "Likewise, [under §686] if a party fails to timely obtain a judicial determination of deficiency after the sale of the foreclosed property, the judgment is deemed satisfied by the sheriff's sale." (¶8)

3. Under 12 O.S. 1981 §706: "Judgments of courts of record of this state and of the United States shall be liens on the real estate of the judgment debtor within a county from and after the time a certified copy of such judgment has been filed in the office of the county clerk in that county."

4. "The issue that apparently has not been addressed in this state is whether the provisions of 12 O.S. 1981 §686 somehow modify the general provisions of 12 O.S. 1981 §706 so that a lien does not arise upon the filing of an *in personam* judgment obtained in a foreclosure proceeding until a deficiency judgment has been entered by the court and filed with the county clerk." (¶9)

5. The Oklahoma Court of Civil Appeals explained that Oklahoma adopted from Kansas the language used for §686, and that the Oklahoma Supreme Court agreed with a Kansas Supreme Court decision which held that under the language of §686 "there is but one judgment—a personal judgment." which was the Foreclosure Judgment. (¶¶12 -13)

6. "The entry of a deficiency judgment is but a supplemental order entered in the lawsuit which allows the judgment creditor to obtain a writ of general execution to satisfy the deficiency amount." (¶15)

7. "The restrictions [whereby §686 prohibits general execution against other property until a Deficiency Order is entered] are entirely upon the right of execution, and do not in any way modify the statutory provisions [of §706] for creating a lien." (¶16)

8. Finally, "We think the result reached in the century old Kansas case best harmonizes the two statutes involved [§§706 and 686]. …[A] lien arose …when Defendants [Creditor#1] filed their [foreclosure] judgment with the county clerk. At that time, all of the Tulsa County real property of … [Owner#1] was encumbered, including the land that is the subject of this action. The lien thereby created was subject to the condition that the property involved in the foreclosure proceedings be sold and the proceeds applied to the judgment before execution could issue against other property. Conditioned though it may have been, the lien arose nonetheless." (¶18) (emphasis added)

9. The existing confusion in the law being dealt with in this dispute is discussed in the concurring opinion by Brightmire: "[L]ike most other lawyers I found it necessary to adjust years of thinking the other way, namely, that the [foreclosure] judgment was some sort of an interlocutory event in the course of the litigation. Upon reflection it began to appear that the problem was one of semantics caused by the statutory reference to the judicial deficiency calculation as a 'judgment'. Clearly there can be but one judgment in an action on a given subject matter, so either the first adjudication [the Foreclosure Judgment] is not a final judgment or the so-called deficiency 'judgment' is not a judgment at all but a judicial determination of the amount remaining due on the [foreclosure] judgment after sale of the mortgaged property." (¶1) "That the foreclosure judgment is a final one with regard to the amount due on the note is hardly subject to dispute. … Though the subsequent ancillary proceeding may create new disputes, it does not create new rights."(¶2)

10. **Conclusion:** Owner#1 loses, Creditor#1 wins.

[NOTE: Next, in Part II, the discussion of the relationship between the lien of the Foreclosure Judgment and the Deficiency Order continues; notice that the court in Mehojah rejects the argument by Owner#1 that the Section 706 lien only attaches after the Deficiency Order is recorded in the county land records.]

(PART II OF II PARTS)

What advice would you give your client (Creditor#1 or Creditor#2) in the following circumstances:

{Hint: Remember the "one judgment rule"}

1. Creditor#1 is the holder of Foreclosure Judgment#1 against Debtor#1 on Firstacre, and he promptly and proudly records the Foreclosure Judgment#1 (pursuant to 12 O.S. §706) in the county land records, because Debtor#1 owns additional land, Thirdacre, in such county.

2. Creditor#2 is the holder of Foreclosure Judgment#2 against Debtor#1 on Secondacre, and aggressively and confidently records the Foreclosure Judgment#2 (pursuant to 12 O.S. §706) in the county land records, because Debtor#1 owns additional land, Thirdacre, in such county.

3. The Foreclosure Judgment#1 is recorded before Foreclosure Judgment#2 in the county land records.

4. Creditor#1 and Creditor#2 conduct Sheriff's sales against their mortgaged lands, Firstacre and Secondacre, respectively, and each secure Deficiency Orders for the remainder of their debt.

5. Creditor#2 records his Deficiency Order#2 in the county land records.

6. Creditor#1 does <u>not</u> (ever) record his Deficiency Order#1 in the county land records.

7. Both Creditor#1 and Creditor#2 seek general execution against Thirdacre. Rather than agreeing to share in the resulting Sheriff's Sale proceeds on a prorata basis, Creditor#2 seeks a declaratory ruling that the §706 lien of its Deficiency Order#2 is <u>prior</u> to Deficiency Order#1 (which is not recorded as a lien), and, therefore, Creditor#2 argues, it, Creditor#2, is entitled to full satisfaction of its Deficiency Order#2 before the balance of the sale proceeds, <u>if any</u>, are applied to the Deficiency Order#1.

8. Creditor#1 counters that because his Foreclosure Judgment#1 was properly recorded in the county land records before the Foreclosure Judgment#2 was recorded, he, Creditor#1, is entitled to a priority ahead of Creditor#2, with his Deficiency Order#1 being fully satisfied before any proceeds are applied towards Deficiency Order#2.

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According to Neil Acquisition, LLC v. Wingrod Investment Corp., 1996 OK 125, 932 P.2d 1100 (opinion by Opala):

1. The court posed the question to be resolved as: "Does a recorded foreclosure decree establish lien priority for a later-acquired but unrecorded deficiency judgment?" (¶1)

2. "By summary judgment the trial court ruled [Creditor#1] held the supreme lien because its foreclosure decree was recorded in the county clerk's office before the foreclosure decree secured by [Creditor#2]. The appellate court affirmed." (¶2) (emphasis in original)

3. "Both courts appear to have overlooked that [Creditor#1] failed to record its post-sale deficiency order, while [Creditor#2's] like adjudication [Deficiency Order] was placed of record."

4. "[Creditor#2's] contention is that [Creditor#1's] priority status was lost by its failure to perfect a judgment lien for the adjudged deficiency. **We agree.**"… (¶2) (emphasis in original)

5. "The dispositive issue here does not deal with the priority of recorded foreclosure decrees, but with the priority of recorded deficiency orders. [Creditor#2] recorded its deficiency while [Creditor#1] did not: [Creditor#2's] judgment lien is hence superior to that of [Creditor#1]." (¶6) (emphasis in original)

6. Recall that in Mehojah, the judgment Creditor#1 recorded its Foreclosure Judgment and also secured a timely Deficiency Order but did not ever record its Deficiency Order, and, still, such judgment Creditor#1 defeated the claim of a grantee in a deed recorded after the Foreclosure Judgment

was recorded but before the Deficiency Order was recorded (because it was never recorded)!

7. In Mehojah v. Moore, 1987 OK CIV APP 43, 744 P.2d 222 (discussed in last month's Briefcase), Judge Brightmire states, in his concurring opinion: "Clearly there can be but one judgment in an action on a given subject matter, so either the first adjudication [the Foreclosure Judgment] is not a final judgment or the so-called deficiency 'judgment' is not a judgment at all but a judicial determination of the amount remaining due on the [foreclosure] judgment after sale of the mortgaged property." (¶1) "That the foreclosure judgment is a final one with regard to the amount due on the note is hardly subject to dispute. …Though the subsequent ancillary proceeding may create new disputes, it does not create new rights." (¶2)

8. In Neil the court, in endnote 6, favorably quotes from both Mahojah and from FDIC v. Tidwell, 1991 OK 119, 820 P.2d 1338, "We do not refer to the deficiency determination as a 'deficiency judgment.' In FDIC v. Tidwell, Okl., 820 P.2d 1338, 1343 (1991), the court held there can be but one 'judgment' on a single cause of action. In a foreclosure proceeding, the single judgment is the court's determination of the amount due the creditor and its order that the encumbered property be sold to satisfy the mortgage lien. Mehojah v. Moore, supra note 4 at 225. Although a 'so-called deficiency judgment' may have the effect of a judgment for some purposes, it is stricto sensu a postjudgment order determining a deficiency on a judgment previously rendered. See FDIC v. Tidwell, supra at 1341; Nowata Land and Cattle Co., Inc., Okl., 789 P.2d 1282, 1285 (1990); Jones v. England, Okl., 782 P.2d 119, 121 (1989); Baker v. Martin, supra, note 4 at 1050."

9. There appears to be no way to reconcile the holding in Neil with the earlier rulings in Mehojah and FDIC, although they were not expressly overturned in Neil, and, in fact, are favorably quoted in Neil. A judgment creditor must accept that there is now a "two judgment rule" for deficiency judgment creditors. Therefore, such judgment creditor must file both the Foreclosure Judgment as quickly as possible to defeat grantees (of the debtor's other property), and record the Deficiency Order promptly to maintain its priority against competing judgment lien holders.

10. This author is confident that the public and the legal profession would have been better served if the Court in Neil had either clearly overruled Mehojah and its cousins, so that it was no longer beneficial to record the Foreclosure Judgment at all, or had followed the clear rule announced in Mehojah which rejected the need to ever record the Deficiency Order.

11. Out of an abundance of caution, it is recommended that the judgment creditor renew its judgment(s) (under 12 O.S. § 735) and renew its judgment lien(s) (under 12 O.S. §706) within 5 years of the issuance of the Foreclosure Judgment, rather than measuring its 5 years from the later issuance of the Deficiency Order.

12. Under the procedure provided by §706, at the current time, a form known as a Statement of Judgment, rather than the judgment itself, is recorded and while the form does not lend itself to a description of multiple judgments and orders, the prudent lawyer should insert a brief but complete itemization of both the initial Foreclosure Decree and the later Deficiency Order to "cover all bets".

APPENDICES

1. 12 O.S. §686
2. 12 O.S. §706
3. Mehojah
4. FDIC
5. Neil Acquisition
6. Statement of Judgment

APPENDIX 1:

12 O.S. §686

Oklahoma Statutes Citationized

Title 12. Civil Procedure

Chapter 12 - Judgment

Section 686 - Mortgage Foreclosure - Deficiency Judgments

Cite as: O.S. §, __ __

In actions to enforce a mortgage, deed of trust, or other lien or charge, a personal judgment or judgment or judgments shall be rendered for the amount or amounts due as well to the plaintiff as other parties to the action having liens upon the mortgaged premises by mortgage or otherwise, with interest thereon, and for sale of the property charged and the application of the proceeds; or such application may be reserved for the future order of the court, and the court shall tax the costs, attorney's fees and expenses which may accrue in the action, and apportion the same among the parties according to their respective interests, to be collected on the order of sale or sales issued thereon; when the same mortgage embraces separate tracts of land situated in two or more counties, the sheriff of each county shall make sale of the lands situated in the county of which he is sheriff. No real estate shall be sold for the payment of any money or the performance of any contract or agreement in writing, in security for which it may have been pledged or assigned, except in pursuance of a judgment of a court of competent jurisdiction ordering such sale. The court may, in the order confirming a sale of land under order of sale on foreclosure or upon execution, award or order the issuance of a writ of assistance by the clerk of the court to the sheriff of the county where the land is situated, to place the purchaser in full possession of such land, and any resistance of the service of such writ of assistance shall constitute an indirect contempt of the process of such court, and if any person who has been removed from any lands by process of law or writ of assistance or who has removed from any lands pursuant to law or adjudication or direction of any court, tribunal or officer, afterwards, without authority of law, returns to settle or reside upon such land, he shall be guilty of an indirect contempt of court, and may be proceeded against and punished for such contempt. Notwithstanding the above provisions no judgment shall be enforced for any residue of the debt remaining unsatisfied as prescribed by this act after the mortgaged property shall have been sold, except as herein provided. Simultaneously with the making of a motion for an order confirming the sale or in any event within ninety (90) days after the date of the sale, the party to whom such residue shall be owing may make a motion in the action for leave to enter a deficiency judgment upon notice to the party against whom such judgment is sought or the attorney who shall have appeared for such party in such action. Such notice shall be served personally or in such other manner as the court may direct. Upon such motion the court, whether or not the respondent appears, shall determine, upon affidavit or otherwise as it shall direct, the fair and reasonable market value of the mortgaged premises as of the date of sale or such nearest earlier date as there shall have been any market value thereof and shall make an order directing the entry of a deficiency judgment. Such deficiency judgment shall be for an amount equal to the sum of the amount owing by the party liable as determined by the judgment with interest, plus costs

and disbursements of the action plus the amount owing on all prior liens and encumbrances with interest, less the market value as determined by the court or the sale price of the property whichever shall be the higher. If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist.

