

SAFEGUARDS AND STANDARDS FOR PLEDGE FORECLOSURES*

FORECLOSURE of loans secured by pledged collateral often brings the valid interests of borrower and lender into sharp conflict. Since a borrower who has defaulted is liable for a deficiency judgment if the pledge is sold for less than his debt,¹ and is entitled to the surplus if the pledge is sold for more than his debt,² he wants the pledge sold at the highest possible price. The lender, on the other hand, has no incentive to work to obtain a surplus for the borrower. And the lender may even want to buy the collateral himself at a low price, in the hope of reselling at a profit. Secondly, the lender wants to be free to foreclose promptly upon default and to sell the pledged collateral expeditiously, since delay may prolong an unprofitable commitment of the lender's funds and increases the risk of a drop in the value of the collateral. Consequently, he demands a free hand in selecting the time, manner and place of sale. But the borrower generally wants a liberal period of time between default and the foreclosure sale in order to permit both parties to advertise and search for buyers, preserve his opportunity to redeem the pledge and put off the day of deficiency judgment.³ The borrower, however, can seldom negotiate contractual protection against the danger of the lender buying the collateral at an inadequate price or selling it hastily, since he generally has an inferior bargaining position⁴ at the time the loan is made. Borrowers must therefore seek protection when the collateral is sold by invoking judicial supervision of foreclosure procedures.

*In the Matter of Kiamie, 309 N.Y. 325, 130 N.E.2d 745 (1955).

1. BROWN, PERSONAL PROPERTY § 132 (2d ed. 1955); JONES, COLLATERAL SECURITIES AND PLEDGES § 597 (3d ed. 1912).

2. BROWN, *op. cit. supra*, § 132; JONES, *op. cit. supra*, § 649.

3. Cf. Brabner-Smith, *Economic Aspects of the Deficiency Judgment*, 20 VA. L. REV. 719, 721-22 (1934) (discussing state redemption laws which give hard pressed mortgagors a certain period of time—commonly a year—in which they may redeem property sold under judicial foreclosure).

For the difference between pledges, chattel mortgages, real estate mortgages, etc., see BROWN, PERSONAL PROPERTY § 128 (2d ed. 1955); TIFFANY, REAL PROPERTY § 1379 (3d ed. 1939); Gilmore, *American Chattel Security Devices*, 2 BUS. L. REV. 65 (1955).

4. "[A]greements . . . are drawn by the pledgee usually upon expert legal advice, and are exacted from the borrower, who by reasons of financial necessity has no other option" BROWN, PERSONAL PROPERTY § 661 (2d ed. 1955); BROWN, . . .