

Circuit Court for Cecil County
Case No.: C-07-CV-18-000598

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2199

September Term, 2019

THE HAIMISH GROUP, LLC

v.

WAMCO, Inc.

Gould,
Zic,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: April 14, 2021

*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.

Following a hearing, the Circuit Court for Cecil County entered an order, in 2019, denying a Motion for Reconsideration and to Vacate Decree Forfeiting Defendant’s Right of Redemption, filed by The Haimish Group, LLC¹ (“Haimish”), Appellant, for property sold at a tax sale to WAMCO, Inc.² (“WAMCO”), Appellee. Haimish contends that the trial court erred.³ We disagree and shall affirm.

Subtitle 8 of Title 14 of the Tax-Property Article, Maryland Code (1957, 2012 Repl. Vol.),⁴ provides county governments a means of collecting delinquent property taxes. Under the statute, “all unpaid taxes on real property, shall be, until paid, liens on the real property in respect to which they are imposed from the date they became or

¹ The Haimish Group, LLC, is a limited liability company organized under the laws of New Jersey.

² WAMCO, Inc., is a Maryland corporation.

³ Haimish presents the following questions for our consideration:

A. Did the Circuit Court for Cecil County err in its failure to vacate the Circuit Court’s Decree of February 27, 2019 foreclosing Haimish’s right to redeem?

- i. Failure to consider conduct reaching the plateau of constructive fraud[?]
- ii. Failure to consider relief based upon equitable principles?

B. Did the Circuit Court for Cecil County abuse its discretionary powers[?]

- i. Failure to liberally grant relief?

⁴ Unless otherwise indicated, all statutory references hereinafter are to Title 14 of the Tax-Property Article, Maryland Code (1957, 2012 Repl. Vol.).

become payable.” Section 14-804(a). The statute empowers a “collector”⁵ to sell property, for which taxes have remained unpaid, within two years of the date on which the taxes became due. Section 14-808. At least thirty days before advertising an upcoming tax sale, the collector must send, by mail, the following notice to delinquent taxpayers:

“This Is a Final Bill and Legal Notice to the Person Whose Name Appears on This Notice.”

“According to the collector’s tax roll you are the owner of the property appearing on this notice. Some of the taxes listed are in arrears. Notice is given you that unless all taxes in arrears are paid on or before 30 days from the above date, the collector will proceed to sell the above property to satisfy your entire indebtedness. Interest and penalties must be added to the total at the time of payment.”

Section 14-812(a) (quotation marks in original). The collector must also provide notice in the form of newspaper advertisements, which must contain specific information.⁶

⁵ A “collector” is “an officer of a county or municipal corporation who has a duty to collect or remit taxes.” Maryland Code (1957, 2012 Repl. Vol.), Section 1-101(e) of the Tax-Property Article.

⁶ Section 14-813(a)(1) of the Tax-Property Article, Maryland Code (1957, 2012 Repl. Vol.), provides:

(a) *Notice generally*; — At any time after 30 days from the mailing of the statement and notice, the collector shall cause to be published, 4 times, once a week for 4 successive weeks in 1 or more newspapers that have a general circulation in the county in which the property is located, a notice that the property will, on the date and at the place named in the notice, be sold at public auction.

The content of the newspaper advertisements is defined by Section 14-813(d) of
(continued . . .)

The collector must notify the owner of a property, which has been sold at a tax sale, subsequent to the purchase of their property, pursuant to Section 14-817.1(a), which provides:

(a) *In general.* — Within 60 days after a property is sold at a tax sale, the collector shall send to the person who last appears as owner of the property on the collector's tax roll, at the last address shown on the tax roll, a notice that includes:

(. . . continued)

the Tax-Property Article, which provides:

(d) *Contents of notice.* — (1) The notice shall contain with substantial accuracy the following:

(i) a description of the property by giving the street number of the improvement and the frontage and depth of the lot, as the property appears on the collector's tax roll;

(ii) the name of the person who last appears on the collector's tax roll as the owner of the property;

(iii) the amount of all taxes due and unpaid on the property;

(iv) if the property is unimproved, or has no street number, the notice shall describe the property as it is described on the collector's tax roll, and no unimproved property, or property having no street number, need be described by metes and bounds. If necessary to describe the property, the collector shall obtain a description and plat of the property from the county or municipal corporation surveyor, for which the sum of \$7.50 shall be added to the total charges due on the property. If it is necessary to procure a description from the county or municipal corporation surveyor, the description shall be kept in the records of the collector's office and the published notice of sale shall contain a statement to the effect that a detailed description of the property to be sold, as prepared by the county or municipal corporation surveyor, is on file at the collector's office and may be examined by anyone interested in the description; and

(v) the assessment of the property as determined by last assessment.