In any action pending at the time this act becomes effective or thereafter commenced, other than an action to foreclose a mortgage, to recover a judgment for any indebtedness secured by a mortgage on real property and which originated simultaneously with such mortgage and which is secured solely by such mortgage, against any person or corporation directly or indirectly or contingently liable therefor, any party against whom a money judgment is demanded, shall be entitled to set off the fair and reasonable market value of the mortgaged property less the amounts owing on prior liens and encumbrances. Provided that nothing in this section shall limit or reduce any deficiency judgment in favor of or in behalf of the state for any debts, obligations or taxes due the state, now or hereafter.

Historical Data

R.L. 1910, § 5128; Laws 1915, c. 175, § 1; Laws 1941, p. 35, § 1.

Citationizer© Summary of Documents Citing This Document

Cite Name Level

Oklahoma Court of Civil Appeals Cases

Cite	Name	Level
1986 OK CIV APP 35, 734 P.2d 849, 57 OBJ 3107,	Jim Walter Homes, Inc. v. County Clerk of Okfuskee County	Cited
1987 OK CIV APP 38, 738 P.2d 967, 58 OBJ 1618,	GHY Developers, Inc. v. Pumpelly	Cited
1987 OK CIV APP 43, 744 P.2d 222, 58 OBJ 1622,	Mehojah v. Moore	Discussed at Length
1990 OK CIV APP 50, 798 P.2d 641, 61 OBJ 2749,	Federal Land Bank of Wichita v. Hague	Discussed at Length
1990 OK CIV APP 57, 798 P.2d 648, 61 OBJ 2745,	Willow Creek Condominiums Second, Inc. v. Andreyev	Cited
1991 OK CIV APP 58, 815 P.2d 1219, 62 OBJ 3041,	American Title Ins. Co. v. M-H Enterprises	Cited
1991 OK CIV APP 69, 820 P.2d 1357, 62 OBJ 3784,	Federal Deposit Ins. Corp. v. Sumner	Discussed at Length

Cite	Name	Level
1992 OK CIV APP 146, 842 P.2d 368, 63 OBJ 3794,	Local Federal Bank, F.S.B. v. JICO, Inc.	Discussed at Length
1993 OK CIV APP 112, 856 P.2d 605, 64 OBJ 2501,	State ex rel. Com'rs of Land Office v. Thompson	Discussed
1995 OK CIV APP 43, 898 P.2d 172, 66 OBJ 1989,	Bank of Oklahoma, N.A. v. Welco, Inc.	Discussed
1995 OK CIV APP 150, 909 P.2d 1198, 67 OBJ 434,	F & M Bank & Trust Co. v. Samara	Cited
2006 OK CIV APP 141, 149 P.3d 1064,	FIRST ENTERPRISE BANK v. BE-GRAPHIC, INC.	Cited
2008 OK CIV APP 39,	FIRST UNITED BANK AND TRUST CO., PAULS VALLEY v. WILEY	Discussed at Length
1996 OK CIV APP 75, 921 P.2d 955, 67 OBJ 2515,	Haines Pipeline Const., Inc. v. Exline Gas Systems, Inc.	Discussed at Length
1996 OK CIV APP 110, 925 P.2d 578, 67 OBJ 3308,	Statewide Funding Corp. v. Reed,	Discussed at Length
1978 OK CIV APP 51, 588 P.2d 592,	FED. NAT. BANK & TRUST CO. OF SHAWNEE v. RYAN	Discussed
1997 OK CIV APP 49, 945 P.2d 84, 68 OBJ 2961,	BANK IV OKLAHOMA v. IRA PHILLIPS	Cited
1983 OK CIV APP 21, 663 P.2d 393,	Eufaula Bank & Trust Co. v. Wheatley	Discussed
1983 OK CIV APP 71, 674 P.2d 1156,	Marcha v. Austin	Cited
1984 OK CIV APP 57, 692 P.2d 77,	Floyd v. Dodson	Cited

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Cite	Name	Level
1989 OK 142, 782 P.2d 119, 60 OBJ 2825,	Jones v. England	Cited
1989 OK 169, 789 P.2d 1282, 60 OBJ 2827,	Willis v. Nowata Land and Cattle Co., Inc.	Cited
1989 OK 170, 790 P.2d 526, 60 OBJ 2842,	Sooner Federal Sav. and Loan Ass'n v. Oklahoma Cent. Credit Union	Cited
1990 OK 79, 795 P.2d 1051, 61 OBJ 2098,	Capitol Federal Savings Bank v. Bewley	Discussed at Length
1992 OK 35, 830 P.2d 1355, 63 OBJ	Founders Bank and Trust Co. v. Upsher	Discussed at Length

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	1048,		
	1992 OK 129, 839 P.2d 1336, 63 OBJ 2574,	First Federal Sav. and Loan Ass'n, Chickasha, Okl. v. Nath	Cited
	1947 OK 274, 185 P.2d 211, 199 Okla. 193,	PRICE v. SHELL OIL CO.	Cited
	1994 OK 26, 875 P.2d 411, 65 OBJ 789,	Morrow Development Corp. v. American Bank and Trust Co.	Discussed
	1952 OK 452, 255 P.2d 248, 208 Okla 155,	LOCAL FED. SAV. & LOAN ASS'N v. DAVIDSON & CASE LBR.	Discussed at Length
	1952 OK 440, 267 P.2d 143,	BREWSTER v. HERRON	Cited
	1945 OK 217, 164 P.2d 221, 196 Okla. 251,	ANDERSON v. WARREN	Cited
	1960 OK 39, 351 P.2d 735,	STALCUP v. EASTERLY	Cited
	1961 OK 3, 358 P.2d 841,	HUNTER v. NESMITH	Cited
	1965 OK 116, 415 P.2d 930,	AMERICAN-FIRST TITLE v. FIRST FED. S. & L. ASS'N	Cited
	1972 OK 42, 495 P.2d 404,	SANCO ENTERPRISES, INC. v. CHRISTIAN	Cited
	1974 OK 106, 529 P.2d 984,	APACHE LANES, INC. v. NATIONAL EDUCATORS LIFE INS.	Discussed at Length
	1996 OK 10, 912 P.2d 836, 67 OBJ 382,	Liberty Bank and Trust Co. of Oklahoma City, N.A. v. Rogalin	Cited
	1996 OK 125, 932 P.2d 1100, 67 OBJ 3566,	Neil Acquisition, L.L.C. v. Wingrod Investment Corp.	Discussed at Length
	1975 OK 112, 538 P.2d 1048,	BAKER v. MARTIN	Cited
	1980 OK 72, 613 P.2d 438,	Riverside Nat. Bank v. Manolakis	Discussed at Length
	1979 OK 88, 601 P.2d 455,	RELIABLE LIFE INS. CO. OF ST. LOUIS v. COOK	Discussed at Length
	1981 OK 109, 634 P.2d 1303,	Selby v. Kelly Rae Apartments, Inc.	Discussed at Length
	1951 OK 268, 236 P.2d 681, 205 Okla. 205,	STATE ex rel. BOARD OF PUB. AFFAIRS v. NEFF	Cited
	1950 OK 280, 229 P.2d 574, 204 Okla. 321,	NORTH v. HANING	Cited
	1948 OK 93, 194 P.2d 852, 200 Okla. 400,	FENIMORE v. STATE ex rel. COM'RS OF THE LAND OFFICE	Discussed at Length
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847,		
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Citationizer: Table of Authority

Cite	Name	Level

None Found.

APPENDIX 2:

12 O.S. §706

Oklahoma Statutes Citationized

Title 12. Civil Procedure

Chapter 12 - Judgment

Section 706 - Judgments as Liens - Filing - Execution

Cite as: O.S. §, __ __

A. Scope. This section applies to all judgments of courts of record of this state, and judgments of courts of record of the United States not subject to the registration procedures of the Uniform Federal Lien Registration Act, Section 3401 et seq. of Title 68 of the Oklahoma Statutes, which award the payment of money, regardless of whether such judgments also include other orders or relief.

B. Creation of Lien. A judgment to which this section applies shall be a lien on the real estate of the judgment debtor within a county only from and after a Statement of Judgment made by the judgment creditor or the judgment creditor's attorney, substantially in the form prescribed by the Administrative Director of the Courts, has been filed in the office of the county clerk in that county.

1. Presentation of a Statement of Judgment and tender of the filing fee, shall, upon acceptance by the county clerk, constitute filing under this section.

2. A lien created pursuant to this section shall affect and attach to all real property, including the homestead, of judgment debtors whose names appear in the Statement of Judgment; however, judgment liens on a homestead are exempt from forced sale pursuant to Section 1 of Title 31 of the Oklahoma Statutes and Section 2 of Article XII of the Oklahoma Constitution.

C. Judgment Index. A judgment index shall be kept by each county clerk in which the name of each person named as a judgment debtor in a Statement of Judgment filed with the county clerk shall appear in alphabetical order.

1. It shall be the duty of the county clerk, immediately after the filing of the Statement of Judgment, to make in the judgment index a separate entry in alphabetical order of the name of each judgment debtor named therein, which entry shall also contain the name(s) of the judgment creditor(s), the name of the court which granted the judgment, the number and style of the case in which the judgment was filed, the amount of the judgment, including interest, costs and attorney's fees if shown on the Statement of Judgment, the date of the filing of the judgment with the court clerk of the court which granted it, and the date of filing of the Statement of Judgment with the county clerk.

2. It shall also be the duty of the county clerk, immediately after the filing of a Release of Judgment Lien, to make a notation in each entry in the judgment index made when any Statement of Judgment was filed with respect to the judgment being released, of the date of filing of the Release with the county clerk, the

name of the judgment creditor on whose behalf the Release is filed, and whether the Release states that it is only a partial Release.

D. Execution of Judgment. Execution shall be issued only from the court which granted the judgment being enforced.

E. Release of Lien of Judgment. The lien of a judgment upon the real estate of judgment debtor in any county, which has not become unenforceable by operation of law, is released only upon the filing in the office of the county clerk in that county of a Release of Judgment Lien, or a copy thereof certified by the court clerk of the court which granted the judgment.

1. A judgment lien may be released, in whole or in part, by filing a Release of Judgment Lien with the county clerk by the judgment creditor or his or her attorney.

a. A Release of Judgment Lien shall either recite the name of the court which granted the judgment, the number and style of the case, the name of each judgment debtor with respect to whom the lien is being released, the name of each judgment creditor in favor of whom the lien was created, or otherwise adequately identify the judgment lien being released and the judgment debtor against whom the lien is indexed. The Administrative Director of the Courts shall prescribe a form of Release of Judgment which may be used at the option of the judgment creditor.

b. If the release is only partial, it shall also contain a description of the lands then being released from the judgment lien or identify the particular judgment debtors, if less than all, with respect to whom the lien is then being released, or both, as the case may be.

c. A Release of Judgment Lien may also be filed with the court clerk of the court which granted the judgment but filing with the court clerk does not release any judgment lien created pursuant to this section.

2. The lien of any judgment which has been satisfied by payment or otherwise discharged and which has not been released by the judgment creditor shall be released by the court upon written motion.

a. The motion shall be accompanied by an affidavit stating the grounds for the motion, and shall contain or be accompanied by a notice to the judgment creditor that, if the judgment creditor does not file with the court a response or objection to the motion within fifteen (15)days after the mailing of a copy of the motion to the judgment creditor, the court will order the judgment lien released.

b. A copy of the motion shall be mailed by certified mail by the party seeking release of the lien to the judgment creditor at the last-known address of the judgment creditor, and to the attorney of record of the judgment creditor, if any. There shall be attached to the filed motion, and to each copy of the motion to be mailed, a Certificate of Mailing showing to whom copies of the motion were mailed, the addresses to which they were mailed, and the date of mailing.

c. If the judgment creditor does not file a response or objection to the motion within fifteen (15) days after the mailing of a copy of the motion, the court shall order the judgment lien released.

d. When a judgment lien is ordered released by the court, the court shall cause a Release of Judgment Lien, in the form provided by the Administrative Director of the Courts, to be prepared. Instructions shall be printed on such form advising the judgment debtor to file the Release in the office of the county clerk of the county in which the real estate is situated in order to obtain the release of the lien of the judgment upon the real estate of the judgment debtor in such county.

e. The party filing the motion for release shall pay all costs of the proceeding and any recording fees.

F. Effect of Filing or Recording a Judgment. The filing or recording of a judgment itself in the office of a county clerk on or after October 1, 1993, shall not be effective to create a general money judgment lien upon real estate, but a certified copy of a judgment may be recorded in such office for the purpose of giving notice of its contents, whether or not recording is required by law.

G. Acceptance by County Clerk. The county clerk shall accept for filing and file any Statement of Judgment or Release of Judgment Lien without requiring any formalities of execution other than those provided in this section.

Historical Data

R.L. 1910, § 5148; Laws 1931, p. 3, § 1; Laws 1943, p. 34, § 1, emerg. eff. April 13, 1943; Laws 1978, c. 138, § 1, eff. Oct. 1, 1978; Laws 1983, c. 56, § 1, eff. Nov. 1, 1983; Laws 1988, c. 102, § 1, eff. Nov. 1, 1988; Laws 1990, c. 251, § 19, eff. Jan. 1, 1991; Laws 1991, c. 251, § 9, eff. June 1, 1991; Laws 1993, c. 351, § 13, eff. Oct. 1, 1993.; Amended by Laws 1997, c. 320, § 1, eff. July 01,1997 (superseded document available).

