

IN THE SUPREME COURT OF MISSOURI

Appeal Number SC92169

CATHERINE NDEGWA et al.,

Respondents-Plaintiffs,

v.

KSSO LLC, et al.,

Appellant-Defendants.

On Appeal from the Circuit Court of St. Louis County, Missouri,
The Honorable Robert S. Cohen, Circuit Judge

APPELLANT'S SUBSTITUTE BRIEF

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PERIOD WHEN THEY HAVE AN ABSOLUTE RIGHT OF REDEMPTION THAT CANNOT BE DEFEATED BY THE TAX SALE PURCHASER, AND THAT THE DELINQUENT TAXPAYER AND OTHER INTERESTED PARTIES CONTINUE TO HAVE THE RIGHT TO REDEEM THEIR INTEREST FROM THE TAX SALE AFTER THAT ABSOLUTE PERIOD CURRENTLY SPECIFIED IN SUBSECTION 1 OF SECTION 140.340, RSMO, UNTIL THE TAX SALE PURCHASER IS AUTHORIZED TO ACQUIRE A COLLECTOR'S DEED TO THE SUBJECT PROPERTY; PROVIDED, HOWEVER, THAT IF NO COLLECTOR'S DEED IS RECORDED WITHIN THE PERIOD SPECIFIED IN WHAT IS NOW CODIFIED IN SECTION 140.410, RSMO (CURRENTLY TWO YEARS FROM THE TAX SALE), THE TAX SALE CERTIFICATE EXPIRES AND THE TAX SALE PURCHASER LOSES ALL INTEREST IN THE SUBJECT PROPERTY..... 18

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RSMO, WAS DRAFTED TO INTEGRATE WITH RELEVANT CASE LAW, INCLUDING, WITHOUT LIMITATION, PRECEDENT DECIDED BY THIS COURT, ESTABLISHING THE *HOBSON* REDEMPTION PERIOD, AS THERE IS NO FIXED ONE-YEAR REDEMPTION PERIOD ENDING ON AUGUST 27, 2008; (2) THERE IS NO UNIVERSALLY APPLICABLE REDEMPTION PERIOD ALLOWING TAX SALE PURCHASERS TO PROVIDE ADVANCE NOTICE OF THE EXPIRATION OF THE REDEMPTION RIGHTS OF DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES, AS VARIOUS STATUTES PROVIDE FOR SPECIAL RIGHTS OF REDEMPTION BASED UPON INDIVIDUALIZED FACTS AND CIRCUMSTANCES SPECIFIC TO THE DELINQUENT TAXPAYER OR OTHER INTERESTED PARTY THAT VARY FROM THE *HOBSON* REDEMPTION PERIOD DEPENDING UPON FACTS AND CIRCUMSTANCES THAT THE TAX SALE PURCHASER CANNOT KNOW OR WOULD KNOW ONLY WITH GREAT DIFFICULTY AT THE TIME THE SECTION 140.405 NOTICE IS SENT, INCLUDING, WITHOUT LIMITATION, SECTION 140.350, RSMO (APPLICABLE TO INFANTS, INCAPACITATED PERSONS AND DISABLED PERSONS AS DEFINED IN CHAPTER 475, RSMO), 11 U.S.C. SECTION 108(B) (APPLICABLE TO DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES FILING FOR PROTECTION UNDER THE BANKRUPTCY CODE BEFORE OR AFTER THE SECTION 140.405 NOTICE IS SENT), 18 U.S.C. § 3613 (APPLICABLE TO THE ENFORCEMENT OF CERTAIN FINES BY THE UNITED

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JURISDICTIONAL STATEMENT

This is a civil appeal from an Order and Judgment, wherein the trial court granted Respondents-Plaintiffs' Motion for Partial Summary Judgment to quiet the title to Lot 253 of Westhaven Plat Eight and entered Judgment in favor of Respondents-Plaintiffs and against Appellant-Defendant KSSO LLC by setting aside a certain Collector's Deed and quieting title to certain real property in Respondent-Plaintiff Catherine W. Ndegwa, as Trustee of the Mrema Family Revocable Trust dated February 15, 2008, subject to such secured interests as had been granted in said real estate, among other things. LF at 976-982.

The Order and Judgment was certified by the trial court in accordance with Missouri Supreme Court Rule 74.01(b) as being final for purposes of appeal, as the trial court found no just reason for delay with respect to the matters raised in the quiet title count of the First Amended Petition. LF at 982.