(1) a statement that the property has been sold to satisfy unpaid taxes;

(2) the date of the tax sale;

(3) the amount of the highest bid;

(4) the lien amount on the property at the time of sale;

(5) a statement that the owner has the right to redeem the property until a court forecloses that right;

(6) a statement that the purchaser of the property may institute an action to foreclose the property:

(i) as early as 6 months from the date of the sale; or

(ii) if a government agency certifies that the property requires, or shall require, substantial repair to comply with applicable building codes, as early as 60 days from the date of the sale;

(7) a statement that if the property is redeemed before an action to foreclose the right of redemption is filed, the amount that shall be paid to redeem the property is:

(i) the total lien amount on the property at the time of sale, with interest;

(ii) any taxes, interest, and penalties paid by the holder of the certificate of sale; and

(iii) any taxes, interest, and penalties accruing after the date of the tax sale;

(8) a statement that, if the property is redeemed more than 4 months after the date of the tax sale, and before an action to foreclose the right of redemption is filed, the holder of the certificate of sale may be reimbursed for:

(i) attorney's fees for recording the certificate of sale;

(ii) a title search fee, not to exceed \$250; and

(iii) reasonable attorney's fees, not to exceed \$500;

(9) a statement that, if the property is redeemed after an action to foreclose the right of redemption has been filed, the amount that shall be paid to redeem the property is the sum of:

(i) the total lien amount on the property at the time of sale, with interest;

(ii) any taxes, interest, and penalties paid by the holder of the certificate of sale;

(iii) any taxes, interest, and penalties accruing after the date of the tax sale; and

(iv) attorney's fees and expenses to which the holder of the certificate of sale may be entitled under § 14-843(a)(4) and (5) of this subtitle; and

(10) the provisions of § 14-843(a) of this subtitle, reproduced as they appear in the Code.

Under the statute, a delinquent taxpayer may recover the property, which had been sold at a tax sale, by exercising a right of redemption.⁷ In order to redeem the property, the taxpayer must adhere to the following:

(a) *Time for filing generally.* — If the property is redeemed, the person redeeming shall pay the collector:

(1) the total lien amount paid at the tax sale for the property together with interest;

(2) any taxes, interest, and penalties paid by any holder of the certificate of sale;

(3) except for owner-occupied residential property in Baltimore City, any taxes, interest, and penalties accruing after the date of the tax sale;

(4) in the manner and by the terms required by the collector, any expenses or fees for which the plaintiff or the holder of a certificate of sale is entitled to reimbursement under § 14-843 of this subtitle; and

(5) for vacant and abandoned property sold under § 14-817 of this subtitle for a sum less than the amount due, the difference between the price paid and the unpaid taxes, interest, penalties, and expenses.

Section 14-828(a). If the property is redeemed, the collector must provide notice to the

⁷ Section 14-827 of the Tax-Property Article, Maryland Code (1957, 2012 Repl. Vol.), provides: “The owner or other person that has an estate or interest in the property sold by the collector may redeem the property at any time until the right of redemption has been finally foreclosed under the provisions of this subtitle.”

purchaser, pursuant to Section 14-828(c), which provides,

(c) *Notice to holder of certificate; certificate of redemption.* — shall notify the holder of the certificate of sale that the property has been redeemed and that on surrender of the certificate of sale all redemption money excluding taxes received by the collector will be paid to the holder. For the purposes of this section, the collector is authorized to conclusively presume that the original purchaser at the tax sale is the holder of the certificate of sale, unless the collector receives a written notice of an assignment of the certificate of sale that gives the collector the name and address of the assignee. Upon request, the collector shall execute and deliver to the person redeeming the property a certificate of redemption which may be recorded among the land records of the county in which the land is located, and when recorded shall have the same effect as a release of a mortgage.

Section 14-828(c).