Citationizer© Summary of Documents Citing This Document

Cite	Name	Level
Oklahoma Attorney General's Opinions		
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1985 OK AG 178,	Question Submitted by: The Honorable Marvin York, Oklahoma State Senate	Cited
Oklahoma Court of Civil Appeals Cases		
1987 OK CIV APP 43, 744 P.2d 222, 58 OBJ 1622,	Mehojah v. Moore	Discussed at Length

Cite	Name	Level
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2001 OK CIV APP 7, 16 P.3d 1134, 72 OBJ 428,	STEWART DRUGS, INC. v. ESTATE OF FUNNELL	Discussed
1994 OK CIV APP 33, 872 P.2d 949, 65 OBJ 1283,	American Mortg. and Inv. Co. v. Fallin	Discussed
2007 OK CIV APP 7, 156 P.3d 48,	GARRETT v. OKLAHOMA PANHANDLE STATE UNIVERSITY	Cited
2008 OK CIV APP 111,	HILL v. DISCOVER BANK	Discussed
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Cite	Name	Level
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1971 OK 61, 485 P.2d 229,	DE MIK v. CARGILL	Cited
1995 OK 124, 907 P.2d 1047, 66 OBJ 3579,	First Community Bank of Blanchard v. Hodges	Discussed at Length
2003 OK 67, 73 P.3d 887,	U.S. MORTGAGE v. LAUBACH	Discussed at Length
2005 OK 63, 122 P.3d 466,	IN THE MATTER OF THE ESTATE OF VILLINES	Cited
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1996 OK 125, 932 P.2d 1100, 67 OBJ 3566,	Neil Acquisition, L.L.C. v. Wingrod Investment Corp.	Discussed
1977 OK 198, 570 P.2d 1161,	JOPLIN CORP. v. STATE EX REL. GRIMES	Discussed

Cite	Name	Level
1977 OK 236, 574 P.2d 293,	LVO FEDERAL CREDIT UNION v. WOLFE	Discussed
1982 OK 84, 649 P.2d 521,	Bovasso v. Sample	Cited
1982 OK 88, 649 P.2d 529,	Farris v. Cannon	Discussed
1951 OK 31, 229 P.2d 179, 204 Okla. 296,	McBEE v. DENNIS	Cited
1951 OK 136, 232 P.2d 618, 204 Okla. 586,	SMITH v. CITIZENS NAT. BANK IN OKMULGEE	Discussed
1985 OK 15, 695 P.2d 1352,	Cate v. Archon Oil Co., Inc.	Cited
1985 OK 100, 710 P.2d 752,	Will Rogers Bank & Trust Co. v. First Nat. Bank of Tahlequah	Discussed at Length

Title 12. Civil Procedure

Cite	Name	Level
12 O.S. 706.3,	Additional Cash Where Deposit Insufficient	Cited

Title 16. Conveyances

Cite	Name	Level
16 O.S. 15,	Necessity of Acknowledgment and Recording as to Validity - Acknowledge and Record as Condition for Judgment Lien to be Binding against Third Persons	Cited

Citationizer: Table of Authority

Cite	Name	Level

Title 31. Homestead and Exemptions

Cite	Name	Level
31 O.S. 1,	Property Exempt from Attachment, Execution or Other Forced Sale - Bankruptcy Proceedings	Cited

Title 68. Revenue and Taxation

Cite	Name	Level
68 O.S. 3401,	Short Title	Cited

APPENDIX 3:

MEHOJAH

Mehojah v. Moore

1987 OK CIV APP 43
744 P.2d 222
58 OBJ 1622
Case Number: 65911
Decided: 06/02/1987
APPROVED FOR PUBLICATION BY THE SUPREME COURT

Cite as: 1987 OK CIV APP 43, 744 P.2d 222

WILLIAM A. MEHOJAH AND FREDERICKA L. MEHOJAH, HUSBAND AND WIFE, APPELLANTS,
v.
JOHN H. MOORE, ROBERT H. OBERFELL, DARLENE M. OBERFELL, AND FRANK THURMAN, SHERIFF OF TULSA COUNTY, APPELLEES.

Appeal from the District Court of Tulsa County; Ronald L. Shaffer, Trial Judge.

¶0 Owners of real property appeal from the trial court's grant of summary judgment for Defendants in a quiet title action and refusal to enter a restraining order to prevent the sale of the real property in satisfaction of an in personam judgment granted in favor of Defendants in a foreclosure action against the owners' predecessor in interest.

AFFIRMED.

Bruce G. Straub, Robert E. Parker and Associates, Tulsa, for appellants.
Linda G. Morrissey, Tulsa, for appellees.

OPINION

STUBBLEFIELD, Judge.

¶1 This is an appeal from a summary judgment for Defendants in an action to quiet title and denial of a restraining order to prevent the sale of Plaintiffs' real property in satisfaction of an in personam judgment against Plaintiffs' predecessor in interest. After a review of the record and applicable law, we affirm.

I

¶2 On January 30, 1985, John H. Moore, Robert H. Oberfell and Darlene Oberfell obtained an in personam judgment in a mortgage foreclosure action against Merritt Lee McCurry, Jr., d/b/a McCurry Investment Company (McCurry). The judgment was for $37,619.94 plus interest, abstracting fees, costs, and attorney's fee, and decreed that the subject property be sold. A certified copy of the judgment was recorded in the office of the Tulsa County Clerk on February 25, 1985. An affidavit giving notice of the judgment and describing all the other real property owned by McCurry was filed with the Tulsa County Clerk on February 26, 1985. On that same date, a certified letter giving notice of the judgment was mailed to the real estate agent who was listing for sale another McCurry property that is the subject of this lawsuit.

¶3 On March 20, 1985, McCurry conveyed that real property to William A. and Fredericka L. Mehojah. The general warranty deed was recorded in the office of the Tulsa County Clerk on March 31.

¶4 On April 18, a deficiency judgment was entered for Moore and the Oberfells against McCurry, from which general execution could issue. On August 19, 1985, they filed an execution against the Mehojahs' property, claiming a lien by virtue of their earlier filing of the judgment against McCurry.

¶5 The Mehojahs filed this action against Moore and the Oberfells on September 24, to quiet title to "Lot Eleven (11), Block One (1), MINSHALL PARK I, An Addition to the City of Tulsa, Tulsa County, State of Oklahoma," and for a temporary restraining order and injunction to prevent the sheriff's sale of that property scheduled for September 26. They further sought to enjoin any further attempts to execute on the property. A temporary restraining order was granted Plaintiffs on September 30. However, on January 27, 1986, Defendants filed a motion for summary judgment, which was granted on February 6. It is from this summary judgment that Plaintiffs appeal.

II

¶6 The facts of the case are not in dispute. Both sides agree that the case is appropriate for summary judgment, but each maintains that the applicable law dictates that it prevail. The Mehojahs' first proposition of error is as follows:

> THE TRIAL COURT'S GRANTING OF APPELLEES' MOTION FOR SUMMARY JUDGMENT IS REVERSIBLE ERROR INASMUCH AS A PROPERLY FILED MOTION FOR A DEFICIENCY JUDGMENT IS A POST-JUDGMENT PREREQUISITE TO AN ISSUANCE OF GENERAL EXECUTION, AND AS SUCH APPELLEES WOULD NOT HAVE BEEN ENTITLED TO A WRIT OF GENERAL EXECUTION UNTIL AFTER THE AMOUNT OF THE DEFICIENCY COULD HAVE BEEN DETERMINED TO A LEGAL CERTAINTY.

¶7 The proposition, however, misses the real issue of the appeal. It is undisputed that Defendants were not entitled to a general execution prior to the entry of the deficiency judgment - they did not attempt to execute herein until some four months after the entry of the deficiency. The real issue is whether an in personam judgment granted in a foreclosure proceeding, when filed with the county clerk, as provided by 12 O.S. 1981 § 706 , becomes a lien on all the real property owned by the judgment debtor or whether the lien may attach only after the entry of a deficiency judgment and the filing of it pursuant to section 706. Plaintiffs do address the crux of the dispute in their remaining proposition of error wherein they contend that the deficiency judgment is a new judgment, and therefore it is this deficiency judgment which, if filed of record, could impress a lien on all of a judgment debtor's property within the county. However, we do not find it helpful to address the vital issues of this appeal within the context of Plaintiffs' propositions of error, although we shall address each of their complaints.

¶8 As stated, the law is clear that a plaintiff in a foreclosure action may not generally execute upon the property of the judgment debtor until after the sheriff's sale of the foreclosed property and the determination and entry of a deficiency judgment. Baker v. Martin, 538 P.2d 1048 (Okla. 1975); Aycock v. Harriman, 185 Okla. 590, 95 P.2d 110 (1939); 12 O.S. 1981 § 686 . Likewise, if a party fails to timely obtain a judicial determination of deficiency after the sale of the foreclosed property, the judgment is deemed satisfied by the sheriff's sale. Selby v. Kelly Rae Apartments, Inc., 634 P.2d 1303 (Okla. 1981); 12 O.S. 1981 § 686 .

¶9 The issue that apparently has not been addressed in this state is whether the provisions of 12 O.S. 1981 § 686 somehow modify the general provisions of 12 O.S. 1981 § 706 so that a lien does not arise upon the filing of an in personam judgment obtained in a foreclosure proceeding until a deficiency

judgment has been entered by the court and filed with the county clerk. Title 12 O.S. 1981 § 706 provides:

> Judgments of courts of record of this state and of the United States shall be liens on the real estate of the judgment debtor within a county from and after the time a certified copy of such judgment has been filed in the office of the county clerk in that county. No judgment whether rendered by a court of the state or of the United States shall be a lien on the real estate of a judgment debtor in any county until it has been filed in this manner. Execution shall be issued only from the court in which the judgment is rendered.

Title 12 O.S. 1981 § 686 (emphasis added), in pertinent part, provides:

> In actions to enforce a mortgage, deed of trust, or other lien or charge, a personal judgment or judgment or judgments shall be rendered for the amount or amounts due as well to the plaintiff . . . with interest thereon, and for sale of the property charged and the application of the proceeds; . . . . Notwithstanding the above provisions no judgment shall be enforced for any residue of the debt remaining unsatisfied as prescribed by this act after the mortgaged property shall have been sold, except as herein provided. Simultaneously with the making of a motion for an order confirming the sale or in any event within ninety (90) days after the date of the sale, the party to whom such residue shall be owing may make a motion in the action for leave to enter a deficiency judgment upon notice to the party against whom such judgment is sought or the attorney who shall have appeared for such party in such action. Such action shall be served personally or in such other manner as the court may direct. Upon such motion the court, whether or not the respondent appears, shall determine, upon affidavit or otherwise as it shall direct, the fair and reasonable market value of the mortgaged premises as of the date of sale or such nearest earlier date as there shall have been any market value thereof and shall make an order directing the entry of a deficiency judgment. Such deficiency judgment shall be for an amount equal to the sum of the amount owing by the party liable as determined by the judgment with interest, plus costs and disbursements of the action plus the amount owing on all prior liens and encumbrances with interest, less the market value as determined by the court or the sale price of the property whichever shall be the higher. If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist. . . .

¶10 It is Defendants' contention that their filing of the judgment in compliance with the provisions of section 706 caused the lien to attach at that time subject to the conditions and restrictions upon execution set out in section 686. They admit they could not execute on the other real property assets of the debtor until the entry of the deficiency, but maintain that the lien nonetheless attached to all of the Tulsa County property of McCurry on the date of the filing of the judgment. The Mehojahs maintain that only the deficiency judgment could have created a lien on McCurry's other property, and that Defendants could have obtained a lien only by filing the deficiency judgment prior to the Mehojahs' purchase of the property from McCurry. They maintain that their purchase of the property prior to the entry of a deficiency prevented any attachment of a lien.

¶11 The parties agree that this is a case of first impression. However, while the precise issue presented has not been addressed on appeal, the statutes involved have been interpreted in such a manner that this court is not presented with a blank slate upon which to analyze the question.

¶12 Both section 686 and section 706 have their origin in Kansas statutes which were first analyzed and interpreted in Lisle v. Cheney, 36 Kan. 578, 13 P. 816 (1887). In Lisle, the court found that in the Kansas statute, from which section 686 is taken, there is but one judgment - a personal judgment. However, in

addition to "this ordinary judgment," there is an order for the "sale of the property charged, and an application of the proceeds to the satisfaction of the judgment." 36 Kan. at 581, 13 P. at 817.

