Oklahoma City Attorney Allie Crawley for the Journal Record - Future of virtual Oklahoma Sheriff's sales in question

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The Oklahoma County Sheriff's Foreclosure Sales are conducted virtually through bid4assets.com. For bidders who lack access to the internet, they may download the offline bidder form. 12 O.S. § 769, effective May 25, 2022, gave Oklahoma sheriffs the option to conduct foreclosure auctions online. Although not the first county to take advantage of the change in law, Oklahoma County began holding its sheriff's sales virtually in November 2023.

While at first glance online sheriff's sales may seem innovative, the online system has received criticism. Specifically, a recent district court decision called into question the viability of such sales. Oklahoma law requires that sheriff's sales be conducted in a way that allows for full, free, and fair competition among bidders to secure the best possible price. Recently, in *Toorak Capital Partners LLC v. Austin Family Estates, LLC, et al*, Oklahoma County Case No. CJ-2022-5855, the district court found that the Terms of Service offered by the online auction market provider, Bid4Assets, Inc., for which acceptance is required to participate in a public auction, chill and stifle public participation in the auction. Accordingly, the district court denied confirmation of the online sale. Both the plaintiff and the intervenor, Bid4Assets, appealed the court's decision to the Oklahoma Supreme Court. Both appeals are ongoing.

Essentially, the sale was not considered a public auction as required by 12 O.S. § 769 because potential bidders are required to agree to the Terms of Service before they can participate in the sale. Interestingly, bidders who utilize the offline bidder form are not bound by the Terms of Service. This inconsistency alone may limit bidder participation.

Because of the district court's decision and the resulting appeals, plus title companies' hesitancy to accept sheriff's deeds from online sales, sheriff's foreclosure sales in Oklahoma County have stalled nearly to a halt. As a result, judgment creditors' ability to collect on their judgments may be hindered until the appeals are finalized.

In the interim, one option for avoiding the online sale is to apply for a receiver pursuant to 12 O.S. § 1551, *et seq*. Appointment of a receiver typically relieves the necessity of going through the Sheriff's office. Additionally, if a receiver is appointed, some Oklahoma County judges are setting aside rooms at the Courthouse for the receivers to conduct auctions. The downside, however, is that appointment of a receiver will likely result in increased costs to judgment creditors.

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