

In approximately the spring of 2019, the judges came to the conclusion that, in general, the use of private selling officers (PSOs) did not serve the best interests of the residents of Lake County. We balanced three primary concerns in coming to this conclusion: (1) recovering the highest value for the subject real estate; (2) the efficiency of judicial oversight in the confirmation of sale process; and, (3) the fairness to the parties involved. In weighing these factors, we came to the conclusion that the sheriff was more advantageous to that of PSOs for the sale of residential real estate, which comprises the vast majority of the foreclosure actions in our county.

In looking at recovering the highest value, we concluded that PSOs might possibly recoup slightly higher returns than traditional sheriff sales, as a PSO is likely a more motivated seller than the sheriff. Also, a PSO would likely utilize more, and better-targeted, advertising. However, any slight advantage in recovering value through a PSO, was far outweighed by the disadvantages in efficiency of judicial oversight and the fairness to all parties concerned. It is worth noting that in the time since our initial decision in 2019, our sheriff has also begun to utilize on-line selling. As a result, a PSO would no longer have a significant advantage in advertising.

The concern we developed with PSOs was that they simply functioned as an arm of the judgment creditor, rather than a neutral third-party seller. Prior to 2019, we routinely utilized PSOs upon request. Our general thinking at that time was that the judgment creditor was in the best position to know how to maximize the sale price returns. This may still be true; however, we experienced a significant number of issues with several PSOs in particular. These issues ranged from typical unresponsiveness and flawed and lagging paperwork when the buyer was not the judgment creditor, all the way up to a deeply concerning lack of candor to judicial staff. Ultimately, we determined that a large percentage of PSOs proffered by judgment creditors were simply a conduit for the judgment creditor and its counsel to exert control over the sale process. This was not fundamentally fair to the homeowner, the other lien holders, or local third-party buyers. As a result, we chose to exclusively utilize the sheriff in all routine residential foreclosure actions.

However, we specifically chose not to draft a Local Rule forbidding PSOs. Consequently, an assigned judge is still free to utilize a PSO in his discretion. Requests in cases involving commercial real estate or unique residential properties, coupled with a proffer of a more balanced PSO (one committed to the fairness of all interested parties and not just the judgment creditor), may be more likely to convince the assigned judge that a PSO would be advantageous after balancing the above-mentioned criteria.

*Judge Eugene A. Lucci*

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