¶13 As with its Kansas prototype, the clear language of section 686 provides that an in personam judgment must be rendered in a foreclosure action and, for any residue still owing after the sale of specified property, the judgment creditor may make a motion, in the same action, for a determination of the deficiency in satisfaction of the in personam judgment. The judicial determination of the amount of deficiency is a post-judgment prerequisite to the judgment creditor's pursuit of further process in satisfaction of the judgment. Baker, 538 P.2d at 1048; Aycock, 185 Okla. at 591, 95 P.2d at 110; Lisle, 36 Kan. at 584, 13 P. at 819.

¶14 In Reconstruction Finance Corp. v. Breeding, 211 F.2d 385, 390 (10th Cir. 1954) (emphasis added), the court stated:

> Under the law of Oklahoma, entry of a so-called deficiency judgment in accordance with section 686. . . . is merely the approval of the execution of the process of the court in the enforcement of its original judgment. . . . Until entry of the deficiency in the manner fixed in the statute, the amount remaining due on the original judgment to be satisfied through the issuance of a general execution and a levy and sale pursuant thereto is not judicially ascertained and no general execution can issue. Entry of the deficiency is a post-judgment prerequisite to the issuance of a general execution for the enforcement of the unpaid balance due upon the original judgment. Aycock v. Harriman, 185 Okl. 590, 95 P.2d 110.

¶15 Therefore, when the trial court acts upon a motion for deficiency, the entry of the deficiency judgment represents the judicial determination of the difference between the amount of the judgment entered in the lawsuit and the fair market value of the mortgaged premises on or near the date of the sale. The entry of a deficiency judgment is but a supplemental order entered in the lawsuit which allows the judgment creditor to obtain a writ of general execution to satisfy the deficiency amount. Bartlett Mortgage Co. v. Morrison, 183 Okla. 214, 81 P.2d 318 (1938); Reconstruction Finance Corp., 211 F.2d at 385.

¶16 Title 12 O.S. 1981 § 706 is a broader and more comprehensive statute than is section 686, and deals with all judgments of courts of record. It allows judgment creditors to impress liens on the real estate of judgment debtors within a county by the filing of a certified copy of a judgment with the county clerk. No exception is made for judgments in foreclosure actions. Nor can we say that the provisions of 12 O.S. 1981 § 686 in any way restrict the section 706 lien procedures in foreclosure lawsuits. The restrictions are entirely upon the right of execution, and do not in any way modify the statutory provisions for creating a lien.

¶17 In interpreting the antecedent to 12 O.S. 1981 § 706 , the Lisle court concluded:

> Under a judgment for any other money demand, the judgment creditor has a lien on the real estate of the debtor within the county; under a judgment on a money demand secured by a mortgage, a judgment creditor has a lien on the real estate of the debtor within the county, with this condition attached, that the proceeds of the sale of certain specific real property shall be first applied to the satisfaction of such judgment.

36 Kan. at 583, 13 P. at 819.

¶18 We think the result reached in the century old Kansas case best harmonizes the two statutes involved. The result of applying the rationale of Lisle in this case is that a lien arose on February 25, 1985, when Defendants filed their judgment with the county clerk. At that time, all of the Tulsa County real property of Merritt Lee McCurry was encumbered, including the land that is the subject of this action. The

lien thereby created was subject to the condition that the property involved in the foreclosure proceedings be sold and the proceeds of the sheriff's sale applied to the judgment before execution could issue against other real property. Conditioned though it may have been, the lien arose nonetheless. The sale was held, application of the proceeds was made, and a deficiency was declared. The conditions thus having been met, the impediment to the judgment creditors' execution was removed, and they could and did proceed to enforce their lien upon the property herein involved. We find nothing erroneous in the trial court's ruling that Defendants were acting according to law. The judgment of the trial court is affirmed.

¶19 RAPP, J., concurs.

¶20 BRIGHTMIRE, P.J., concurs specially.

BRIGHTMIRE, Presiding Judge, (concurring specially)

¶1 I concur fully with the court's opinion. I do want to add, however, that like most other lawyers I found it necessary to adjust years of thinking the other way, namely, that the judgment was some sort of an interlocutory event in the course of the litigation. Upon reflection it began to appear that the problem was one of semantics caused by the statutory reference to the judicial deficiency calculation as a "judgment." Clearly there can be but one judgment in an action on a given subject matter,[1] so either the first adjudication is not a final judgment or the so-called deficiency "judgment" is not a judgment at all but a judicial determination of the amount remaining due on the judgment after sale of the mortgaged property.

¶2 That the foreclosure judgment is a final one with regard to the amount due on the note is hardly subject to dispute. It is docketed just like every other judgment and it is appealable. It determines all the rights of the parties to the litigation which exist up to that point.[2] Though the subsequent ancillary proceeding may create new disputes, it does not create new rights.

¶3 I have no trouble whatever with the legal conclusion that once placed in the judgment docket as required by statute, the judgment which determines the amount due from mortgagor on the note and enters judgment in favor of mortgagee for that amount along with foreclosure of the mortgage, becomes a lien on another piece of real property owned by mortgagor and situated in the county in which the judgment was filed.

¶4 This result was reached a century ago by the Supreme Court of Kansas, Lisle v. Cheney, 36 Kan. 578, 13 P. 816 (1887), the state whence came our own statute - 12 O.S. 1981 § 686 , first adopted in 1893.[3]

¶5 So far as I can find, the validity of the so-called deficiency judgment as such has never been challenged.[4] Nor has the more disquieting provision - that the amount received from the sale of the mortgaged property shall be deemed to satisfy the judgment if no deficiency "judgment" is asked for. It seems to me that in this respect § 686 is at war with the one judgment rule mentioned earlier and might well run afoul of the constitutional guarantees of due process and equal protection by requiring a class of creditors - those whose promissory note is secured by a mortgage - to seek a second "judgment" if a sale of the security does not satisfy the first judgment, and failing to do so, arbitrarily declare the unsatisfied judgment satisfied.

Footnotes:

[1] Aishman v. Taylor, 516 P.2d 244 (Okl. 1973); Tobin Constr. Co. v. Grandview Bank, 424 P.2d 81 (Okl. 1967).

[2] Reliable Life Ins. Co. of St. Louis v. Cook, 601 P.2d 455 (Okl. (1979).

[3] St. 1893, § 4290.

[4] There was a lack of due process notice challenge in Reliable Life Ins. Co. of St. Louis v. Cook, supra, footnote 2.

Citationizer© Summary of Documents Citing This Document

Cite	Name	Level
Oklahoma Court of Civil Appeals Cases		
Cite	Name	Level
1990 OK CIV APP 50, 798 P.2d 641, 61 OBJ 2749,	Federal Land Bank of Wichita v. Hague	Cited
2008 OK CIV APP 39,	FIRST UNITED BANK AND TRUST CO., PAULS VALLEY v. WILEY	Discussed at Length
1996 OK CIV APP 110, 925 P.2d 578, 67 OBJ 3308,	Statewide Funding Corp. v. Reed,	Cited
Oklahoma Supreme Court Cases		
Cite	Name	Level
1991 OK 119, 820 P.2d 1338, 62 OBJ 3541,	Federal Deposit Ins. Corp. v. Tidwell	Cited
1992 OK 35, 830 P.2d 1355, 63 OBJ 1048,	Founders Bank and Trust Co. v. Upsher	Cited
1996 OK 125, 932 P.2d 1100, 67 OBJ 3566,	Neil Acquisition, L.L.C. v. Wingrod Investment Corp.	Cited
1998 OK 110, 981 P.2d 1244, 69 OBJ 3784,	Halliburton v. Grothaus	Cited

Citationizer: Table of Authority

Cite	Name	Level
Oklahoma Supreme Court Cases		
Cite	Name	Level
1939 OK 421, 95 P.2d 110, 185 Okla. 590,	AYCOCK v. HARRIMAN	Discussed at Length
1938 OK 427, 81 P.2d 318, 183 Okla. 214,	BARTLETT MORTG. CO. v. MORRISON	Cited
1966 OK 265, 424 P.2d 81,	J.A. TOBIN CONSTRUCTION CO. v. GRANDVIEW BANK	Cited
1973 OK 130, 516 P.2d 244,	AISHMAN v. TAYLOR	Cited
1975 OK 112, 538 P.2d 1048,	BAKER v. MARTIN	Discussed
1979 OK 88, 601 P.2d 455,	RELIABLE LIFE INS. CO. OF ST. LOUIS v. COOK	Cited
1981 OK 109, 634 P.2d 1303,	Selby v. Kelly Rae Apartments, Inc.	Cited
Title 12. Civil Procedure		
Cite	Name	Level
12 O.S. 686,	Mortgage Foreclosure - Deficiency Judgments	Discussed at Length
12 O.S. 706,	Judgments as Liens - Filing - Execution	Discussed at Length

APPENDIX 4:

FDIC

Federal Deposit Ins. Corp. v. Tidwell

1991 OK 119
820 P.2d 1338
62 OBJ 3541
Case Number: 73406
Decided: 11/19/1991
Supreme Court of Oklahoma

Cite as: 1991 OK 119, 820 P.2d 1338

FEDERAL DEPOSIT INSURANCE CORPORATION AS MANAGER OF THE FSLIC RESOLUTION FUND AS RECEIVER FOR HOMESTEAD SAVINGS AND LOAN ASSOCIATION, WOODWARD, OKLAHOMA, APPELLEE,
v.
FRANK TIDWELL; MARY E. TIDWELL, APPELLANTS.

Appeal from the District Court Woodward County, Oklahoma; Ray Dean Linder, District Judge.

¶0 The Federal Savings and Loan Insurance Corporation brought a foreclosure action in the district court and filed a motion for summary judgment. The trial court granted the motion for summary judgment in rem, ordered the property sold, awarded costs and attorney fees, and reserved the issue of a personal judgment and any defenses of the petitioners until assessment of a deficiency after the sale of the property. Two defendants appealed. The FSLIC filed a motion to dismiss the appeal for the absence of a final judgment adjudicating the petitioners' liability.

APPEAL DISMISSED BUT WRIT OF PROHIBITION ISSUED WITH INSTRUCTIONS.

Michael F. Stake, Woodward, for appellants, Frank Tidwell and Mary E. Tidwell.

Mark E. Pruitt, Phillips, McFall, McCaffrey, McVay, Sheets & Lovelace, P.C., Oklahoma City, for appellee, FSLIC.

Richard H. Ruth, Oklahoma City, for appellee, FDIC.

SUMMERS, Justice.

I. FACTS AND POSTURE

[820 P.2d 1340]

¶1 Federal Savings and Loan Insurance Corporation as Receiver for Homestead Savings and Loan Association of Woodward sued to foreclose its mortgage on properties owned by the Tidwells and other defendants. The Tidwells pled estoppel, waiver, and laches as affirmative defenses. FSLIC moved for summary judgment. The trial court granted the motion, stating that it granted judgment "in rem", and determined the amount due on each note, together with interest and attorney fees. In its order the court ordered the property sold and further said "all issues of in personam liability (to include claims, counterclaims, and defenses) if any, of all the defendants are hereby specifically reserved for hearing upon hearing of Plaintiffs' Motion for Deficiency Judgment." The Tidwells appealed.

¶2 FSLIC moved to dismiss the appeal as premature, arguing that no appealable judgment had yet been rendered. The Tidwells responded that if the appeal were dismissed the trial court would proceed with judicial sale and that their property would be sold to someone else before they were ever heard on their affirmative defenses to the foreclosure suit. We conclude order for the purpose of appeal and that the appeal must be dismissed. However, because the interlocutory order on "summary judgment" authorizes execution on the property of the defendants prior to adjudicating their defenses, we issue a writ of prohibition to prohibit execution unless and until a proper order is rendered. However, before explaining our decision we must substitute the proper party as appellee/respondent.

II. SUBSTITUTION OF FEDERAL DEPOSIT INSURANCE CORPORATION FOR FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION.

¶3 The Plaintiff and original appellee herein is the Federal Savings and Loan Insurance Corporation in its capacity as Receiver for Homestead Savings and Loan Association, Woodward, Oklahoma. The FDIC has requested that it be substituted for the FSLIC on appeal. With certain exceptions, all assets and liabilities of the Federal Savings and Loan Insurance Corporation were transferred to the FSLIC Resolution Fund on August 8, 1989. 12 U.S.C. § 1821a(a)(2)(A). The FSLIC Resolution Fund is managed by the Federal Deposit Insurance Corporation. Id. at § 1821a(a)(1). The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub.L. No. 101-73, Title IV § 401(f)(2) 103 Stat. 183, 356, provides in part: "[n]o action or other proceeding commenced by or against the Federal Savings and Loan Insurance Corporation, . . . shall abate by reason of the enactment of this Act, except that the appropriate successor to the interests of such Corporation shall be substituted for the Corporation or the Federal home loan bank as a party to any such action or proceeding." With no objection from any of the parties we hereby substitute as appellee the Federal Deposit Insurance Corporation as Manager of the FSLIC Resolution Fund as Receiver for Homestead Savings and Loan Association, Woodward, Oklahoma.

