

Circuit Court for Baltimore City  
Case No. 24-C-18-003211

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1377

September Term, 2019

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MD TAX PROPERTIES 2016, LLC

v.

OLIVE REALTY MANAGEMENT, LLC

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Arthur,  
Beachley,  
Wilner, Alan M.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Arthur, J.

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Filed: September 24, 2020

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104

This appeal arises out of tax-sale foreclosure proceedings in the Circuit Court for Baltimore City. Within 30 days after the entry of a judgment foreclosing the rights of redemption in favor of appellant MD Tax Properties 2016, LLC, the delinquent property owner, appellee Olive Realty Management, LLC, moved to vacate the judgment. The circuit court granted the motion, citing its broad discretion to revise an unenrolled judgment. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Olive Realty owned a piece of a real property at 1815 North Port Street in Baltimore. Olive Realty failed to pay the property taxes due on the property. Consequently, in May 2016, Baltimore City sold the property at a public auction and issued a certificate of tax sale for the property to MD Tax Properties for \$5,035.<sup>1</sup>

On May 15, 2018, MD Tax Properties filed a complaint in the Circuit Court for Baltimore City, seeking to foreclose all rights of redemption in the property. Despite receiving notice of the sale and a writ of summons, Olive Realty did not redeem the property or otherwise contest the proceeding. The court entered a judgment foreclosing Olive Realty's right of redemption on March 21, 2019.

On March 29, 2019, Olive Realty moved to vacate the judgment, or in the alternative, to redeem the property, pursuant to Md. Rule 2-535(a), which allows the

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<sup>1</sup> The highest bidder at a tax sale does not acquire title to the property, but instead is issued a "certificate of sale," or tax certificate. *See* Md. Code (1986, 2012 Repl. Vol., 2018 Supp.), § 14-820 of the Tax-Property Article. Upon the satisfaction of an array of conditions, the tax certificate entitles the holder to file a complaint to foreclose all rights of redemption in the property. *See id.* § 14-833.

court, on a motion filed within 30 days after the entry of judgment, to exercise revisory “power and control over the judgment.”<sup>2</sup>

On the same day, Olive Realty filed a motion to deposit funds into the court registry, together with a certified check for the estimated redemption amount: \$5,948.28. MD Tax Properties does not dispute that the check covered every financial obligation that Olive Realty was required to discharge in order to redeem the property, including the expenses, attorneys’ fees, and interest to which MD Tax Properties was entitled under Md. Code (1986, 2012 Repl. Vol., 2018 Supp.) § 14-843 of the Tax-Property Article (“TP”); *see also* TP § 14-848 (requiring the tax collector to “repay the holder of the certificate of sale the amount paid to the collector on account of the purchase price of the property sold, with interest at the rate provided in the certificate of tax sale,” if a judgment is set aside).

At a hearing, Olive Realty affirmed that it was ready, willing, and able to pay the taxes, interest, and fees required to redeem the property, as evidenced by its deposit of funds with the court. When asked by the court why it had waited to redeem until after a

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<sup>2</sup> Because Olive Realty filed its motion within 10 days after the entry of judgment, it was technically a motion to alter or amend the judgment under Md. Rule 2-534. *See White v. Prince George’s County*, 163 Md. App. 129, 140 (2005) (citing *Sieck v. Sieck*, 66 Md. App. 37, 44-45 (1986)). Under that rule, the court “may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.” Md. Rule 2-534. Although Olive Realty purported to proceed pursuant to both Rule 2-535(a) and 2-534, its motion refers more extensively to Rule 2-535(a) and the court’s broad, equitable revisory power over judgments in the first 30 days after they have been entered.

judgment was entered, counsel for Olive Realty responded, “I don’t have a good explanation for that. . . . [b]ut once judgment was entered, my client did have the funds and was able to redeem.” Olive Realty stressed that because it had filed its motion to vacate just eight days after the entry of judgment, the court retained broad discretionary power to set aside the judgment.

Opposing the motion, MD Tax Properties argued that Olive Realty had failed to assert any valid basis for vacating the judgment. In addition, MD Tax Properties contended that Olive Realty was attempting to abuse the court’s revisory power, as Olive Realty had ample opportunity to redeem the property before the entry of judgment, but opted to challenge the tax-sale procedure with a post-judgment motion instead.