In the event a delinquent taxpayer fails to redeem the property, the purchaser must wait at least six months after the date of sale to initiate proceedings to foreclose the right of redemption. Section 14-833(a)(1). Prior to initiating proceedings, a purchaser must provide two notices to the former owner, the first of which may be sent no sooner than four months after the date of the tax sale. Section 14-833(a-1)(4)(i)(1). The second notice may be sent no sooner than two months after the first notice. Section 14-833(a-1)(5)(i)(2).

Both notices must include specific content, pursuant to Section 14-833(a-1)(3), which provides:

(3) The notices required under this subsection shall include at least the following:

- (i) a statement of the fact of the issuance of a certificate of sale;
- (ii) a copy of the certificate of sale, if the holder of the certificate of sale received the certificate of sale before the notice was sent under this

paragraph;

(iii) a statement that the owner, a mortgage holder, or any other person that has an estate or interest in the property may redeem the property at any time until the right of redemption has been finally foreclosed under the provisions of this subtitle;

(iv) a statement that the holder of the certificate of sale may file an action to foreclose the right of redemption at any time after 2 months from the date of the first notice;

(v) a statement that if the property is redeemed before an action to foreclose the right of redemption is filed, the amount that shall be paid to redeem the property is:

1. the total lien amount on the property at the time of sale, with interest;

2. any taxes, interest, and penalties paid by the holder of the certificate of sale;

3. any taxes, interest, and penalties accruing after the date of the tax sale; and

4. the following expenses incurred by the holder of the certificate of sale:

A. costs for recording the certificate of sale;

B. a title search fee, not to exceed \$250;

C. the postage and certified mailing costs actually incurred for the notices; and

D. reasonable attorney's fees, not to exceed \$500;

(vi) a statement that if the property is redeemed after an action to foreclose the right of redemption has been filed, the amount that shall be paid to redeem the property is the sum of:

1. the total lien amount on the property at the time of sale, with interest;

2. any taxes, interest, and penalties paid by the holder of the certificate of sale;

3. any taxes, interest, and penalties accruing after the date of the tax sale; and

4. attorney's fees and expenses to which the holder of the certificate of sale may be entitled under § 14-843(a)(4) and (5) of this

subtitle;^[8]

⁸ Sections 14-843(a)(4) and (5) of the Tax-Property Article, Maryland Code (1957, 2012 Repl. Vol.), provide:

(4) If an action to foreclose the right of redemption has been filed, the plaintiff or holder of a certificate of sale may be reimbursed for:

(i) attorney's fees in the amount of:

1. \$1,300 if an affidavit of compliance has not been filed, which amount shall be deemed reasonable for both the preparation and filing of the action to foreclose the right of redemption; or

2. \$1,500 if an affidavit of compliance has been filed, which amount shall be deemed reasonable for both the preparation and filing of the action to foreclose the right of redemption;

(ii) reasonable attorney's fees, not to exceed \$1,200, incurred by the plaintiff or holder of a certificate of sale for opening an estate for purposes of service of process and notice on a defendant's estate;

(iii) in exceptional circumstances, other reasonable attorney's fees incurred and specifically requested by the plaintiff or holder of a certificate of sale and approved by the court, on a case by case basis; and

(iv) if the plaintiff or holder of a certificate of sale provides a signed affidavit attesting to the fact that the expenses were actually incurred, the following expenses actually incurred by the plaintiff or holder of a certificate of sale:

1. filing fee charged by the circuit court for the county in which the property is located;

2. service of process fee, including fees incurred attempting to serve process;

3. a title search fee, not to exceed \$250;

4. if a second title search is conducted more than 6 months after the initial title search, a title search update fee, not to exceed \$75;

5. publication fee charged by a newspaper of general circulation in the county in which the property is located;

6. posting fee;

7. postage and certified mail;

(continued . . .)

(vii) the provisions of § 14-843(a) of this subtitle, reproduced as they appear in the Code;

(viii) a statement that, in Baltimore City only, the holder of the certificate of sale is entitled to taxes, interest, and penalties paid in accordance with § 14-843(c) of this subtitle and interest at the rate of redemption under § 14-820 of this subtitle from the date of payment to the date of redemption; and

(ix) the name, address, and telephone number of:

1. the holder of the certificate of sale, or the holder's agent or attorney; and

2. the collector who made the sale.

