

Circuit Court for Prince George's County
Case No. CAE 17-29226

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3454

September Term, 2018

ALEXI ORTIZ

v.

ALFRED D. WALSH, JR.

Graeff,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 21, 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.

On June 26, 2018, the Circuit Court for Prince George’s County issued a Judgment Foreclosing Right of Redemption on a piece of property located at 1702 Hannon Street, Hyattsville, Maryland (“the Property”). The court awarded Fee Simple title to Alfred Walsh, appellee. On September 14, 2018, Alexi Ortiz, appellant, filed a Motion to Vacate Judgment Foreclosing Right of Redemption and Reopen Case, asserting that he was the owner of the Property and Mr. Walsh had failed to properly notify him of the action. The court denied Mr. Ortiz’s motion and ordered that the case remain closed.

On appeal, appellant presents two issues for this Court’s review, which essentially raise the following question:

Did the circuit court err in denying appellant’s motion to vacate?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On May 9, 2016, Mr. Walsh purchased a tax sale certificate for the Property at a public tax sale for \$824.04. The Property was described as “2004 Eai-x Trs 1,871.0000 Sq.Ft. & Imps. Riggs Hill Condo Assmt \$41,000 Lib 35950 F1 001 Unit 1 Bldg M and assessed to Ortiz Alexi E.” The Certificate of Tax Sale noted that the Property was subject to redemption, but after November 6, 2016, “a proceeding can be brought to foreclose all rights of redemption in the [P]roperty.” It further provided that the certificate would be void unless such a proceeding was brought within two years of May 9, 2016.

On October 16, 2017, Mr. Walsh filed a Complaint to Foreclose the Equity of Redemption for Non-Payment of Taxes.¹ He alleged that counsel for Mr. Walsh filed an affidavit stating that he mailed notice of the sale to Mr. Ortiz on July 12, 2017, and then again on August 22, 2017. He mailed the notice to 1700 Hannon Street, Unit 1, Hyattsville, Maryland, the address provided to the Maryland State Department of Assessment and Taxation (“SDAT”) as his mailing address.

On October 23, 2017, the court issued an Order of Publication “to secure the foreclosure of all rights of redemption from the tax sale” on the Property, ordering that

notice be given by the insertion of a copy of this Order in some newspaper having a general circulation in Prince George’s County once a week for three consecutive weeks, warning all persons interested in the [P]roperty to appear in this [c]ourt by the 26 day of December, 2017, and redeem the [P]roperty and answer the Complaint or thereafter a final judgement will be entered foreclosing all rights of redemption in the [P]roperty and vesting in [Mr. Walsh] a title to said property in Fee Simple[.]

The *Prince George’s Post* published the Order of Publication on November 2, 9, and 16, 2017.

Mr. Walsh also attempted to serve notice on Mr. Ortiz. The notice advised that, to redeem the Property or file an answer to the Complaint, it needed to be done by the latest of “(a) The expiration date of the period described in the summons, or (b) The date

¹ Mr. Walsh noted that he filed his complaint six months from the date of sale, but within the two years required by the Certificate of Tax Sale. He alleged that no party had attempted to redeem the Property in the six-month period.

specified in the Order of Publication, or (c) 33 days after the mailing out of said Order of Publication.”

The affidavit of service stated that, on December 19, 2017, “[s]ervice was accepted at 1700 Hannon Street, Unit 1 Hyattsville MD 20783 by Jessie Guerrero a co-occupant.” Mr. Walsh also attempted service on Mr. Ortiz via first class mail at the 1700 Hannon Street, Unit 1 address. The letter was returned to sender.

Mr. Walsh asked the Sheriff to post a copy of the notice on the Property “known as 1702 Hannon St., Unit 1.” On November 1, 2017, a Sergeant filed a return, which stated: “NON-EST 11-01-17/Incomplete Address.” On March 7, 2018, Mr. Walsh also sent notice by mail addressed to “Alexi E. Ortiz or Occupant” at 1702 Hannon Street, Unit 1. The envelope containing the notice was marked “Notice of Action to Foreclose.”

Mr. Walsh subsequently filed an Affidavit of Compliance, detailing the actions he had taken to serve Mr. Ortiz in compliance with Md. Rule 2-121(c). In that affidavit, Mr. Walsh stated that the Sherriff had posted notice in a conspicuous place on the Property on December 1, 2017.