III. APPELLATE REVIEW, THE FORECLOSURE DECREE, AND DISMISSING AND RECASTING THE APPEAL

¶4 We need not theorize about in rem and in personam judgments to resolve the problem before us at this stage of the proceeding. The record clearly shows that the FSLIC sought a personal judgment against the Tidwells in its petition for foreclosure of its mortgage. Such requested relief is proper under the jurisprudence of this State. Mehojah v. Moore, 744 P.2d 222 (Okla. App. 1987), (approved for [820 P.2d 1341] publication by Supreme Court).[1] The record before us contains no request by any party for an in rem judgment.

¶5 There can be only one "judgment" or one final judicial determination upon a single cause of action. See Stubblefield v. General Motors Acceptance Corp., 619 P.2d 620, 624 (Okla. 1980) and Oklahomans For Life, Inc. v. State Fair of Okla., 634 P.2d 704, 706 (Okla. 1981). In a strict sense, this one judgment in a foreclosure proceeding is the order determining the amount due and ordering the sale to satisfy the mortgage lien. Jones v. England, 782 P.2d 119, 121 (Okla. 1989); Mehojah v. Moore, 744 P.2d at 225. See also Willis v. Nowata Land and Cattle Co., Inc., 789 P.2d 1282, 1285 n. 11 (Okla. 1989), (deficiency judgment[2] described as a "post-judgment" order). This view is nothing new to the jurisprudence of this State. See Funk v. Payne, 183 Okl. 332, 82 P.2d 976 (1938), wherein we explained that in order to appeal errors in a judgment of foreclosure it was necessary to appeal from that judgment, and First National Bank v. Colonial Trust Co., 66 Okl. 106, 167 P. 985, 987, 988 (1917), wherein we observed that the order of foreclosure was final as it was not appealed. In Reliable Life Ins. Co. of St. Louis v. Cook, 601 P.2d 455, 457 (Okla. 1979), we observed that the appellant did not appeal the foreclosure judgment prior to the motion for the deficiency. In Burton v. Mee, 152 Okl. 220, 4 P.2d 33, 36 (1931), we said that a judgment of foreclosure could not be attacked in the context of a motion to confirm a sale but that the parties' remaining remedy in attacking the judgment at that point in the proceedings was by vacating the judgment. In Wyant v. Davidson & Case Lumber Co., 173 Okl. 467, 49 P.2d 151, 154 (1935) we did the same.

¶6 The trial court order before us states the amounts due. The trial court, however, did not adjudicate the amounts due, and that is because it failed to adjudicate the sufficiency of the Tidwells' defense to the motion for summary judgment. In other words, the plaintiff's cause of action was not fully adjudicated.

¶7 A judgment that adjudicates a plaintiff's cause of action must also adjudicate all defenses and interrelated counterclaims to that particular cause of action that were properly raised by the defendant. For example, in Eason Oil Co. v. Howard Engineering, 755 P.2d 669 (Okla. 1988), we said that "[w]hen a counterclaim is interrelated with the plaintiff's claim, no judgment is rendered in the case until all issues raised by both claims have been resolved." Id. 755 P.2d at 670 n. 1. See also Retherford v. Halliburton Co., 572 P.2d 966, 968 (Okla. 1977), wherein we explained that the concept of a cause of action "exists to satisfy the needs of plaintiffs for a means of redress, of defendants for a conceptual context within which to defend an accusation, and of the courts for a framework within which to administer justice." (Emphasis ours).

¶8 The order before us specifically declined to adjudicate the legal sufficiency of the Tidwells' defense to the foreclosure of the mortgage. Thus, the order does not adjudicate the cause of action and is not a judgment. See Teel v. Public Service Co. of Oklahoma, 767 P.2d 391, 395 (Okla. 1985), in which we explained that a summary adjudication of less than all of a cause of action is not appealable as a judgment. However, the order does include two characteristics of a judgment since it authorizes execution[3] and awards [820 P.2d 1342] attorney's fees.[4]

¶9 We have held that an order of sale after judgment in a foreclosure proceeding is an "execution" within section 732 of title 12. See Bartlett Mortgage Co. v. Morrison, 183 Okl. 214, 81 P.2d 318 (1938). We have also explained that an execution is premature when issued on a judgment that shows on its face that it is not final. Thornburgh v. Ben Hur Coal Co., 203 Okl. 553, 224 P.2d 249 (1950). An erroneous execution

arising from a foreclosure proceeding, by itself, is insufficient to warrant extraordinary relief by prohibition. See Schuman v. Sternberg, 179 Okl. 118, 65 P.2d 413 (1937). Here, the authorized execution and sale of the Tidwells' property prior to an adjudication of their alleged defense is not only premature but a fundamental flaw in the order.[5]

¶10 Due process mandates that a party be given an opportunity to participate in the proceedings and an opportunity to controvert the claims of the opposing party. Cate v. Archon Oil Co., Inc., 695 P.2d 1352, 1356 (Okla. 1985); Jackson v. Independent School Dist. No. 16, 648 P.2d 26, 31 (Okla. 1982). As the present case now stands below, the defendants' property is subject to forced sale prior to any judicial review of the legal sufficiency of their alleged defenses to the seizure and sale of the property. Such a result contravenes due process. Cate v. Archon Oil Co., Inc., supra, and Jackson v. Independent School Dist. No. 16, supra.

¶11 This court on occasion, and when justice so requires, will treat a petition in error as an original action for a writ, or vice versa. In the Matter of B.C., 749 P.2d 542, 544 (Okla. 1988); Prock v. District Court of Pittsburg County, 630 P.2d 772, 775 (Okla. 1981). This is such a case. We dismiss the appeal herein and recast a portion of the Tidwells' petition in error as an application for extraordinary relief. In the Matter of B.C., supra. We issue a writ and prohibit the respondent district judge, or any other assigned judge in this cause, from enforcing that part of the present interlocutory order that authorizes execution on the property and its sale. The trial court remains free on remand to adjudicate the claims and defenses and then render any appropriate judgment of foreclosure.

¶12 HODGES, V.C.J., and LAVENDER, DOOLIN, ALMA WILSON and KAUGER, JJ., concur.

¶13 OPALA, C.J., concurs in result.

¶14 SIMMS and HARGRAVE, JJ., dissent.

Footnotes:

[1] An opinion of the Court of Appeals approved for publication by the Supreme Court "shall be accorded precedential value." 12 O.S.Supp. 1990, Ch. 15, App. 2, Rule 1.200(C)(B). (Effective retroactively to April 1, 1983).

[2] Although the "deficiency judgment" has the effect of a judgment for some purposes as in Baker v. Martin, 538 P.2d 1048 (Okla. 1975), and Jones v. England, supra, the deficiency order is "an order affecting a substantial right, made in a special proceeding or upon summary application in an action after judgment" and thus, a final order under 12 O.S. 1981 § 953 and appealable under 12 O.S. 1981 § 952 (b)(1). See McCredie v. Dubuque Fire & Marine Ins. Co., 49 Okl. 496, 153 P. 846 (1916).

[3] See Mann v. State Farm Mut. Auto. Ins. Co., 669 P.2d 768, 772 (Okla. 1983), (court described treating an interlocutory summary adjudication as final when such order would authorize execution on the order).

[4] The right to an attorney's fee in a foreclosure proceeding depends upon a final judgment. Oklahoma Farm Mortgage Co. v. Cesar, 178 Okl. 451, 62 P.2d 1269, 1278 (1936); Miller v. Liberty Nat'l Bank & Trust Co., 391 P.2d 269, 272 (Okla. 1964).

[5] We make no conclusions as to the sufficiency of the Tidwells' defense or their response to the motion for summary judgment. Such a determination is within the province of the trial court.

OPALA, Chief Justice, concurring in result.

¶1 Although the court is correct in dismissing this appeal for want of an appealable decision, the precise legal point upon which I would focus is whether the adjudication sought to be reviewed constitutes a "judgment" within the meaning of 12 O.S. 1981 § 681 .[1] I would unequivocally answer in the negative and hold that the trial court's ruling in this foreclosure action is but an interlocutory summary adjudication anterior to judgment, from which no appeal lies. I concur in prohibiting nisi prius execution process. When the dismissal of an appeal leaves a case in procedural limbo, this court's writ power - in aid of its superintending authority conferred by Art. 7 § 4, Okl. Const.,[2] - may be exercised to [820 P.2d 1343] place the case on the proper procedural track.[3]

¶2 Appellants - defendants in a mortgage foreclosure action - seek review of a so-called "summary judgment" that expressly reserves for future determination their personal liability for the underlying obligation. The trial court did find, among other things, that the overdue notes in suit are secured by mortgages and that the properties should be sold. Without doubt these findings do not constitute a judgment.[4] There can be no judgment when the court disposes of but a portion of the claim and leaves unresolved any other issues joined by the pleadings.[5]

¶3 This appeal should be dismissed for only one reason. The trial court's ruling fails to resolve all the issues in the controversy and hence falls short of a judgment.[6] Unless the decision before us qualifies as an interlocutory order appealable by right or is certified for immediate review[7] - and this decision clearly does not - the adjudication is but a nonappealable prejudgment order.[8]

¶4 This appeal's dismissal should have no impact upon the trial court's order directing that the property be sold. Inasmuch as execution and sale proceedings cannot precede the time when judgment is entered, I

would, as the court does today, invoke sua sponte our superintending control, conferred upon this court by Art. 7 § 4, Okl. [820 P.2d 1344] Const.,[9] and prohibit execution process from issuing.[10]

Footnotes:

[1] The terms of 12 O.S. 1981 § 681 are:

> "A judgment is the final determination of the rights of the parties in an action." (Emphasis added.)

[2] The pertinent terms of Art. 7 § 4, Okl. Const., are:

> "* * * The original jurisdiction of the Supreme Court shall extend to a general superintending control over all inferior courts and all Agencies, Commissions and Boards created by law. The Supreme Court . . . shall have power to issue, hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and such other remedial writs as may be provided by law and may exercise such other and further jurisdiction as may be conferred by statute. * * *" (Emphasis added.)

[3] See Continental Oil Co. v. Allen, Okl., 640 P.2d 1358, 1360 (1982); Sheegog v. Incorporated Town of Lindsay, 127 Okl. 39, 259 P. 551 (1927) (the court's syllabus).

[4] See King v. Finnell, Okl., 603 P.2d 754, 756 (1979), where in a mortgage foreclosure action the order tendered for review fell short of a judgment because only one of several issues in the claim had been resolved. The trial court there had found the defendant liable but left the quantum of liability undetermined.

[5] 12 O.S. 1981 § 681 , supra note 1; Reams v. Tulsa Cable Television, Inc., Okl., 604 P.2d 373, 374 (1979); Oklahomans For Life, Inc. v. State Fair of Okl., Okl., 634 P.2d 704, 706 (1981); Hurley v. Hurley, 191 Okl. 194, 127 P.2d 147, 148 (1942) (the court's syllabus § 3); Foreman v. Riley, 88 Okl. 75, 211 P. 495 (1923) (the court's syllabus § 4); Wells v. Shriver, 81 Okl. 108, 197 P. 460 (1921) (the court's syllabus § 2).

[6] See Teel v. Public Service Co. of Oklahoma, Okl., 767 P.2d 391, 395 (1989); Eason Oil Co. v. Howard Engineering, Okl., 755 P.2d 669, 672 (1988); Dennis v. Lathrop, 204 Okl. 684, 233 P.2d 969, 970 (1951); Fowler v. City of Seminole, 196 Okl. 167, 163 P.2d 526 (1945); Hutchison v. Wilson, 136 Okl. 67, 276 P. 198, 200 (1929).

[7] See Reams v. Tulsa Cable Television, Inc., supra note 5 at 374.

[8] In an unpublished order (reproduced infra) this court dismissed an appeal, holding that in a foreclosure action a ruling which does not determine the maker's liability on the note fails to resolve all the issues in

the controversy and is hence nonappealable. First Interstate Bank of California v. Morford (No. 68,014, February 23, 1987):

"ORDER

"Appellee's motion to dismiss is granted, and this appeal is ordered dismissed as having been prematurely filed from an order which grants to the appellee one of the remedies sought below, but which leaves the remainder of appellee's claim pending. Such order neither amounts to a final determination of the rights of the parties, fully resolving all issues in controversy, nor is it an interlocutory order specifically made appealable by statute. 12 O.S. 1981 §§ 953 , 993 ; Rules of Civil Appellate Procedure, Rule 1.11(b), and Rule 1.60.

"Nothing herein shall preclude the bringing of a subsequent appeal, addressing the issues involved herein, upon the entry of a final, appealable order.

"DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 23RD DAY OF FEBRUARY, 1987.

/s/ John B. Doolin
CHIEF JUSTICE

"DOOLIN, C.J., HARGRAVE, V.C.J., HODGES, LAVENDER, KAUGER, JJ., concur.

"OPALA, J., concur[s] in result - I would add that our dismissal is without prejudice to appellant's plea for an order arresting execution and sale proceedings in the trial court until the issue of his personal liability has been resolved." (Emphasis in original.)

