

# Deficiency Judgments from Foreclosures Are Not Setoff by the Value of the Sale of the Real Estate

*Amundsen Davis Financial Services Alert*  
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The Appellate Court of Illinois, Second District, has just held that a lender that purchases real estate at a sheriff's sale upon which it is foreclosing, and then sells that same real estate for a higher price than it paid at the Sheriff's sale, is not required to setoff its deficiency judgment against the mortgagors.

The case, *Jafry*, dealt with an all-too-common scenario, a lender purchasing real estate at a foreclosure sale for less than what was owed on the promissory note. In *Jafry*, the lender obtained a deficiency judgment in the amount of \$577,876 after it was the only bidder at a Sheriff's sale of real estate upon which the bank was foreclosing (the bank bid on credit \$900,000 for the property). About four months after confirmation of the Sheriff's sale, the bank sold this same property for \$1,320,000, which is \$420,000 more than it bid for the property at the Sheriff's sale. After this sale to a third party, the bank initiated collection proceedings against the debtors, and the debtors asked the court to setoff the \$420,000.00 that the bank earned from the sale of the real estate to the third party. The trial court denied the debtors' motion, and the appellate court affirmed, with one justice dissenting.

The debtors made several arguments on why they should receive a setoff, but none of those arguments carried the day. One of the main arguments that the debtor advanced was that it was inequitable for the lender to be able to underbid on the property, sell it for more than it bid, and still recover the full deficiency amount from the debtors. While the appellate court gave multiple reasons for rejecting this argument, the one that rings with the greatest force is the fact that if a lender cannot add to the deficiency judgment if it sells the property for less than it bid at the Sheriff's sale, why should the debtors be allowed a setoff if the lender sells it for more? This lack of balance in the equities is an argument for which the debtors had no viable answer.

It is possible that the Illinois Supreme Court could agree to hear an appeal in this case, especially with one justice dissenting from the majority. Until such an appeal occurs and this case is overruled, however, this decision solidifies the law in Illinois relating to setoffs of deficiency judgments.

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This decision affirms advice that we always give to lenders that are foreclosing, which is that once the sale of the property is confirmed, then the lender can do anything it wants with it.

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