On June 26, 2018, the court issued a Judgment Foreclosing Right of Redemption. It found that all known defendants were given notice in accordance with Md. Code (2016) § 14-839 of the Tax Property Article (“TP”), and no redemption had been made. Accordingly, the court entered judgment in favor of Mr. Walsh, foreclosing the right of redemption in the Property, ordering that Mr. Walsh be vested with an absolute and

indefeasible Fee Simple title to the Property and the Director of Finance execute a Deed to him.

On September 14, 2018, Mr. Ortiz filed a Motion to Vacate Judgment Foreclosing Right of Redemption and Reopen Case; and Request for Hearing. In his motion and attached affidavit, Mr. Ortiz alleged that the Property address was 1702 Hannon Street, T-2, not 1702 Hannon Street, Unit 1. He asserted that the address listed on the State of Maryland Land Instrument Intake Sheet recorded with the Deed was 1702 Hannon Street, T-2, he had never owned 1700 Hannon Street, Unit 1, and he had never asked to be served there.² Despite these documents, Mr. Walsh attempted service at the wrong address. Mr. Ortiz alleged that Jessie Guerrero was a person with no relation to him. Finally, he asserted that the service attempts failed to give him actual notice, and he asked that the court vacate the Judgment Foreclosing Rights of Redemption and reopen the case to be decided on the merits.

Mr. Ortiz’s tenant, Esvin O. Benavente Perez, also signed an affidavit. Mr. Perez attested that he had lived at 1702 Hannon Street, T-2, since May 1, 2016, he personally knew his landlord, Mr. Ortiz, he was never served with legal papers, there was no posting on the Property relating to this case, and he did not personally know “Jessie Guerro.”

Mr. Walsh filed an opposition to Mr. Ortiz’s motion to vacate. He asserted that the motion to vacate the judgment foreclosing rights of redemption should be denied for two reasons. First, he argued that Mr. Ortiz had failed to “satisfy the condition precedent of

² He also stated that his mailing address was in Rockville.

paying the outstanding taxes and expenses” on the Property. He argued that, pursuant to *Quillens v. Moore*, 399 Md. 97, 125 (2007), to seek to vacate a judgment foreclosing rights of redemption, the taxpayer must first pay to the collector or the certificate holder the total sum of taxes and other monies due. Second, he argued that notice sent to Unit 1 was the “correct address,” asserting that this was the address that Mr. Ortiz gave to the SDAT as his mailing address.

On January 3, 2019, the circuit court denied Mr. Ortiz’s Motion to Vacate Judgment Foreclosing Right of Redemption and Reopen Case; and Request for a Hearing. It stated that Mr. Ortiz did not “first pay to the Collector or the certificate holder the total sum of the taxes, interest, penalties and expenses of the sale that are due” pursuant to *Quillens*. It ordered that the case remain closed.

This appeal followed.

STANDARD OF REVIEW

In *Canaj, Inc. v. Baker and Division Phase III, LLC*, 391 Md. 374, 400–01 (2006), the Court of Appeals explained the proper standard of review:

Under the trial court’s general review power as provided by Rule 2–535 and C.J. § 6–408, when a party files a motion to set aside a judgment more than thirty days after the judgment is entered, the grounds for setting aside the judgment are generally limited to instances of fraud, mistake or irregularity. In reviewing the decision below, “the only issue before the appellate court is whether the trial court erred as a matter of law or abused its discretion in denying the motion.” *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475, 687 A.2d 681, 689, *cert. denied sub nom. Clemy P. v. Montgomery County Dep’t of Soc. Servs.*, 520 U.S. 1267, 117 S.Ct. 2439, 138 L.Ed.2d 199 (1997).

DISCUSSION

Denial of Motion to Vacate

Mr. Ortiz contends that the circuit court committed legal error when it denied his motion to vacate. He argues that the court’s reliance on *Quillens* is “misplaced,” asserting that the holding in *Quillens* was “narrower and more distinguishable.” Mr. Ortiz asserts that *Canaj*’s holding that payment of taxes owed is a condition precedent is “not absolute,” and his case is different because he attempted to pay the taxes, but he could not pay them because his rights had been foreclosed.

Mr. Walsh contends that the circuit court correctly relied on *Quillens*. He asserts that the circuit court did not abuse its discretion in denying the motion to vacate because Mr. Ortiz has not paid any funds.