[9] For the pertinent terms of Art. 7 § 4, Okl. Const., see supra note 2.

[10] See the authorities cited supra note 3.

Citationizer© Summary of Documents Citing This Document

Cite Name Level

Oklahoma Court of Civil Appeals Cases

Cite	Name	Level
2007 OK CIV APP 83, 169 P.3d 1210,	FIRST CAPITAL BANK v. TARRANT	Discussed

Cite	Name	Level
1998 OK CIV APP 140, 965 P.2d 413, 69 OBJ 3403,	Bank of the Panhandle v. Irving Hill	Discussed at Length

Oklahoma Supreme Court Cases

Cite	Name	Level
1992 OK 35, 830 P.2d 1355, 63 OBJ 1048,	Founders Bank and Trust Co. v. Upsher	Cited
1992 OK 90, 833 P.2d 1239, 63 OBJ 1935,	Wood v. Sympson	Cited
1993 OK 34, 849 P.2d 1083, 64 OBJ 976,	Aetna Finance Co. v. Schmitz	Cited
1993 OK 45, 871 P.2d 398, 64 OBJ 1255,	Rodgers v. Higgins	Discussed
1993 OK 89, 856 P.2d 255, 64 OBJ 2066,	Campbell v. White	Cited
1997 OK 65, 940 P.2d 502, 68 OBJ 1767,	Breeding v. NJH Enterprises, LLC	Discussed
2001 OK 39, 24 P.3d 846, 72 OBJ 1479,	S. W. v. DUNCAN	Discussed
2001 OK 93, 39 P.3d 781, 72 OBJ 3277,	ALLEN v. LYNN HICKEY DODGE, INC.	Discussed
2002 OK 1, 41 P.3d 371, 73 OBJ 128,	CITY OF LAWTON v. INTERNATIONAL UNION OF POLICE ASSOCIATIONS, LOCAL 24	Discussed
1999 OK 87, 20 P.3d 135, 70 OBJ 3149,	May-Li Barki, M.D., Inc. v. Liberty Bank & Trust, Co.	Discussed
1995 OK 31, 894 P.2d 1082, 66 OBJ 1233,	Sooner Federal Sav. & Loan Assn. v. Smoot	Cited
2002 OK 87, 61 P.3d 891,	SMEDSRUD v. POWELL	Discussed
2003 OK 42, 73 P.3d 840,	BARNTHOUSE v. CITY OF EDMOND	Discussed
2004 OK 16, 87 P.3d 598,	CHANDLER (U.S.A.), INC. v. TYREE	Discussed at Length
2004 OK 29,	OFFICE OF JUVENILE AFFAIRS v. WALKER	Discussed
2005 OK 2, 110 P.3d 550,	OKLAHOMA CITY URBAN RENEWAL AUTHORITY v. CITY OF OKLAHOMA CITY	Discussed
1996 OK 10, 912 P.2d 836, 67 OBJ 382,	Liberty Bank and Trust Co. of Oklahoma City, N.A. v. Rogalin	Discussed at Length

Cite	Name	Level
1996 OK 73, 918 P.2d 1388, 67 OBJ 2060,	LCR, Inc. v. Linwood Properties	Cited
1996 OK 125, 932 P.2d 1100, 67 OBJ 3566,	Neil Acquisition, L.L.C. v. Wingrod Investment Corp.	Discussed
2000 OK 28, 71 OBJ 952,	McNickle v. Phillips Petroleum Co.	Discussed
1998 OK 16, 956 P.2d 871, 69 OBJ 847,	LUCAS v. BISHOP	Discussed
1998 OK 110, 981 P.2d 1244, 69 OBJ 3784,	Halliburton v. Grothaus	Discussed

Citationizer: Table of Authority

Cite	Name	Level
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Cite	Name	Level
1987 OK CIV APP 43, 744 P.2d 222, 58 OBJ 1622,	Mehojah v. Moore	Cited
Oklahoma Supreme Court Cases		
Cite	Name	Level
1988 OK 4, 749 P.2d 542, 59 OBJ 182,	B.C., Matter of	Cited
1988 OK 57, 755 P.2d 669, 59 OBJ 1289,	Eason Oil Co. v. Howard Engineering, Inc.	Discussed
1989 OK 142, 782 P.2d 119, 60 OBJ 2825,	Jones v. England	Cited
1989 OK 169, 789 P.2d 1282, 60 OBJ 2827,	Willis v. Nowata Land and Cattle Co., Inc.	Cited
1938 OK 270, 82 P.2d 976, 183 Okla. 332,	FUNK v. PAYNE	Cited
1938 OK 427, 81 P.2d 318, 183 Okla. 214,	BARTLETT MORTG. CO. v. MORRISON	Cited
1937 OK 80, 65 P.2d 413, 179 Okla. 118,	SCHUMAN v. STERNBERG	Cited
1936 OK 365, 62 P.2d 1269, 178	OKLAHOMA FARM MORTG. CO. v. CESAR	Cited

Cite	Name	Level
Okla. 451,		
1945 OK 304, 163 P.2d 526, 196 Okla. 167,	FOWLER v. CITY OF SEMINOLE	Cited
1935 OK 840, 49 P.2d 151, 173 Okla. 467,	WYANT v. DAVIDSON & CASE LBR. CO.	Cited
1964 OK 82, 391 P.2d 269,	MILLER v. LIBERTY NAT. BANK & T. CO. OF OKLA. CITY	Cited
1931 OK 615, 4 P.2d 33, 152 Okla. 220,	BURTON et al. v. MEE.	Cited
1975 OK 112, 538 P.2d 1048,	BAKER v. MARTIN	Cited
1977 OK 178, 572 P.2d 966,	RETHERFORD v. HALLIBURTON CO.	Cited
1979 OK 88, 601 P.2d 455,	RELIABLE LIFE INS. CO. OF ST. LOUIS v. COOK	Cited
1979 OK 155, 603 P.2d 754,	KING v. FINNELL	Cited
1979 OK 171, 604 P.2d 373,	REAMS v. TULSA CABLE TELEVISION, INC.	Cited
1980 OK 164, 619 P.2d 620,	Stubblefield v. General Motors Acceptance Corp.	Cited
1981 OK 41, 630 P.2d 772,	Prock v. District Court of Pittsburg County	Cited
1981 OK 101, 634 P.2d 704,	Oklahomans for Life, Inc. v. State Fair of Oklahoma, Inc.	Discussed
1982 OK 18, 640 P.2d 1358,	Continental Oil Co. v. Allen	Cited
1982 OK 74, 648 P.2d 26,	Jackson v. Independent School Dist. No. 16 of Payne County	Cited
1951 OK 87, 233 P.2d 969, 204 Okla. 684,	DENNIS v. LATHROP	Cited
1950 OK 284, 224 P.2d 249, 203 Okla. 553,	THORNBURGH v. BEN HUR COAL CO.	Cited
1942 OK 220, 127 P.2d 147, 191 Okla. 194,	HURLEY v. HURLEY	Cited
1983 OK 84, 669 P.2d 768,	Mann v. State Farm Mut. Auto. Ins. Co.	Cited
1985 OK 15, 695 P.2d 1352,	Cate v. Archon Oil Co., Inc.	Cited
1985 OK 112, 767 P.2d 391,	Teel v. Public Service Co. of Oklahoma	Discussed

Title 12. Civil Procedure

Cite	Name	Level

Cite	Name	Level	
	12 O.S. 681,	Definition of Judgment	Discussed at Length
	12 O.S. 952,	Jurisdiction of Supreme Court	Cited
	12 O.S. 953,	Final Order Defined	Discussed

APPENDIX 5:

NEIL ACQUISITION

Neil Acquisition, L.L.C. v. Wingrod Investment Corp.

1996 OK 125
932 P.2d 1100
67 OBJ 3566
Case Number: 86634
Decided: 11/19/1996
Mandate Issued: 02/27/1997
Supreme Court of Oklahoma

Cite as: 1996 OK 125, 932 P.2d 1100

NEIL ACQUISITION, L.L.C., an Oklahoma limited liability company, Appellant,
v.
WINGROD INVESTMENT CORPORATION, a Delaware corporation Appellee.

ON CERTIORARI TO THE COURT OF APPEALS, DIV. 4.

¶0 Neil Acquisition, L.L.C. (Neil), sought a declaratory judgment in the District Court, Oklahoma County, Leamon Freeman, trial judge, to establish the superiority of its judgment lien over that claimed by Wingrod Investment Corporation (Wingrod) whose judgment lien was urged as unperfected for failure to record its post-foreclosure deficiency determination in the office of the County Clerk of Oklahoma County. The district court ruled in favor of Wingrod. The Court of Appeals affirmed. Certiorari was granted on Neil's petition.

THE COURT OF APPEALS' OPINION IS VACATED, THE TRIAL COURT'S DECLARATORY DECREE IS REVERSED, AND THE CAUSE IS REMANDED FOR ENTRY OF JUDGMENT THAT IS CONSISTENT WITH THIS PRONOUNCEMENT.

Kurt M. Rupert, Melanie J. Jester, Hartzog Conger & Cason, Oklahoma City, OK, For appellant.

James D. Tack, Jr, Robertson & Williams, Oklahoma City, OK, For appellee.

Opala, J.

[932 P.2d 1102]

¶1 The issues we are asked to decide today are simply put by these two questions: 1) May a trial judge, by *nunc pro tunc* correction of an *earlier unrecorded* deficiency adjudication (that was misfiled in the court clerk's office), reorder judgment lien priorities? and 2) Does a recorded foreclosure decree establish lien priority for a later-acquired but unrecorded deficiency judgment? Our answer to both questions is in the negative.

¶2 The parties in this case are two companies with competing judgment lien claims sought to be impressed against the same real property. By summary judgment the trial court ruled Wingrod Investment Corporation [Wingrod] held the superior lien because its *foreclosure decree* was recorded in the county clerk's office *before* the foreclosure decree secured by Neil Acquisition, L.L.C. [Neil]. The appellate court

affirmed. Both courts appear to have overlooked that Wingrod failed to record its post-sale *deficiency* order, while Neil's like adjudication was placed of record. Neil's contention is that Wingrod's priority status was lost by *its failure to perfect a judgment lien for the adjudged deficiency*. We agree and direct that, on remand, judgment be entered in a manner consistent with today's pronouncement.

I

THE ANATOMY OF LITIGATION

¶3 The FDIC secured in 1989 several foreclosure decrees upon real property owned by C.A. Henderson. Two cases here in contention proceeded to sale. Deficiency determinations followed in each of them for the unsatisfied amount of the adjudicated indebtedness. By assignment, the parties in this suit succeeded to the deficiency interests of the FDIC.

¶4 The probative material in the record establishes that the Wingrod *deficiency order*, though pronounced December 7, 1989, *initially was not filed in the court case* nor shown upon its appearance docket. Through a "scrivener's error" the case number next to [932 P.2d 1103] the caption shown on the order identified the wrong case. The misnumbered order was then filed in a case in which Neil was the foreclosing litigant. A *nunc pro tunc* memorial, issued on July 20, 1994, corrected the number for the Wingrod deficiency, expunged the document from the other (wrong) case file, and ordered the court clerk to enter Wingrod's deficiency adjudication in the correctly numbered case "as if it had originally been entered on December 7, 1989," the date the deficiency was initially pronounced. *Neither Wingrod nor its predecessor in interest ever recorded the misfiled deficiency document in the office of the county clerk.*

¶5 The Neil company's predecessor recorded the December 15, 1989 deficiency order in the office of the county clerk no less than twice - first on January 10, 1990, and then again on January 17, 1990. Both companies caused writs of *general* execution to issue. Neil brought this suit to establish its judgment lien priority over the competing interest claimed by Wingrod. After initial summary judgment for Neil, the cause came to be reconsidered, and summary judgment then went to Wingrod. The Court of Appeals affirmed the trial court's decision. Certiorari was granted on Neil's petition. Because the trial court's disposition was effected by summary judgment, the issues on review are before us for a *de novo* examiniation.[1]

II

A DEFICIENCY ADJUDICATION MUST BE RECORDED IN THE OFFICE OF THE COUNTY CLERK IN ORDER TO ESTABLISH THE JUDGMENT CREDITOR'S LIEN PRIORITY

¶6 To be considered a lien on real property, a judgment must be filed of record in the office of the county clerk.[2] The Court of Appeals rested its holding on Wingrod's act of recording its foreclosure decree before Neil's like decree was placed of record. In this it erred. The dispositive issue here does not deal with the priority of recorded foreclosure decrees, but with the priority of recorded deficiency orders. *Neil recorded its deficiency while Wingrod did not*. Neil's judgment lien is hence superior to that of Wingrod. *Qui prior est tempore potior est jure*.[3]

¶7 A foreclosure decree authorizes merely the sale of the specific land that is mortgaged. It does not represent a recovery of money and hence will not support a general execution.[4] It is the postjudgment deficiency adjudication which determines the amount of deficiency and then allows a general execution to issue against the property owned by the debtor other than that which has been foreclosed.[5]

[932 P.2d 1104]

¶8 Not until there is a judicial determination of a deficiency[6] can a general execution issue. To keep the deficiency alive, execution upon the deficiency must be issued within five years.[7] The deficiency instrument must be recorded if it is to be established as a judgment lien against the real property of the debtor.