(. . . continued)

8. substantial repair order fee, not to exceed the fee charged by the government agency issuing the certificate of substantial repair;

9. expenses and costs incurred for opening an estate of a deceased defendant for purposes of service of process and notice, not to exceed \$1,200; and

10. any court approved expense for stabilization or conversion of the property under § 14-830 of this subtitle or in accordance with an action taken against the property by the county in which the property is located in accordance with the applicable building, fire, health, or safety codes.

(5) In addition to the expenses and attorney's fees under paragraph (3) or (4) of this subsection, the plaintiff or holder of a certificate of sale may be reimbursed for:

(i) taxes paid at the tax sale, together with redemption interest, arising after the date of sale to the date of redemption;

(ii) the high bid premium paid at the tax sale, if applicable; and

(iii) in Baltimore City only, taxes, interest, and penalties paid in accordance with subsection (c) of this section and interest at the rate of redemption provided in § 14-820 of this subtitle from the date of payment to the date of redemption.

The purchaser initiates proceedings to foreclose by filing a complaint, pursuant to Section 14-835(a), which provides:

(a) *In general.* — A person shall file a complaint in the circuit court for the county in which the land is located, that states:

- (1) the fact of the issuance of the certificate of sale;
- (2) a description of the property in substantially the same form as the description appearing on the certificate of tax sale and, if the person chooses, any description of the property that appears in the land records;
- (3) the fact that the property has not been redeemed by any party in interest;
- (4) a request for process to be served on the defendants named in the complaint;
- (5) a request for an order of publication directed to all parties in interest in the property;
- (6) a request that the court pass a judgment that forecloses all rights of redemption of the defendants and any other person having any interest in the property;
- (7) a description of the amount necessary for redemption including the amount paid out at the tax sale; and
- (8) at the option of the plaintiff, in a foreclosure proceeding brought by the Mayor and City Council of Baltimore City for abandoned property sold for a sum less than the amount due under § 14-817 of this subtitle, a request that the court pass a judgment for the City and against the person liable for the taxes prior to the sale in the amount of the unpaid taxes, interest, penalties, and expenses otherwise due in a tax sale.

The circuit court, upon receiving a complaint to foreclose a right of redemption, must “issue a summons to procure the answer and appearance of all the defendants as in other civil actions.” Section 14-839(a)(3). The circuit court must also provide notice of the foreclosure proceedings through publication, pursuant to Section 14-840, which, in relevant part, provides:

At the same time the summons is issued as provided by § 14-839 of this subtitle, the court shall pass an order of publication directed to all defendants, naming them as provided by this subtitle. The property shall be described in the order of publication as the property is described on the collector's certificate of tax sale. The order of publication shall warn any person that has or claims to have an interest in the property to answer the complaint or to redeem the property on or before the date named in the order of publication and in case of failure to appear, answer, or redeem the property a judgment will be entered that forecloses all rights of redemption in the property. The date named may not be less than 60 days from the date of the order. When the order of publication is issued and published, any person that has any right, title, interest, claim, lien, or equity of redemption in the property is bound by the judgment of the court that may be passed in the case as if the person were personally served with process.

The circuit court may enter a final judgment foreclosing a right of redemption pursuant to the requirements identified in Section 14-839(a)(6), which provides:

(6) A final judgment may not be entered before the last of:

- (i) where actual service is made on the defendant, the passage of the time specified in the summons issued by the court;
- (ii) the actual time specified in the order of publication; or
- (iii) 33 days after the date of mailing the copy of the order of publication under paragraph (4) of this subsection.

A purchaser has two years from the date of sale to petition to foreclose the former owner's right of redemption. Section 14-833(b).

The property at issue in this appeal, known as "Property No. 05131138 LOT 1 – 77.1282 ACRE, SHADY BEACH ROAD S/E OF NORTH EAST and assessed to: THE HAIMISH GROUP, LLC[,]” was purchased by WAMCO at a tax sale conducted by the Cecil County tax authorities, in June of 2017. More than a year later, WAMCO provided two notices to Haimish, the first of which was sent in August of 2018 and the second in

October 2018. In November of 2018, WAMCO initiated proceedings to foreclose Haimish's right of redemption in the property by filing a complaint in the Circuit Court for Cecil County. The Circuit Court issued an Order of Publication of the complaint, which was published in the Cecil Whig, the newspaper of record for Cecil County, on three dates in December of 2018. Haimish never filed an Answer in response to WAMCO's complaint.