In *PNC Bank, Nat’l Ass’n v. Braddock Props.*, 215 Md. App. 315, 322–23 (2013), this Court provided an overview of the procedures to be followed in a tax sale:

In Maryland, when an owner fails to pay *ad valorem* taxes levied upon real property, the taxing authority for the political subdivision within which the property is located must sell the property at auction. *See* TP § 14-808; *St. George Antiochian Orthodox Church v. Aggarwal*, 326 Md. 90, 91, 603 A.2d 484 (1992). After the sale, the owner of the property, and any other person having an equitable interest in the property, has the right to “redeem” title to the property by reimbursing the successful bidder (the “tax sale purchaser”) for the taxes and other expenses paid. TP § 14-827; *see Aggarwal*, 326 Md. at 91, 603 A.2d 484; *Voltolina*, 198 Md. App. at 598-99, 18 A.3d 944.

After a period of six months, the tax sale purchaser has the right to acquire fee simple title by filing a complaint in the circuit court to “foreclose all rights of redemption of the property....” TP § 14-833. This action not only gives the record owner and any other interest holders in the property an opportunity to raise procedural or other challenges to the taxes and the tax

sale, *see* TP § 14-842, but also serves as a means to give those persons one last opportunity to redeem the property. *See Stewart v. Wheatley*, 182 Md. 455, 457, 35 A.2d 104 (1943) (interpreting predecessor statute). The right to redeem is effective until the circuit court enters final judgment. TP § 14-827 and 833(b).

The ability of a purchaser to foreclose the right of redemption balances the interest between “(1) the due process and redemption rights of persons that own or have an interest in property sold at a tax sale; and (2) the public policy of providing marketable title to property that is sold at a tax sale through the foreclosure of the right of redemption.” *Kona Properties, LLC v. W.D.B. Corp., Inc.*, 224 Md. App. 517, 529 (2015) (quoting *Scheve v. Shudder, Inc.*, 328 Md. 363, 370–71 (1992)). For the circuit court to enter a final judgment pursuant to TP § 14-844, the following must occur:

(1) the certificate holder must file a complaint, conforming with § 14–835(a) within two years following the sale; (2) the certificate holder must attach the certificate of sale pursuant to § 14–835(b); (3) the certificate holder must attach an affidavit of title search (§ 14–838); and (4) the court must issue process and public notice under §§ 14–839 and 14–840, setting out the time after which the right of redemption will be foreclosed.

Id. at 530.

After the circuit court enters final judgment, a party generally has 30 days to ask the court to exercise revisory power over the judgment. Md. Rule 2-535(a). *Accord* Md. Code (2013), § 6-408 of the Courts and Judicial Proceedings Article (“CJP”). A court may, on motion of any party filed at any time, exercise revisory power in cases of “fraud, mistake or irregularity.” Md. Rule 2-535(b). *Accord* CJP § 6-408.

In *Quillens*, 399 Md. at 102, Quillens challenged the circuit court’s foreclosure on his right of redemption to several properties. The Court of Appeals, relying on *Canaj*, held

that “a property owner must tender all of the deficient real property taxes before he can challenge the validity of a tax sale.” *Id.* at 125. Because Quillens failed to tender all of the taxes, he could not challenge the foreclosure. *Id.*

The Court of Appeals explained its reasoning as follows: “If a delinquent taxpayer can find a way to overturn a tax sale without paying the delinquent taxes, the delinquent taxpayer will never redeem. It is for this reason that the general rule is that in order to challenge a tax sale, the payment of taxes in arrears is a condition precedent.” *Canaj*, 391 Md. 385 n.6. The Court stated:

By attacking the sale procedure in a post-judgment motion to vacate, instead of paying the taxes and charges which it would have been required to do in order to redeem prior to judgment, the taxpayer appears to be seeking to have the title of the property revert back to the delinquent taxpayer without having to ever redeem by paying the overdue and due taxes.

Id. at 387.

Here, Mr. Walsh filed his complaint with the certificate of sale and the affidavit of title search, all within the necessary time limits, and the court issued process and public notice. Although Mr. Ortiz contends that he never received notice, counsel for Mr. Ortiz acknowledged at oral argument that Mr. Walsh complied with the statute.

Because Mr. Ortiz did not answer by December 26, 2017, as required by the order, the court foreclosed his right of redemption on June 26, 2018. Mr. Ortiz did not file his motion to vacate until September 14, 2018, well beyond 30 days after the court’s judgment as required by Md. Rule 2-535.

When Mr. Ortiz filed his motion to vacate, he stated that he was ready to pay the back taxes, but he never paid them. Under *Quillens* and *Canaj*, paying the taxes is a condition precedent to overturning a tax sale. *Quillens*, 399 Md. at 124–25; *Canaj*, 391 Md. at 396. Because Mr. Ortiz did not satisfy this condition precedent, the circuit court properly denied the motion to vacate the judgment foreclosing rights of redemption.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**