¶9 The statutory scheme prevents the automatic entry of deficiency. That adjudication, which cannot be effected in advance of sale and does not deal with issues on the merits,[8] is part of postjudgment process.[9] A deficiency order does not legally transform itself into a lien until its *sine qua non* prerequisites have been met by: 1) a timely filing of a motion for deficiency judgment (within 90 days of the sale);[10] 2) the court's ascertainment that a deficiency exists in the 12 O.S. 1990 § 686 sense;[11] and 3) the *order* [932 P.2d 1105] (memorial) is *entered and recorded*. If the deficiency's entry were automatic - in the sense that it could be effected *ex lege* and without judicial intervention - there would no doubt be merit to the argument that the lien of a post-foreclosure monetary deficiency recovery should be allowed to attach at the time the foreclosure decree is recorded (after its entry upon the court clerk's record). *At common law, the deficiency was automatic and called for no judicial intervention*.[12] Since § 686 mandates a hearing and a determination of deficiency in accordance with the statutory formula, it cannot be said that a foreclosure decree alone, once recorded, may serve to establish the priority of a § 706 lien whose underlying amount of obligation is not yet in legal existence.

III

NEIL'S KNOWLEDGE OF WINGROD'S *UNRECORDED* DEFICIENCY ORDER DOES NOT ADVANCE WINGROD'S PRIORITY STATUS

¶10 Wingrod's argument that its priority should be advanced because Neil knew or should have known of Wingrod's deficiency order (since the instrument adjudicating its amount was erroneously filed in the Neil case) is without merit. An unrecorded deficiency ascertainment did not place Wingrod in the protected class of a judgment lienholder.[13] Because Wingrod's unrecorded deficiency never acquired the attribute of a lien, Neil's priority cannot be subordinated by mere knowledge of Wingrod's unrecorded deficiency order. Courts are powerless to advance an *unperfected* judgment lien to a higher priority than that held by a perfected judgment lien. Such action would impermissibly disturb the law's regime that is made dependent on the order of time a judgment is recorded rather than on the lienor's notice of outstanding encumbrances.

IV

AN ORDER *NUNC PRO TUNC* CANNOT OPERATE RETROSPECTIVELY TO PERFECT A JUDGMENT LIEN OR TO AFFECT A JUDGMENT LIEN'S PRIORITY

¶11 Neil's argument that Wingrod's foreclosure decree became dormant because over five years had elapsed before execution was issued confuses the lien priority issue with dormancy statutes.[14] We reject the [932 P.2d 1106] notion that by a *nunc pro tunc* device the court can reorder lien priorities that are statutorily based on time of recordation.[15] The *nunc pro tunc* order which corrected the misfiling of Wingrod's prior deficiency adjudication could not remedy Wingrod's failure to record its deficiency order in the office of the county clerk.

¶12 Liens are created either by *contract* or by the *force of law*.[16] Courts cannot create them.[17] The trial court's power of *nunc pro tunc* correction extends to mistakenly memorialized court records.[18] The device cannot be used to advance the priority of a nonrecorded judgment lien. *Wingrod's claim to priority was relinquished by its failure to transform its deficiency order into a lien by the memorial's recording in the county clerk's office*. Neil's recordation of its deficiency order makes its lien superior to that of Wingrod's unrecorded deficiency order.

V

SUMMARY

¶13 We reject today as erroneous the trial court's notion that earlier recordation of a foreclosure decree, when not followed by recordation of the subsequent deficiency order, may establish priority status for a deficiency adjudication's lien. The Neil deficiency order, recorded in the office of the county clerk since 1990, is clearly superior to the never-recorded Wingrod deficiency lien. The five-year dormancy statute - 735 - which provides for executions to be issued within five years is not implicated in this case.[19] A judgment lienor who relies on recordation of its foreclosure decree but fails later to record its deficiency order is not superior to a competing lienholder who placed its deficiency of record.

¶14 ON CERTIORARI PREVIOUSLY GRANTED, THE COURT OF APPEALS' OPINION IS VACATED, THE TRIAL COURT'S DECLARATORY DECREE IS REVERSED, AND THE CAUSE IS REMANDED FOR ENTRY OF JUDGMENT THAT IS CONSISTENT WITH THIS PRONOUNCEMENT.

¶15 WILSON, C.J., and HODGES, LAVENDER, HARGRAVE, OPALA, and WATT, J.J., concur; KAUGER, V.C.J., and SIMMS, J.J., concur in result;

¶16 SUMMERS, J., disqualified.

Footnotes:

[1] Issues of law are reviewable by a de novo standard. An appellate court claims for itself plenary, independent and non-deferential authority to re-examine a trial court's legal rulings. Kluver v. Weatherford Hospital Authority, Okl., 859 P.2d 1081, 1083 (1993); See also Salve Regina College v. Russell, 499 U.S. 225, 231, 111 S.Ct. 1217, 1221, 113 L.Ed. 2d 190 (1991).

[2] The provisions pursuant to which the documents in this case were recorded, 12 O.S. 1981 § 706 (A), now repealed, required the filing of a judgment's memorial. The latest version of § 706 calls for the filing of a "Statement of Judgment." 12 O.S. 1993 Supp. § 706 (A).

[3] The cited Latin phrase stands for the maxim that one who is prior in time has a superior right in law. The provisions of 42 O.S. 1991 § 15 , which express the same order of priority, are: "Other things being equal, different liens upon the same property have priority according to the time of their creation. . ." See in this connection First Comm. Bank of Blanchard v. Hodges, Okl., 907 P.2d 1047, 1055 (1995).

[4] In a foreclosure proceeding, the court must establish the debt due, and the mortgagee must first issue a special execution upon the property under mortgage. If the amount of sale is insufficient to satisfy the judgment, the court must be requested by the mortgagee to enter a deficiency ruling as a postjudgment prerequisite for the issuance of a general execution to enforce the balance due on the original obligation. 12 O.S. 1991 § 686 ; Baker v. Martin, Okl., 538 P.2d 1048, 1050 (1975); Mehojah v. Moore, Okl. App., 744 P.2d 222, 223 (1987) [approved for publication by the Supreme Court]; see also First Comm. Bank of Blanchard v. Hodges, supra note 3 at 1053-1055.

[5] See supra note 4.

[6] We do not refer to the deficiency determination as a "deficiency judgment." In FDIC v. Tidwell, Okl., 820 P.2d 1338, 1343 (1991), the court held there can be but one "judgment" on a single cause of action. In a foreclosure proceeding, the single judgment is the court's determination of the amount due the creditor and its order that the encumbered property be sold to satisfy the mortgage lien. Mehojah v. Moore, supra note 4 at 225. Although a "so-called deficiency judgment" may have the effect of a judgment for some

purposes, it is stricto sensu a postjudgment order determining a deficiency on a judgment previously rendered. See FDIC v. Tidwell, supra at 1341; Nowata Land and Cattle Co., Inc., Okl., 789 P.2d 1282, 1285 (1990); Jones v. England, Okl., 782 P.2d 119, 121 (1989); Baker v. Martin, supra, note 4 at 1050.

[7] Neil's deficiency order was recorded in the county clerk's office on January 10, 1990, and again on January 17, 1990. Neil's execution on its deficiency was recorded in the county clerk's office on July 14, 1992, which was done within the statutory 5-year dormancy period. Wingrod's deficiency adjudication, though originally misfiled, has been on file in the court clerk's office since July 20, 1994, but was never recorded in the office of the county clerk. Wingrod's first execution was issued August 2, 1994.

The terms of 12 O.S. 1991 § 735 , the so-called "dormancy statute", provide:

> If execution is not issued and filed as provided in Section 759 of this title or a garnishment summons is not issued by the court clerk within five (5) years after the date of any judgment that now is or may hereafter be rendered in any court of record in this state, or if five (5) years has intervened between the date that the last execution on such judgment was filed or the date that the last garnishment summons was issued as provided by Section 759 of this title, and the date that writ of execution was filed or a garnishment summons was issued as also provided in Section 759 of this title, such judgment shall become unenforceable and of no effect, and shall cease to operate as a lien on the real estate of the judgment debtor. Provided, that this section shall not apply to judgments against municipalities.

[8] See Roark v. Shelter Mutual Ins. Co., Okl., 731 P.2d 389 (1986). The word "merits" has a well-defined meaning in the law. It signifies the real or substantial grounds of action or of defense. Practice, procedure, and evidence are not embraced within the term. These are matters "dehors the merits." See also Tidmore v. Fullman, Okl., 646 P.2d 1278, 1283 (1982); Flick v. Crouch, Okl., 434 P.2d 256, 261 (1967); but cf. Kimery v. Public Service Company of Oklahoma, Okl., 562 P.2d 858 (1977).

[9] Founders Bank & Trust v. Upsher, Okl., 830 P.2d 1355, 1360 (1992); FDIC v. Tidwell, Okl., 820 P.2d 1338, 1341 (1991).

[10] The U.S. Court of Appeals for the Tenth Circuit refers to the 90-day time bar in 12 O.S. 1991 § 686 as an "extinguishment statute" rather than a "statute of limitations." See International Paper Company v. Whitson, 10th Cir., 595 F.2d 559, 562 (1979); Ingerton v. First National Bank & Trust Co. of Tulsa, 10th Cir., 291 F.2d 662 (1961) later appeal at 303 F.2d 439 (1961). We prefer to view the § 686 bar as a condition upon the exercise of a right. United States ex rel. Farmers Home Administration v. Hobbs, Okl., 921 P.2d 338, 344 (1996) (Opala, J., concurring); Matter of Estate of Speake, Okl., 743 P.2d 648, 652 (1987). Unless deficiency is timely sought the mortgagee's debt is deemed satisfied, through the use of legal fiction, by the proceeds from the sale of the specific mortgaged property. Our anti-deficiency statute, 12 O.S. 1991 § 686 , like that of the State of New York, goes farther than the statutory requirements of other states, some of which effect only a restriction upon the time period during which the recovery of a deficiency may be sought. See discussion in Riverside National Bank v. Manolakis, Okl., 613 P.2d 438 (1980).

[11] The provisions of 12 O.S. 1991 § 686 , in pertinent part, provide:

> "No real estate shall be sold for the payment of any money or the perfomance of any contract or agreement in writing, in security for which it may have been pledged or assigned, except in pursuance of a judgment of a court of competent jurisdiction ordering such sale . . . No judgment shall be enforced for any residue of the debt remaining unsatisfied as prescribed by this act after the mortgaged property shall have been sold, except as herein provided. Simultaneously with the making of a motion for an order

> confirming the sale or in any event within ninety (90) days after the date of the sale, the party to whom such residue may be owing may make a motion in the action for leave to enter a deficiency judgment
>
> . . .
>
> If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist."

See Riverside National Bank v. Manolakis, supra note 10.

[12] See Nelson & Whitman, Real Estate Finance Law, Third Ed., § 8.1, A. Regulation of Deficiency Judgments (1994), where the authors state:

> "Where foreclosure is by sale under judicial decree in a court action, *the usual method in America and the one under chief consideration here, the amount realized on sale is often an automatic determination of the amount to be applied upon the debt, and mortgage creditor is entitled to recover the balance*."

[Footnotes omitted.] [Emphasis ours.]

Our current statutory scheme in § 686, which requires judicial determination of a deficiency, is in accord with the majority of states. The modern trend is to determine the "fair value" of the property in computing the deficiency rather than to follow the common law. The latter measures the deficiency as the difference between the foreclosure price and the mortgage obligation. See also Restatement of Law of Property (Mortgages) Preliminary Draft No. 5, § 8.4, pg. 111 (June 8, 1995).

[13] Neil's priority is not defeated by its failure to issue execution within one year, as required by the provisions of 12 O.S. 1991 § 801 . The cited statute does not operate to extinguish Neil's lien. Aetna Finance Company v. Schmitz, Okl., 849 P.2d 1083 (1993). Moreover, since Wingrod did not record its deficiency adjudication, Wingrod cannot be deemed a competing lienholder. See in this connection Federal Land Bank of Wichita v. Hague, Okl., 798 P.2d 641, 643 (1990).

[14] The order in which executions are issued does not affect lien priority. The provisions of 12 O.S. 1991 § 737 are:

> "When two or more writs of execution against the same debtor shall be sued out during the term in which judgment was rendered, or within ten (10) days thereafter, and when two or more writs of execution against the same debtor shall be delivered to the officer on the same day, no preference shall be given to either of such writs; but if a sufficient sum of money be not made to satisfy all such executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands. In all other cases, the writ of execution first delivered to the officer shall be first satisfied. And it shall be the duty of the officer to endorse on every writ of execution the time when he received the same; but *nothing herein contained shall be so construed as to affect any preferable lien which one or more of the judgments, on which execution issued, may have on the lands of the judgment debtor*." [Emphasis added.]