In *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011), the Missouri Court of Appeals, Eastern District, affirmed the trial court's judgment invalidating the Collector's Deed to Appellant-Defendant KSSO LLC. On or about December 5, 2011, Appellant-Defendant KSSO LLC filed its Application for Transfer under Missouri Supreme Court Rule 83.04, and on or about January 31, 2012, such Application for Transfer was sustained by this Court. This Court has jurisdiction over this matter under Mo. Const. art. V, § 10.

STATEMENT OF FACTS

Respondent-Plaintiff Catherine Ndewga and John E.K. Mrema are husband and wife and reside at 119 Oakside Lane, in St. Louis County, Missouri. LF at 281, 294, 366.

On November 17, 2008, Respondent-Plaintiff Catherine Ndewga and Anale Mrema were appointed co-guardians of John E.K. Mrema by the Probate Division of the Circuit Court of St. Louis County, Missouri. LF at 281, 294, 366. The Judgment of the Probate Division of the St. Louis County Circuit Court found that John E.K. Mrema is an incapacitated and disabled person by reason of dementia-Alzheimer's disease. LF at 370, 372-373.

Respondent-Plaintiff Catherine Ndewga and John E.K. Mrema were the original Trustees of the Mrema Family Revocable Trust dated February 15, 2008. LF at 281, 294, 367.

Appellant KSSO, LLC is a Missouri limited liability company with its principal office located in St. Louis County, Missouri. LF at 281, 366.

By General Warranty Deed dated on or about August 7, 1997 and recorded on or about August 19, 1997, in Book 11262 Page 0272 of the St. Louis County Records, Respondent-Plaintiff Catherine Ndewga and John E.K. Mrema, husband and wife, purchased real estate located in St. Louis County, Missouri, commonly known as 10960 Warwickhall, Bridgeton, Missouri 63044, and more particularly described as:

Lot 253 of Westhaven Plat Eight, according to the plat thereof recorded in Plat Book 108 Page 42 of the St. Louis County Records.

LF at 282-283, 295, 366.

Lot 253 of Westhaven Plat Eight is improved with a multi-family dwelling containing four rental units. LF at 283, 295, 366.

Respondent-Plaintiff Catherine W. Ndegwa and John E.K. Mrema obtained a loan of \$98,000.00 from IndyMac Bank. LF at 283, 295.

The loan from IndyMac Bank is evidenced by a Promissory Note dated January 22, 2004. LF at 283, 295.

The Note is secured by a Deed of Trust dated on or about January 22, 2004 and recorded on or about January 29, 2004 in Book 15610 Page 3495 of the St. Louis County Records, naming Respondent-Plaintiff Catherine W. Ndegwa and John E.K. Mrema as Borrowers, Integrity Land Title as Trustee, and IndyMac Bank as Lender (hereinafter sometimes referred to as the "IndyMac Deed of Trust"). LF at 283, 295, 301A, 302-321, 367, 563.

The IndyMac Deed of Trust does not describe Lot 253 of Westhaven Plat Eight, but in fact describes the real estate affected by that instrument as being Lot 252 of Westhaven Plat Eight. LF at 301A, 302-321, 367, 452, 463. The IndyMac Deed of Trust contains a street address of 10960 Warwickhall Drive, Bridgeton, Missouri 63044. LF at 302-321, 630.

One West Bank succeeded to the interests of IndyMac Bank. LF at 283, 366.

On or about August 27, 2007, a tax sale certificate of purchase encumbering Lot 253 of Westhaven Plat Eight was offered for sale by John Friganza, the Collector of Revenue of St. Louis County, for delinquent real estate taxes owed for the years 2004, 2005 and 2006. LF at 283-284, 459, 466.

The August 27, 2007 offering was a first offering under the Jones-Munger Act. LF at 284, 367.

Appellant KSSO LLC was the highest and best bidder at the August 27, 2007 sale and received a Tax Sale Certificate of Purchase encumbering Lot 253 of Westhaven Plat Eight. LF at 284, 366, 448, 459, 466, 628, 645.

The Tax Sale Certificate of Purchase contains a legal description of Lot 253 of Westhaven Plat Eight. LF at 451, 461, 466, 628, 645.

