

# Third District Court of Appeal

## State of Florida

Opinion filed July 17, 2019.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-689  
Lower Tribunal No. 17-9360

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**Space Coast Credit Union,**  
Appellant,

vs.

**Michael A. Day, et al.,**  
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Spencer Eig,  
Judge.

Blaxberg, Grayson, Kukoff & Forteza, P.A., and Moises T. Grayson, for  
appellant.

Shmuel Druin, in proper person.

Before EMAS, C.J., and FERNANDEZ and HENDON, JJ.

HENDON, J.

Space Coast Credit Union (“Space Coast”) appeals from an order directing the Clerk of the Circuit Court (“clerk”) to disburse to the third-party successful high bidder (“third-party bidder”) at a foreclosure sale the deposit he made under section 45.031(3), Florida Statutes (2018). For the reasons that follow, we reverse the order under review and remand with instructions to disburse the deposit as set forth in section 45.031(3).

In 2018, a final judgment of foreclosure was rendered in favor of Space Coast against Michael and Drexella Day. At the foreclosure sale, Shmuel Druin was the third-party successful high bidder. The third-party bidder paid the \$3,390 deposit required under section 45.031(3), but failed to make the final payment due the following day.

The day after the final payment was due, the third-party bidder filed a “Motion for Winning Deposit Reimbursement,” requesting that the trial court enter an order directing the clerk to refund the entire deposit to him. In his motion, the third-party bidder argued, without any specificity, that there was misleading and inaccurate information regarding title, the position of the mortgage, and the amount of the mortgage. The following day, the clerk issued a Certificate of Incomplete Sale, stating that the foreclosure sale should be rescheduled. Following the issuance of the Certificate of Incomplete Sale, Space Coast moved to reschedule the foreclosure sale and to have the third-party bidder’s deposit disbursed.

The trial court entered an order rescheduling the foreclosure sale, and entered a separate order granting the third-party bidder's Motion for Winning Deposit Reimbursement, directing the clerk to disburse the entire deposit to the third-party bidder. Space Coast's appeal followed.

Space Coast contends that the trial court erred by directing the clerk to disburse the deposit to the third-party bidder. We agree.

Section 45.031, titled "Judicial sales procedure," provides, in part, as follows:

In any sale of real or personal property under an order or judgment, the procedures provided in this section and ss. 45.0315-45.035 may be followed as an alternative to any other sale procedure if so ordered by the court.

....

**(3) Conduct of sale; deposit required.**--The sale shall be conducted at public auction at the time and place set forth in the final judgment. The clerk shall receive the service charge imposed in s. 45.035 for services in making, recording, and certifying the sale and title that shall be assessed as costs. At the time of the sale, the successful high bidder shall post with the clerk a deposit equal to 5 percent of the final bid. The deposit shall be applied to the sale price at the time of payment. If final payment is not made within the prescribed period, the clerk shall readvertise the sale as provided in this section and pay all costs of the sale from the deposit. Any remaining funds shall be applied toward the judgment.

(underlining added). Based on the clear language set forth in section 45.031(3), the trial court erred by granting the third-party bidder's Motion for Winning Deposit Reimbursement, which directed the clerk to disburse the deposit to the third-party bidder. Pursuant to section 45.031(3), when a final payment is not made by the

successful high bidder, “the clerk is required to readvertise the sale . . . and pay all costs of the sale from the deposit.” “Any remaining funds shall be applied toward the judgment.” Accordingly, we reverse the order under review and remand the cause with directions for the trial court to enter an order disbursing the third-party bidder’s deposit in compliance with section 45.031(3).

Although we have determined that the order under review must be reversed and the cause remanded, we briefly address the sole argument made by the third-party bidder. The third-party bidder argues that pursuant to paragraph 10 of the final judgment, he is entitled to the return of his deposit. Paragraph 10 provides, in part, as follows: “If the sale is set aside for any reason, the purchaser at the sale shall be entitled only to a return of the deposit paid. . . .” The third-party bidder’s reliance on this provision is misplaced because there was no sale that was set aside, but only an incomplete sale due to the third-party bidder’s failure to make the final payment. Accordingly, we reverse the order under review and remand for further proceedings consistent with this opinion.

Reversed and remanded.