The record also reveals that Haimish, however, did contact WAMCO's attorney, John C. Bays, on January 23, 2019, seeking information regarding redemption of the property. Mr. Bays informed Haimish that, as part of the redemption process, it would be required to pay WAMCO's attorneys' fees in the amount of \$2,444.40. Mr. Bays received payment from Haimish the next day and informed Cecil County tax officials, via email, that Haimish had paid WAMCO's attorneys' fees and that WAMCO had extended the deadline for Haimish to redeem the property until February 15, 2019. Haimish requested redemption information for the property, in an email sent to Cecil County tax officials, on February 6; Haimish received the information within a week.

Haimish, however, failed to redeem the property by February 15, 2019. The Circuit Court entered a judgment foreclosing Haimish's right of redemption on March 1 of that year. That same month, Haimish filed a Motion for Reconsideration and to Vacate Decree Forfeiting Defendant's Right of Redemption, which Judge Brenda Sexton denied, following a hearing that took place in December of 2019.

In its Motion for Reconsideration, premised on Section 6-408 of the Courts and

Judicial Proceedings Article,⁹ Rule 2-535(a),¹⁰ and Section 14-845(a) of the Tax-Property

⁹ Section 6-408 of the Courts and Judicial Proceedings Article, Maryland Code (1977, 2013 Repl. Vol.), which confers to a trial court the authority to revise judgments, provides:

For 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. After the expiration of that period the court has revisory power and control over the judgment only in case of fraud, mistake, irregularity, or failure of an employee of the court or of the clerk's office to perform a duty required by statute or rule.

¹⁰ Maryland Rule 2-535(a), which addresses a circuit court's power to revise judgments, provides:

(a) **Generally.** On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

Rule 2-534 provides:

In an action decided by the court, on motion of any party filed within ten days after entry of judgment, 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. A motion to alter or amend a judgment may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

Article,¹¹ Haimish argued that it had paid WAMCO’s attorneys’ fees and was, therefore, in the process of exercising its right of redemption when the decree foreclosing that right was issued. Haimish alleged that it “always has been able, ready and willing to bring into court, tender, or give assurance that it is able, ready and willing to pay the full amount due under the redemption statute[,]” as evidenced by its payment of WAMCO’s attorneys’ fees. Haimish also alleged that WAMCO committed “constructive fraud,” because, Haimish argued, it had a duty to inform the court that it had received Haimish’s payment of attorneys’ fees, the abrogation of which prevented Haimish from completing the redemption.

WAMCO, in response, argued that it had complied with the statutory requirements to foreclose Haimish’s right of redemption, whereas Haimish, according to WAMCO, had failed to complete the redemption process before the Circuit Court issued its judgment. WAMCO also asserted that, in the proceedings to foreclose Haimish’s right of redemption, it was not obliged to inform the court that Haimish had paid its attorneys’

¹¹ Courts have limited authority to reopen a judgment foreclosing a delinquent taxpayer’s right of redemption under Section 14-845(a) of the Tax-Property Article, Maryland Code (1957, 2012 Repl. Vol.), which provides:

(a) *Reopening judgments generally.* — 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; however, no reopening of any judgment on the ground of constructive fraud in the conduct of the proceedings to foreclose shall be entertained by any court unless an application to reopen a judgment rendered is filed within 1 year from the date of the judgment.

fees.

Judge Sexton, in denying Haimish's motion, made the following factual findings:

- Haimish had contacted WAMCO's attorney regarding redeeming the property and that Haimish had paid WAMCO's attorneys' fees.
- WAMCO had informed the Cecil County Department of Finance that Haimish had paid its attorneys' fees and that it had extended the deadline that Haimish had, until February 15, 2019, to pay the delinquent taxes and redeem the property.
- Haimish had obtained pay-off information for its delinquent tax debt from Cecil County and had failed to remit payment prior to February 15, 2019.
- A decree foreclosing Haimish's right of redemption had been entered on February 27, 2019.
- Haimish had not filed any pleadings asserting its interests prior to the foreclosure of its right of redemption by the Circuit Court.
- Haimish had filed a motion to reconsider and vacate the decree on March 21, 2019.
- WAMCO had not "in any way interfered with the right or opportunity of Haimish to redeem," and WAMCO had no duty to inform the Circuit Court of Haimish's payment of attorney's fees.
- John C. Bays, attorney for WAMCO, had not violated any canon of ethics or rule of professional conduct.