[15] Misindexed judgments cannot be considered as properly recorded judgment liens. Will Rogers Bank and Trust Co. v. First National Bank of Tahlequah, Okl., 710 P.2d 752 (1985).

[16] The terms of 42 O.S. 1991 § 6 provide:

> A lien is created:
>
> 1. By contract of the parties; or,
>
> 2. By operation of law.

See also Young v. J.A. Young Machine & Supply Co., 203 Okl. 595, 224 P.2d 971 (1950).

[17] See supra note 15.

[18] Stork v. Stork, Okl., 898 P.2d 732, 736, 740 (1995), where it is said:

> "*Nunc pro tunc* relief is limited to supplying inadvertent clerical omission and correcting facial mistakes in recording judicial acts that actually took place. In short, a *nunc pro tunc* order can and will place of record what was actually decided by the court but was incorrectly recorded . . . *Nunc pro tunc* relief may be available to place of record what was actually adjudicated but incorrectly recorded. The power of a court to correct *its* records to make them speak the truth is not lost by any lapse of time prescribed by statute." [Emphasis added.]

[19] See supra note 7.

Citationizer© Summary of Documents Citing This Document

Cite	Name	Level
Oklahoma Court of Civil Appeals Cases		
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2001 OK CIV APP 19, 20 P.3d 170, 72 OBJ 663,	CHRISTENSEN AVIATION, INC. v. STATE BANK, N.A.	Discussed
2001 OK CIV APP 48, 25 P.3d 936, 72 OBJ 1530,	ATWOOD v. ATWOOD	Discussed
2001 OK CIV APP 49, 23 P.3d 309, 72 OBJ 1541,	IN THE MATTER OF THE ALLEN A. ATWOOD TRUST	Discussed
2001 OK CIV APP 66, 24 P.3d 872, 72 OBJ 1878,	WILKERSON v. CITY OF PAULS VALLEY, OKLAHOMA	Discussed
2001 OK CIV APP 73, 25 P.3d 930, 72 OBJ 2014,	PACIFICARE OF OKLAHOMA v. OKLAHOMA HEALTH CARE AUTHORITY BOARD	Discussed
2001 OK CIV APP 84, 26 P.3d 779, 72 OBJ 2193,	MORAVA v. CENTRAL OKLAHOMA MEDICAL GROUP	Discussed
2001 OK CIV APP 95, 30 P.3d 1164, 72 OBJ 2225,	TICE v. PENNINGTON	Discussed
2001 OK CIV APP 147, 38 P.3d 252, 73 OBJ 180,	IN RE GUARDIANSHIP OF H.D.B.	Discussed
2000 OK CIV APP 112, 13 P.3d 989, 71 OBJ 2951,	GIBSON v. COPELAND	Discussed
2001 OK CIV APP 153, 39 P.3d 152, 73 OBJ 195,	TULSA ORDER OF POLICE LODGE NO. 93 v. CITY OF TULSA	Discussed
2001 OK CIV APP 154, 37 P.3d 974, 73 OBJ 201,	DAVIS v. STATE ex. rel. DEPT. OF PUBLIC SAFETY	Discussed
2002 OK CIV APP 14, 46 P.3d 176,	IN THE MATTER OF ESTATE OF FIELDS	Discussed

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	73 OBJ 428,		
	2002 OK CIV APP 25, 41 P.3d 1038,	ESTATE OF SIEBER v. OKLAHOMA TAX COMMISSION	Discussed
	2002 OK CIV APP 26, 41 P.3d 1003,	IN RE ADOPTION OF S.W	Discussed
	2002 OK CIV APP 57, 50 P.3d 579,	PEOPLE'S ELECTRIC COOP., INC. v. STATE EX. REL. OKLAHOMA CORP. COMM'N	Discussed
	2002 OK CIV APP 60, 46 P.3d 1286,	BOHM, INC. v. MICHAEL	Discussed
	2002 OK CIV APP 61, 48 P.3d 120,	HI-PRO ANIMAL HEALTH v. HALVERSON	Discussed
	2002 OK CIV APP 65, 48 P.3d 131,	IN THE MATTER OF K.G.	Discussed
	2003 OK CIV APP 24, 67 P.3d 359,	IN THE MATTER OF THE ADOPTION OF BABY GIRL B.	Discussed
	2003 OK CIV APP 29, 66 P.3d 1004,	IN THE MATTER OF C.R.T.	Discussed
	2003 OK CIV APP 32, 68 P.3d 212,	MINER v. MID-AMERICA DOOR COMPANY	Discussed
	2003 OK CIV APP 34, 67 P.3d 356,	DEAN v. MULTIPLE INJURY TRUST FUND	Discussed
	2003 OK CIV APP 61, 74 P.3d 612,	GULLO v. GULLO	Discussed
	2003 OK CIV APP 62, 77 P.3d 1090,	PETERS v. AMERICAN INCOME LIFE INSURANCE COMPANY	Discussed
	2003 OK CIV APP 86, 78 P.3d 961,	RYAN v. RYAN	Discussed
	2003 OK CIV APP 97, 81 P.3d 78,	LAWS v. STATE ex rel. OKLAHOMA DEPT. OF HUMAN SERVICES	Discussed
	2004 OK CIV APP 12, 84 P.3d 792,	FABSCO SHELL & TUBE LLC v. EUBANK	Discussed
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	2005 OK CIV APP 8, 106 P.3d 611,	STATE ex rel. DEPT. OF HUMAN SERVICES v. CABE	Discussed
	2005 OK CIV APP 35, 114 P.3d 499,	KENNEDY v. STATE ex rel. DEPT. OF PUBLIC SAFETY	Discussed
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	2005 OK CIV APP 50, 118 P.3d 224,	IN THE MATTER OF P.F.	Discussed
	2005 OK CIV APP 84, 122 P.3d 879,	WOLFE v. STATE ex rel. DEPT. OF PUBLIC SAFETY	Discussed
	2005 OK CIV APP 95, 125 P.3d 680,	SQUIRREL v. BORDERTOWN BINGO	Discussed
	2005 OK CIV APP 97, 125 P.3d 1243,	JOHNSON v. AUGUST	Discussed
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	2006 OK CIV APP 88, 140 P.3d 568,	IN THE MATTER OF K.U.	Discussed
	2006 OK CIV APP 100, 142 P.3d 1001,	COLLINS v. PACIFICARE OF OKLAHOMA, INC.	Discussed
	2007 OK CIV APP 24, 158 P.3d 484,	STATE ex rel. PROTECTIVE HEALTH SERVICES v. BILLINGS FAIRCHILD CENTER, INC.	Discussed

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2008 OK CIV APP 6, 176 P.3d 366,	DISCOVER BANK v. WORSHAM	Discussed
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2008 OK CIV APP 18, 178 P.3d 186,	STATON v. GUARANTEE STATE BANK OF MANGUM	Discussed
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2008 OK CIV APP 30, 180 P.3d 1,	OKLAHOMA FOUNDATION FOR MEDICAL QUALITY v. DEPARTMENT OF CENTRAL SERVICES	Discussed
2008 OK CIV APP 32,	PIONEER EQUIPMENT RENTAL, L.L.C. v. W.S. BOWLWARE CONSTRUCTION, INC.	Discussed
2008 OK CIV APP 39,	FIRST UNITED BANK AND TRUST CO., PAULS VALLEY v. WILEY	Discussed at Length
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2006 OK 72, 148 P.3d 864,	SHORTER v. TULSA USED EQUIPMENT AND INDUSTRIAL ENGINE SERVICES	Discussed

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	2008 OK 12, 178 P.3d 859,	CORR v. SMITH	Discussed
	2000 OK 9, 997 P.2d 843, 71 OBJ 411,	Foster's Florist v. Jackson	Discussed
	2000 OK 20, 1 P.3d 981, 71 OBJ 774,	Clayton v. Fleming Co., Inc.	Cited
	2000 OK 44, 10 P.3d 212, 71 OBJ 1583,	WHITE v. ADOPTION OF BABY BOY D.	Discussed
	1997 OK 123, 947 P.2d 512, 68 OBJ 3307,	SOMMER v. SOMMER	Discussed
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	1998 OK 110, 981 P.2d 1244, 69 OBJ 3784,	Halliburton v. Grothaus	Discussed
	1999 OK 68, 990 P.2d 235, 70 OBJ 2226,	State ex. rel. Dept. of Human Services v. Baggett	Discussed
	2000 OK 50, 16 P.3d 450, 71 OBJ 1753,	BOUZIDEN v. ALFALFA COOP. INC.	Discussed
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	2000 OK 63, 11 P.3d 211, 71 OBJ 1918,	STATE OF OKLAHOMA v. VAUGHN	Discussed
	2000 OK 68, 12 P.3d 452, 71 OBJ 2366,	RIVAS v. PARKLAND MANOR	Discussed

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	1987 OK 61, 743 P.2d 648, 58 OBJ 1982,	Estate of Speake, Matter of	Cited
	1989 OK 142, 782 P.2d 119, 60 OBJ 2825,	Jones v. England	Cited
	1989 OK 169, 789 P.2d 1282, 60 OBJ 2827,	Willis v. Nowata Land and Cattle Co., Inc.	Cited
	1991 OK 119, 820 P.2d 1338, 62 OBJ 3541,	Federal Deposit Ins. Corp. v. Tidwell	Discussed
	1992 OK 35, 830 P.2d 1355, 63 OBJ 1048,	Founders Bank and Trust Co. v. Upsher	Cited
	1993 OK 34, 849 P.2d 1083, 64 OBJ 976,	Aetna Finance Co. v. Schmitz	Cited
	1993 OK 85, 859 P.2d 1081, 64 OBJ 2009,	Kluver v. Weatherford Hosp. Authority	Cited
	1967 OK 131, 434 P.2d 256,	FLICK v. CROUCH	Cited
	1995 OK 61, 898 P.2d 732, 66 OBJ 1982,	Stork v. Stork	Cited
	1995 OK 124, 907 P.2d 1047, 66 OBJ 3579,	First Community Bank of Blanchard v. Hodges	Cited
	1996 OK 77, 921 P.2d 338, 67 OBJ 2242,	U.S. Through Farmers Home Admin. v. Hobbs	Cited
	1975 OK 112, 538 P.2d 1048,	BAKER v. MARTIN	Cited

Cite	Name	Level	
	1977 OK 60, 562 P.2d 858,	KIMERY v. PUBLIC SERV. CO. OF OKL.	Cited
	1980 OK 72, 613 P.2d 438,	Riverside Nat. Bank v. Manolakis	Cited
	1982 OK 73, 646 P.2d 1278,	Tidmore v. Fullman	Cited
	1950 OK 303, 224 P.2d 971, 203 Okla. 595,	YOUNG v. J. A. YOUNG MACH. & SUPPLY CO.	Cited
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	12 O.S. 735,	Must Be Issued within Five Years or Judgment Becomes Dormant - Inapplicable to Municipalities	Cited
	12 O.S. 737,	Execution Preferences	Cited
	12 O.S. 801,	Judgment Lien on Realty - Reappraisal	Cited
Title 42. Liens			
	Cite	Name	Level
	42 O.S. 6,	Creation of Liens	Cited
	42 O.S. 15,	Different Liens on Same Property - Priority	Cited

APPENDIX 6:

Statement of Judgment

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

_____, Plaintiff, vs. _____, Defendant.	Case No. __-____-____ Judge: _____ _. _____

STATEMENT OF JUDGMENT

STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

I, (attorney's name), of lawful age, first being duly sworn, state:

1. That on the ____ day of _____, 200_, judgment was rendered in case number __-____-____ in the District Court of Oklahoma County styled _____as follows:

Against Judgment Debtors	**In Favor of Judgment Creditor**	**Amount: Judgment Costs & Attorney Fees**
_____	_____	$_____ (explain interest, attorneys fees, etc.)_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. That said judgment was filed with the Court Clerk of Oklahoma County on the ____ day of _____, 200_.
3. That the County Clerk shall enter on the judgment index a statement based on this information in compliance with 12 O.S. §706.
4. That the name and address of the judgment creditor is:
   Name: _____
   _____
   Address: _____
   _____

FURTHER, YOUR AFFIANT SAITH NOT.

_____
ATTORNEY, OBA #_____
FIRM
Address Line #1
Address Line #2
Telephone: (___) ___-____
Facsimile: (___) ___-____

ATTORNEYS FOR PLAINTIFF

Subscribed and sworn to before me this _____ day of _____, 200__.

My Commission Expires:
Commission No.

_____
NOTARY PUBLIC

(SEAL)
RETURN TO: ATTORNEY
FIRM
Address Line #1
Address Line #2