After taking the matter under advisement, the circuit court issued a memorandum opinion and order granting Olive Realty’s motion on August 19, 2019. The court explained that “because Olive Realty ha[d] complied with the condition precedent necessary to mov[e] to vacate [a] judgment in a tax sale foreclosure by filing a motion to deposit funds into the court” and because Olive Realty’s motion to vacate was filed within 30 days after the entry of the judgment, the court could exercise full revisory power and control over the judgment under Md. Rule 2-535(a).<sup>3</sup>

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<sup>3</sup> In contravention of Md. Rule 2-601(a), the court did not embody its order in separate document. Nonetheless, neither party disputes that the court intended its ruling to be an unqualified, final disposition of all issues in the case. Hence, the requirement of a separate document has been waived. *See URS Corp. v. Fort Meyer Constr. Co.*, 452 Md. 48, 69-70 (2017).

MD Tax Properties noted a timely appeal, wherein it presents a single question, which we have rephrased for brevity: Did the circuit court abuse its discretion when it granted Olive Realty’s motion to vacate the judgment foreclosing its right of redemption?<sup>4</sup>

For the reasons stated below, we answer in the negative. Accordingly, we affirm the judgment of the circuit court.

### DISCUSSION

Maryland Rule 2-535(a) establishes the circuit court’s general revisory powers. It provides: “[o]n motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment.” Similarly, Md. Code (1973, 2013 Repl. Vol.), § 6-408 of the Courts and Judicial Proceedings Article (“CJP”), states that, “[f]or a period of 30 days after the entry of a judgment, or thereafter pursuant to motion filed within that period, the court has revisory power and control over the judgment.”

In interpreting CJP § 6-408, the Court of Appeals has said that “if a motion to revise or set aside a judgment is filed within 30 days of the entry of a judgment, a trial

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<sup>4</sup> In its brief, MD Tax Properties presented its question as follows:

The Circuit Court has revisory power over Judgments Foreclosing on Rights of Redemption in a Tax Sale matter. Appellee satisfied the condition precedent necessary to move the Court to revise its Judgment but did not offer a lawfully valid cause of action or any testimony or evidence in support of their motion. Did the Court abuse its discretion when it vacated the Judgment?

court has unrestricted discretion to revise the unenrolled judgment.” *Maryland Lumber Co. v. Savoy Constr. Co.*, 286 Md. 98, 102 (1979); accord *Maryland Bd. of Nursing v. Nechay*, 347 Md. 396, 408 (1997); *Platt v. Platt*, 302 Md. 9, 13 (1984). The Court later amended that statement to say that the circuit court’s discretion “is not truly unrestricted but simply broad.” *Dixon v. Ford Motor Corp.*, 433 Md. 137, 157 (2013) (citing *Southern Mgmt. Corp. v. Taha*, 378 Md. 461, 495 (2003)).

By contrast, the stated grounds for reopening a judgment under the tax-sale statute are narrow: “A court in the State may not reopen a judgment rendered in a tax sale foreclosure proceeding except on the ground of lack of jurisdiction or fraud in the conduct of the proceedings to foreclose.” Md. Code (1986, 2012 Repl. Vol., 2018 Supp.), § 14-845(a) of the Tax Property Article (“TP”). Citing TP § 14-845(a), MD Tax Properties argues that in a tax-sale case a court may open a judgment only because of fraud or a lack of jurisdiction, “and for no other reason.”

Maryland courts have recognized the tension between TP § 14-845(a) and CJP § 6-408 (and the related rules of court). See, e.g., *Suburban Dev. Corp. v. Perryman*, 281 Md. 168, 168 (1977) (per curiam); *Scheve v. McPherson*, 44 Md. App. 398, 414-15 (1979).

After considering the legislative history of the predecessor of TP § 14-845(a), the canons of statutory construction, the circuit courts’ broad revisory power over judgments (dating back to the common law), and the then-recent enactment of CJP § 6-408, Judge Wilner, writing for this Court, concluded that circuit courts “possess the power to strike or revise any judgment or decree entered by them upon motion filed within 30 days.”