Judge Sexton concluded that, under the statute, Haimish was not entitled to

additional time to redeem its property by virtue of its having paid WAMCO's attorneys' fees. Additionally, Judge Sexton determined that WAMCO's actions did not constitute constructive fraud.

Haimish timely appealed the denial of its motion to reconsider and vacate.

In the instant appeal, we are asked to determine whether Judge Sexton abused her discretion in denying Haimish's Motion for Reconsideration and declining to vacate the judgment foreclosing its right of redemption.

A Circuit Court judge has broad discretion to reconsider a decision under Rule 2-535, by which a judge may "revise or set aside [a] judgment within thirty days after its entry." *Southern Mgmt. Corp. v. Taha*, 378 Md. 461, 494 (2003). In reviewing a decision denying a motion under Rule 2-535, therefore, "the only issue before the appellate court is whether the trial court erred as a matter of law or abused its discretion[.]" *Canaj, Inc. v. Baker and Div. Phase III, LLC*, 391 Md. 374, 400-01 (2006). In general, "a trial court abuses its discretion when 'no reasonable person would take [its] view' or when its ruling is 'violative of fact and logic.'" *Impac Mortgage Holdings, Inc. v. Tim*, 245 Md. App. 84, 124 (2020) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295 312 (1997)) (alteration in original). "[A] trial court must exercise its discretion in accordance with correct legal standards." *LeJeune v Coin Acceptors, Inc.*, 381 Md. 288, 301 (2004).

Haimish first asserts that under *Steuart v Meyer*, 54 Md. 454 (1880), it was permitted to "tender" payment to the Circuit Court. The argument is specious, however,

even were the case to stand for that proposition, because Haimish did not pay or bring the “sums due for taxes” to the Circuit Court.

Haimish next argues that its statement, included in its Motion for Reconsideration, that it “has been and is ready, willing and able to pay all expenses and taxes required by statute[,]” was a “tender” of the taxes under the statute. Haimish relies on *Preske v. Carroll*, 178 Md. 543 (1940), in support of its assertion that such an “‘offer’ or ‘promise’ to pay the taxes, interest, costs of the proceedings and expenses of the tax sale” is tantamount to tender.

Preske, however, did not involve a tax sale, but concerned a sale, by public auction, of real property, which had been subject to a mortgage. The mortgagor, Preske, challenged the propriety of the sale before the Circuit Court for Howard County, alleging that the sale had failed to comport with notice requirements and that the auction had yielded an inadequate sale price for the property. The Circuit Court ratified the sale, and Preske appealed.

The Court of Appeals, on the issue of the price paid for the property, considered whether that price was sufficiently low as to “cast doubt or suspicion upon the fairness of the sale.” *Preske*, 178 Md. at 550. In concluding that the price obtained was fair, the Court noted that Preske had failed to present evidence that a higher price could be obtained for the property such that he could not be heard in equity:

[U]nder the maxim that ‘he who seeks equity must do equity,’ no exceptant to a sale is entitled to obtain the aid of a Court of Equity unless he offers to pay a higher price for the property, or at least gives assurance that some

other person would be likely to do so, even though there may be some irregularity in the conduct of the sale. In this case the appellant has given no assurance that he would bid on the property if sold again. He has made no offer to pay the costs of the proceedings or any expenses of the sale.

Id. at 550. How *Preske* could or would apply to support Haimish’s claims is inscrutable, because Haimish failed to observe the statutory mandate to pay the taxes on the property and any applicable fees and interest. Judge Sexton did not err when she found that Haimish had not paid the required sums.

Haimish’s next argument is that redemption is a two-step process, the first of which, it avers, is the payment of attorneys’ fees. According to Haimish, it should have been allowed additional time to perform what it asserts is the second step, i.e., payment of its tax debt. With respect to Haimish’s attempt to bifurcate the statute, we agree with Judge Sexton that the redemption process does not entail a bifurcated process and that all the requirements listed in Section 14-828(a) must be satisfied in order to forestall foreclosure of the right of redemption. Although Haimish complied with the statutory requirement to reimburse WAMCO’s attorney’s fees, it failed to satisfy the other requirements of the statute before the Circuit Court issued its decree foreclosing its right of redemption.

