Text as published on gao.gov, https://www.gao.gov/products/b-173007, archived 2026-09-19. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-173007 June 29, 1971

Number: B-173007

Date: 1971-06-29

B-173007 June 29, 1971

Mr. Stewart J. Carrouth Assistant United States Attorney Post Office Box 1308 Tallahassee, Florida 32302

Dear Mr. Carrouth:

By letter of April 22, 1971, you requested a review of the legal arguments of Mr. Thelston Earl Bacon whose indebtedness to the United States arose under a Veterans Administration (VA) guaranteed home loan. When he and his wife obtained the loan in June 1958, he obligated himself to reimburse VA for any amount it was required to pay as guarantor to the lender or its assignee upon default of the loan. Although Mr. Bacon sold his home to Mr. James S. Sheppard and Jane V. Sheppard, who subsequently conveyed it to Mr. And Mrs. John Hawkins - both assuming Mr. Bacon's mortgage -Mr. Bacon became liable to VA after the Hawkins defaulted on the loan, because the purchase price paid at the foreclosure sale was less than the amount of the mortgage indebtedness and VA made payment under its guaranty.

Mr. Bacon's legal point are set forth in his letter to you of March 25, 1971. He contends that since the actual value of the property was equal to or exceeded the amount of the mortgage and the purchase price at the foreclosure sale was substantially less than its value, he can successfully plead as a defense under the law of Florida the actual value of the property in any action against him for a deficiency judgement, and the court will determine that the purchase price at the foreclosure sale did not represent its actual value. He cites as authority R. K. Cooper Construction Company v. Fulton, 216 So. 2d 11 (Fla. 1968). This argument is answered by the numerous court decisions, including that of the United States Supreme Court in United States v. Shimer, 367 U. S. 374 (1961), holding that VA regulations control the determination of the property value to be credit against a veteran's indebtedness, and that these regulations displace State statutes and court decisions governing deficiency judgements and procedures for testing the fair and reasonable value of the property after foreclosure sales. See, in addition to Shimer, McKnight v. United States, 259 F. 2d 540 (1958); United States v. Rossi, 342 F. 2d 505 (1965); United States v. Stadium Apartment, Inc. 425 F. 2d 358 (1970), discussion of VA case at pp. 362-363 and 365; United States v. Henderson, 121 F. Supp. 343 (1953); United States v. Gallardo, 154 F. Supp. 373 (1957); United States v. Jones, 155 F. Supp. 52 (1957).

The pertinent VA regulations, covering the sale of secured property, were those in effect at the time of foreclosure and sale of the home early in 1968 and these are similar to those cited in the Shimer case, that is the regulations at

13 federal Register 7739-7741, November 27, 1948, as amended. See 38 CFR 36.4320. Under the regulations, the veteran is to be credited at least for the amount received at the foreclosure sale. In addition, for the protection of VA and the veteran, VA may in its discretion establish in accordance with its appraisal of the property a minimum amount (upset price) for credit to the veteran's account, even though the price paid at the foreclosure sale might be less than this appraised value. This latter step was apparently taken in the present case, although VA was not required to establish an upset price under the regulations. The VA appraised value insures that value of his property, State law notwithstanding.

Mr. Bacon also believes that under Florida law he is only secondarily liable, and the Government must exhaust all possible remedies against the Sheppards and the Hawkins before making any claim against him. This view is unsupportable because Mr. Bacon made a separate and independent agreement to reimburse VA for any loss. See Shimer at pp. 387-388 and Rossi, cited above. We also note that the most recent Florida case cited by Mr. Bacon, Alabama - Florida Co. v. Mays, 149 So 61 (1933), held at p. 64 (91 ALR 143) that where a mortgagor sells the real property subject to the mortgage, the mortgagor may treat both the mortgagor and each successive purchaser who has assumed payment of the mortgage debt as principal debtors, or he may proceed against one or more of them, and to the exclusion of the others. In other words, the mortgagor and the successive grantees are liable jointly and severally.

Mr. Bacon's final argument is that the United States is estopped from making claim against him because he was not properly notified of the default and all payments were accepted from subsequent purchasers. Assuming, but not deciding, this to be true, the Government is not estoppped because of the actions of the mortgagee. Insofar as notification of default by the VA is concerned, the court in the Rossi case, supra, held that notice of foreclosure proceedings and possibility of deficiency was not required; and also held that where an official of the United States acts outside his actual authority, the United States is not estopped by that action. Further, in the instant case a copy of a letter dated April 30, 1969, from the VA to Mr. Bacon discloses that:

"The loan records show that the first delinquency occurred in July 1967 and you telephoned our office on October 10, 1967 regarding it. At that time, our representative discussed the matter with you and informed you of your potential liability in the event of foreclosure. Although the account was later reinstated, the loan records disclose that we received another notice in November 1967 that the account was in default and the maturity date of the loan had been accelerated. In response to our letter to you of November 29, 1967, you telephoned our office on December 6, 1967 and our representative informed you of the status of the loan and you said you would see what you could do, but we did not hear from you again prior to foreclosure."

Sincerely yours,

Paul G. Dembling General Counsel