

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**VESTIN REALTY MORTGAGE I, INC., ET AL.,
APPELLANTS,**

v.

**PICKWICK PARTNERS, L.L.C., ET AL.,
RESPONDENTS.**

WD68907

March 3, 2009

Appeal From:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE JAY A. DAUGHERTY, JUDGE

Attorneys:
A. Bradley Bodamer, Kansas City, MO, **for appellant.**

Steven J. Braun, Kansas City, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

VESTIN REALTY MORTGAGE I, INC., ET AL., APPELLANTS

v.

PICKWICK PARTNERS, L.L.C., ET AL., RESPONDENTS

WD68907

JACKSON COUNTY CIRCUIT COURT

Before Division Three Judges: Joseph M. Ellis, P.J., James M. Smart, Jr., Alok Ahuja, JJ.

Vestin Realty Mortgage I, Inc. filed an action for relief in equity in Jackson County Circuit Court to have a foreclosure sale set aside. The foreclosure sale was an effort to enforce a debt secured primarily by commercial real estate in Oklahoma and by a personal guarantee. Vestin's bid at the sale was based on the amount due on the debt, together with costs and expenses of sale; the bid did not take into account the net value of the property, which was minimal, and did not take into account the effect of the bid on Vestin's ability to enforce its claim against the other security. Vestin pleaded that if the sale is not set aside, and if the debt is deemed extinguished, Vestin will lose the opportunity to enforce the lien against the Oklahoma property and lose the opportunity to collect on the personal guarantee, and the debtors will receive an unjustified windfall of several million dollars, producing an unconscionable result. The petition asks that the court set aside the sale and return the parties to the status quo before the sale. The defendants filed a motion to dismiss, contending that the petition failed to state a claim upon which relief could be granted. The trial court granted the motion to dismiss without stating the grounds for dismissal. Vestin appeals.

AFFIRMED.

Division Three holds:

The trial court did not err in dismissing the petition. The petition did not invoke the court's equitable powers. There is no authority indicating that it is proper for equity to set aside a completed non-judicial foreclosure sale involving a unilateral mistake as to the value of the property or a mistake of the legal effect of the bid (here, to the extent that there was a mistake of law, it was a lack of awareness that the usual legal consequence of a "full credit bid" is extinguishment of the debt, precluding enforcement of any other collateral securing the debt). Foreclosure sales are difficult to set aside because of the inherent "caveat emptor" element of non-judicial foreclosure sales. To set aside a completed foreclosure sale, evidence of unilateral mistake and serious hardship flowing therefrom generally must be accompanied by substantial evidence of another party's

wrongdoing. Here, the petition sought relief simply on the basis that there was a unilateral mistake resulting in an unconscionable degree of loss to Vestin and a windfall to the debtors. Though the court sympathizes with Vestin, the court holds that equity was not required to grant relief.

Opinion by: James M. Smart, Jr., Judge

March 3, 2009

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