Haimish also alleges that WAMCO’s “fail[ure] to tell the Circuit Court . . . that WAMCO had accepted and retained Haimish’s payment of WAMCO’s attorney’s fees and costs or that Haimish stood able, ready and willing to pay the tax, interest, and penalties” was constructive fraud, because if it had, “it is believed [by Haimish] that the

Circuit Court would have permitted Haimish to complete the redemption[.]” Judge Sexton disagreed and concluded that WAMCO had not committed constructive fraud, because WAMCO’s attorney had not “interfered with the right or opportunity of Haimish to redeem.” We agree with Judge Sexton.

Constructive fraud is defined generally as “the breach of a legal or equitable duty.” *Seidel v. Panella*, 81 Md. App. 124, 131 (1989). In the context of tax sales, constructive fraud “would normally relate to notice and things of that nature that would hinder the delinquent taxpayer from exercising his right to redeem, i.e., pay the delinquent taxes.” *Canaj*, 391 Md. at 422.

In the present case, Haimish does not allege that the statutory notice requirements were violated. Haimish posits, however, a purchaser of property at a tax sale has the duty to inform the Circuit Court that it has communicated with the delinquent taxpayer regarding redemption. In support, Haimish points us to *Jannenga v. Johnson*, 243 Md. 1 (1966), in which the Court of Appeals affirmed the vacatur of a decree foreclosing a right of redemption in property located in Prince George’s County, based on the tax sale purchaser’s failure to provide notice of the proceedings to the property owner. *Jannenga*, 243 Md. at 5. In *Jannenga*, the Court of Appeals explained that a tax sale purchaser’s failure to provide requisite notice of foreclosure proceedings was a failure “to perform a legal duty.” *Id.* In the present case, Haimish was afforded the requisite notice but appears to be basing its allegation about a breach of legal duty by WAMCO on the fact that it had

paid WAMCO's attorneys' fees, without identifying any statutory or common law duty on the part of WAMCO to disclose that information to the Circuit Court.¹²

Lastly, Haimish suggests that WAMCO's attorney, John C. Bays, had a duty, under the Maryland Attorneys' Rules of Professional Conduct, to inform the Circuit Court that he had communicated with and received attorneys' fees from Haimish and, in support, cites Rule 19-303.3(d), which provides: "In an ex parte proceeding, an attorney shall inform the tribunal of all material facts known to the attorney which will enable the

¹² Haimish suggests that WAMCO had a duty to amend the complaint, by which proceedings to foreclose the right of redemption were initiated, because Haimish had made the attorneys' fee payment. Haimish, in support, cites Rule 14-502(b), which defines the contents of a complaint to foreclose the right of redemption in property, and provides:

(b) **Contents.** In an action to foreclose the right of redemption in property sold at a tax sale, the complaint, in addition to complying with Rules 2-303 through 2-305, shall set forth:

- (1) the fact of the issuance of the certificate of sale;
- (2) a description of the property in substantially the same form as the description appearing on the certificate of tax sale;
- (3) the fact that the property has not been redeemed by any party in interest; and
- (4) a description of the amount necessary for redemption, including the amount paid out at the tax sale.

Haimish, relying on the language in Rule 14-502(b)(3), argues that WAMCO had "a duty to amend its Complaint and advise the Court of the sequence of events leading up to the rush to judgment by WAMCO in obtaining a Decree foreclosing the right of redemption[.]"

Judge Sexton found that Haimish had never paid its tax bill. The property, therefore, as alleged in WAMCO's complaint, had not been redeemed by Haimish.

tribunal to make an informed decision, whether or not the facts are adverse.” In addition to the fact that the Rules of Professional Conduct “are not designed to be a basis for civil liability,” Rule 19-300.1(20), Judge Sexton found that Mr. Bays had not violated any of the Rules of Professional Conduct in this matter, a finding with which we concur.

In conclusion, we discern no error in Judge Sexton’s findings that Haimish had failed to redeem its property as a result of the failure to pay the amounts required under the statute and her conclusion that WAMCO’s actions did not constitute constructive fraud. Therefore, Judge Sexton did not abuse her discretion in denying the Motion for Reconsideration and to Vacate Decree Forfeiting Defendant’s Right of Redemption.

**JUDGMENT OF THE CIRCUIT COURT
FOR CECIL COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**