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| William M. Storm, Assignee of Mortgage from James A. Long, et al, to Farmers and Mechanics National Bank of Frederick, | : | No. 12,374 Equity. |
| | : | In the Circuit Court |
| | : | for Frederick County. |
| On | : | |
| | : | In Equity. |
| Petition. | : | |

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In this case objections to the ratification of a public sale made by the assignee of a mortgage under a power of sale contained in the mortgage duly recorded after default by the mortgagors in the payment of the principal and a portion of the interest that was due and payable in July, 1931, were filed by John Renotus and John D. Pappacostopulos.

The objections coming on to be heard, testimony was taken orally before the Court and argument of counsel for the respective parties heard.

The objectors are lessees of the mortgaged real estate under a lease entered into with the mortgagors the first part of November, 1931, dated in October and while the mortgagors were in default.

The grounds of the objections as alleged are an unlawful combination on the part of the mortgagors, mortgagee and purchaser to wrongfully obtain possession of the premises with intent to defraud the objectors, and also estoppel.

As is usual where fraud is set up a wide latitude is allowed by the Court in the admission of testimony throwing light upon the question of intent.

A great deal of testimony was heard by the Court, all of which has been given careful consideration, and as in cases of this kind it is almost impossible to quote some parts of the testimony without giving the appearance of not having considered other portions which are necessarily a part of the whole case, and all of the evidence having been taken down, I will not undertake to quote the evidence.

However, there are certain undisputed facts and legal inferences to which I will refer, as follows:

(a) The mortgagors had defaulted both in the payment of the principal and part of the interest due in July, 1931, under said mortgage.

(b) Themortgage had been duly recorded, and under our registry laws the objectors had constructive notice of the overdue mortgage on the said property when they entered into said lease.

(c) Neither the mortgagee nor its officers had anything to do with procuring or granting the lease, which is for a term of three years with the right to renew for two additional years, nor did they have knowledge of its existence until sometime after it was executed.

(d) The assignee of the mortgage had a perfect right to foreclose the mortgage when he did and to sell the mortgaged property at public sale to the highest bidder after due notice, etc., regardless of the lease, unless the mortgagee by some act had forfeited that right and was thereby estopped from selling it under the mortgage.

In the opinion of the Court, no unlawful combination or conspiracy on the part of the mortgagors and purchaser or act of the lessees could deprive the mortgagee of its right to foreclose through its assignee under its mortgage and give title to the property free from the encumbrance of the lease unless the mortgagee was a party to the unlawful combination or conspiracy or lease, or unlessit had misled or lulled the lessees into believing that it would not foreclose during the term of said lease.

The Court is further of the opinion that the evidence in this case does not show an unlawful conspiracy or combination of the mortgagee with either the mortgagors or purchaser to defraud the objectors, nor would there be any motive on the part of the mortgagee to unlawfully conspire to do with others that which it had a legal right to do itself through