

Court hears Elevation Chandler case

by **Luci Scott** - Feb. 24, 2012 02:21 PM
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Lawyers feuding over who owns Elevation Chandler argued their cases Wednesday before the Arizona Supreme Court.

The five justices puzzled over the three trustee sales that were held for the 10.5-acre property, which contains an abandoned hotel-construction site near the intersection of Loops 101 and 202.

Lawyers say the case has a bearing on all commercial real-estate deals in Arizona.

Tom Peltier, a Phoenix foreclosure speculator doing business as BT Capital, contends he bought the property for \$1,000,001 on June 15, 2009, at the second of the three sales. The sale was rife with errors made by T.D. Service, which conducted the auctions.

On Wednesday, the justices peppered the attorneys with questions.

First up was attorney Roger Cohen, representing T.D. Service, and he told the justices that B.T. Capital "is seeking to obtain a windfall at someone's expense.

"The ... bid of a million and one dollars is something under 40 percent of the value of the property ... and we believe it to be far less."

Cohen maintained the property went to the California-based lender, Point Center Financial, at the third sale - on July 1, 2010.

The first auction took place June 15, 2009, at noon, at which time the foreclosed property first went to PCF.

Peltier showed up about 3:30 p.m., asking about the sale and expressing dismay when he was told the sale had already been held. He brandished a paper saying the sale had been scheduled for 2 p.m. He insisted on a chance to bid.

So the auctioneer held the sale again. No representative of PCF attended either sale on June 15. It was relying on T.D. Service to enter its bids.

At the 3:30 sale, the auctioneer began bidding for PCF at a million dollars, and Peltier bid an extra dollar. The auctioneer called his office and was told to let Peltier have the property. T.D. Service had been told to increase the bidding up to \$24 million, at which time PCF would enter a credit bid, but the person in the T.D. Service office failed to tell that to the auctioneer, according to court papers.

There were other errors in the sale. The advance notice had been posted on the wrong property, and the property

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description of Elevation Chandler was inaccurate.

The next day, T.D. Service refused to take the balance of Peltier's money, saying the sale was void. At the same time, Peltier refused to take back the \$10,000 he had put down the day before.

At the Supreme Court, Joseph Cotterman, attorney for PCF, told the justices that the third sale -- in 2010 -- was free of defects and that PCF then got the deed.

In Maricopa County Superior Court, Judge Bethany Hicks had dismissed Peltier's lawsuit, citing the errors and the "inadequacy" of price.

On Wednesday, Vice Chief Justice Andrew Hurwitz asked if the issue of inadequacy of price should be raised, and Cotterman said yes.

Resuming the discussion of the three sales, it was the first one that muddied the waters, Cotterman said.

"The significance of the noon sale is that it tainted everything that came after it," he said.

Justice A. John Pelander asked, "If there was a sale at noon, why in the world would they hold a second sale?"

Cotterman replied, "The 3:30 sale should not have happened."

Twice during the hour-long session, Chief Justice Rebecca White Berch asked what time the sale was originally supposed to occur, and Cotterman said it was not in the record.

Justice Hurwitz asked if the property had

been sold in 2009, why was another sale held in 2010.

Cotterman said the reasoning behind the third sale was, "Let's clear this up and indisputably do it the right way."

The five justices took the case under advisement.

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