

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss:
No. 10-SP-1915

Housing Court Department
Western Division

AURORA LOAN SERVICES, LLC,

Plaintiff,

v.

SHAWN A MINER, et al,

Defendants.

**RULINGS AND ORDER ON
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

The above-captioned summary process (eviction) action came before me on the plaintiff's motion for summary judgment. After hearing on December 17, 2010, for which all parties were represented by counsel, the following Rulings and Order are to enter:

1. **UNDISPUTED FACTS:** The defendants Shawn Miner and Corey Nicolene (defendants) are the former owners of the single family residential home located at 57 Forest Avenue, Greenfield, MA (subject property or premises). On or about February 9, 2010, the mortgagee of the premises, Aurora Loan Services, LLC (plaintiff) held a foreclosure auction in accordance with the statutory power of sale. The plaintiff was the highest bidder at the auction. On February 19, 2010, the plaintiff executed the foreclosure deed, which was subsequently recorded on April 30, 2010.
2. On or about April 5, 2010, the plaintiff served the defendants with a 72 hour notice to quit. On or about May 28, 2010, the plaintiff filed the instant eviction action, in which the defendants filed multiple counterclaims. The counterclaims were subsequently dismissed by court order dated September 29, 2010. The plaintiff now moves for summary judgment on its

claim for possession.

3. **DISCUSSION.** In defense of the plaintiff's claim for possession, the defendants claim that the summary process action was entered prior to the service of a legally sufficient notice to quit. They defendants point to the fact that the foreclosure deed was recorded subsequent to the service of the notice to quit. Here, the defendants argument is two-fold: 1) that former owners are entitled to a notice to quit; and 2) that a foreclosing mortgagor is not the owner of the subject property until recording it records the deed. This argument misunderstands the governing law.

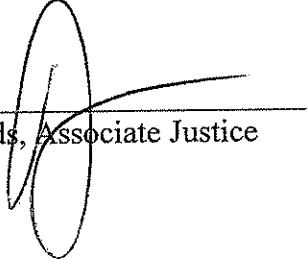
4. First, when the plaintiff tendered the highest bid at the foreclosure auction and thereafter executed the foreclosure deed, delivery of the deed was complete and the plaintiff became the absolute owner of the subject property, regardless of whether it recorded the deed. See *City of Springfield Code Enforcement Department v. Santiago*, Housing Court-Western Division, Docket No. 10-CV-362 (Fein, J.) (where the foreclosing mortgagee purchased the property at foreclosure auction, legal and equitable title merged in the mortgagee at the moment the gavel dropped); See also *Barry v. Dudley*, 282 Mass. 258 , 259 (1933) ("when the plaintiff [mortgagee] bought at the foreclosure sale and gave deed to herself, she ended the equity of redemption of the defendant . . ."). Thereafter, the defendants had no interest, either legal or equitable, left in the subject property. The plaintiff held a superior right to possession, and was entitled to bring the eviction action. G.L. c. 239, s. 1.

5. Even were I to hold that recording of the deed was required to perfect ownership as claimed by the defendants, I would still find that this action was properly entered by the plaintiff. At the time the complaint was filed, the deed had so been recorded and, as former owners of the property they were not entitled to any notice prior to the institution of this action. *Rubin v.*

Prescott, 362 mass. 281 (1972) (tenant at sufferance is not entitled to a notice to quit).

6. **ORDER.** Based on the foregoing, the plaintiff's motion for summary judgment is allowed. Judgment for possession shall enter in favor of the plaintiff. Execution shall issue in due course upon application.

So entered this 23 day of December, 2010.



Robert G. Fields, Associate Justice