*Scheve v. McPherson*, 44 Md. App. at 416. Similarly, the Court of Appeals has determined that, to give effect to both statutes, the restriction in TP § 14-845(a) “is applicable to enrolled judgments of foreclosure of the right of redemption, but is inapplicable to such unenrolled judgments.” *Haskell v. Carey*, 294 Md. 550, 559-60 (1982). A judgment becomes “enrolled” after 30 days.<sup>5</sup>

Therefore, notwithstanding TP § 14-845, “[t]he court ha[s] general revisory power for thirty days” after the entry of a judgment foreclosing the right of redemption. *Smith v. Lawler*, 93 Md. App. 540, 551 (1992). It follows that MD Tax Properties is incorrect in asserting that a finding of fraud or lack of jurisdiction is required for the court to exercise its broad revisory power over an unenrolled judgment. *Seidel v. Panella*, 81 Md. App. 124, 131 (1989) (citing *Haskell v. Carey*, 294 Md. at 558-60).

Before a court may exercise its revisory power, however, the delinquent taxpayer must satisfy a prerequisite. “[I]n order to challenge the foreclosure of the equity of redemption in a tax sale, the taxes and other relevant charges acknowledged to be due, either prior to the challenge or simultaneously with it, must, as a condition precedent, be paid.” *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 396 (2006); *see also* TP § 14-828(a).

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<sup>5</sup> Although *Haskell v. Carey* and *Scheve v. McPherson* concern CJP § 6-408 rather than Md. Rule 2-535(a), Rule 2-535(a) “is intended to be as comprehensive as [CJP] § 6-408” (*Maryland Bd. of Nursing v. Nechay*, 347 Md. at 408 (quoting Rule 2-535 committee note)), and the two provisions are meant to be “be read together, complementing or supplementing each other.” *Id.* Similarly, in *Scheve v. McPherson*, 44 Md. App. at 414, Judge Wilner wrote that CJP § 6-408 “codified” former Maryland Rule 625 a, the predecessor of Rule 2-535(a). Accordingly, the reasoning of those cases applies to Rule 2-535(a) as well as CJP § 6-408.

MD Tax Properties does not dispute that Olive Realty met this condition when it filed its motion to deposit funds with the court, accompanied by a certified check. But doing so, MD Tax Properties asserts, simply allowed Olive Realty to file its motion to vacate and reopen the judgment foreclosing its right of redemption. MD Tax Properties argues that Olive Realty was still obligated to make a valid argument about *why* the judgment should be revised. Because Olive Realty failed to make any such argument, MD Tax Properties asserts that the court abused its discretion in revising the judgment. We disagree.

As previously stated, a trial court is said to have quite “broad,” if not truly “unrestricted,” discretion to revise an unenrolled judgment. *Dixon v. Ford Motor Corp.*, 433 Md. at 157; *see also Maryland Lumber Co. v. Savoy Constr. Co.*, 286 Md. at 102; *accord Maryland Bd. of Nursing v. Nechay*, 347 Md. at 408; *Platt v. Platt*, 302 Md. at 13. “[T]hat discretion has to be liberally exercised.” *Maryland Lumber Co. v. Savoy Constr. Co.*, 286 Md. at 102. The court’s considerable discretion over unenrolled judgments of foreclosure is intended to provide “a proper balance between the public interest in preventing injustice and individual hardship resulting from legal technicalities, and the public interest in assuring marketable title promptly after a judgment foreclosing a right of redemption.” *Haskell v. Carey*, 294 Md. at 559; *see also* TP § 14-832. A judge’s “reasonable doubt that justice had not been done is an appropriate basis for the exercise of that discretion.” *Maryland Bd. of Nursing v. Nechay*, 347 Md. at 408.

In general, a trial court abuses its discretion when “no reasonable person would take the view adopted by the [trial] court,” or when the court acts “without reference to



any guiding rules or principles.”” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (alteration in original) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)).

Because Olive Property had failed to pay its real estate taxes for more than three years, did not contest the foreclosure proceeding until a judgment had been entered against it, offered no justification for its delay, identified no error or flaw in the conduct of the proceedings, and might well be unable to meet its future tax obligations, a court could reasonably conclude that it would be inequitable to revise the judgment and to permit Olive Property to redeem the property. On the other hand, a court could also conclude that because MD Tax Properties had been made whole when Olive Property tendered the amounts necessary to redeem the property, with interest, it was not inequitable to permit the owner to redeem the property. In view of the broad scope of a circuit court’s discretion to determine whether to revise an unenrolled judgment, we cannot say that the court abused its discretion in this case.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED;  
COSTS TO BE PAID BY APPELLANT.**