Appellant KSSO, LLC paid the sum of \$26,100.00 for the Tax Sale Certificate of Purchase, representing the sum of \$9,242.00 for delinquent taxes, interest and penalties, and the sum of \$16,858.00 as surplus. LF at 284, 366.

By Quit Claim Deed dated on or about February 20, 2008 and recorded on or about February 20, 2008 in Book 17796 Page 5783 of the St. Louis County Records, both Lots 252 and 253 of West Haven Plat Eight were conveyed by Respondent-Plaintiff Catherine W. Ndegwa and John E.K. Mrema, husband and wife, to John E. K. Mrema and Catherine W.

Ndegwa, as Trustees of the Mremra Family Revocable Trust dated February 15, 2008. LF at 285, 296, 301A-301, 322-326, 366, 453, 463, 563, 645.

On March 4, 2008, the records of the St. Louis County Department of Revenue were changed to reflect a new mailing address of 119 Oakside Lane, St. Louis, Missouri 63122 for the tax bills for Lot 253 of Westhaven Plat Eight. LF at 454, 478-479, 630-631. This change of address was processed shortly after the Quit Claim Deed was recorded. LF at 454, 478-479. Prior to March 4, 2008, there may be conflicting evidence that the St. Louis County Department of Revenue records showed a mailing address for tax bills for Lot 253 of Westhaven Plat Eight to be 10968 Warwickhall Drive, Bridgeton, Missouri 63044, and tax bills through 2007 were mailed to that address. LF at 453-454, 478-479, 630.

Appellant KSSO LLC notified Respondent-Plaintiff Catherine Ndewga and John E.K. Mrema of their right to redeem by letters dated September 15, 2008 (hereinafter sometimes referred to as the "Notice Letters"). LF at 284-285, 287-292, 366.

Appellant KSSO LLC caused a title examination of Lot 253 of Westhaven Plat Eight to be performed by Title Professionals LLC with an effective date of May 1, 2008, sometimes referred to herein as the Original May 1, 2008 Title Examination. LF at 451, 461-462, 467-469, 630, 644-647.

The Original May 1, 2008 Title Examination of Lot 253 of Westhaven Plat Eight does not show the IndyMac Deed of Trust as an encumbrance against Lot 253 of Westhaven Plat Eight. LF at 451, 453, 461-462, 463-464, 466-469.

Title Professionals LLC revised the Original May 1, 2008 Title Examination, and the Revised May 1, 2008 Title Examination does not show the IndyMac Deed of Trust as an encumbrance against Lot 253 of Westhaven Plat Eight. LF at 452, 453, 462, 463-464, 470-472, 630, 646-649.

Title Professionals LLC updated its title examination of Lot 253 of Westhaven Plat Eight effective September 4, 2008, and the Updated September 4, 2008 Title Examination does not show the IndyMac Deed of Trust as an encumbrance against Lot 253 of Westhaven Plat Eight. LF at 452, 453, 463-464, 473-475, 630, 646-649.

The Notice Letters dated September 15, 2008 stated in part:

As a person or party that has, or may claim some interest in the property, you are advised, that the Missouri ... [statutes] afford you the opportunity to redeem and / or otherwise protect your interest. Be further advised, that this opportunity will be available for a period of not less than 90 days from the date of this letter.

The right of redemption continues to be available until that deed is recorded. ***, it is possible that the period of redemption may exceed the 90 day period described in this notice. This indication is made to you to describe the current handling, and is

not brought to your attention as an inducement for you to expect an extended period.

If you fail to redeem this property within the redemption period, you will be forever barred from redeeming the property.

LF at 287-292, 449, 628-629, 645-646. Enclosed with these letters was a copy of § 140.405, RSMo. LF at 287-292, 629, 645-646.

Appellant KSSO LLC did not notify IndyMac Bank of any right to redeem any interest in Lot 253 of Westhaven Plat Eight. LF at 285, 366.

By Collector's Deed dated on or about January 9, 2009 and recorded on or about February 4, 2009 in Book 18202 Page 1341 of the St. Louis County Records, John Friganza, Collector of Revenue of St. Louis County, Missouri, conveyed Lot 253 of Westhaven Plat Eight to Appellant KSSO LLC. LF at 285, 301, 327-330, 366, 450, 461, 563, 628, 645.

Approximately 116 days elapsed from the date of the Notice Letters dated September 15, 2008 to the date the Collector's Deed was issued on January 9, 2009. LF at 450, 461, 628, 645.

By letter dated March 19, 2009 addressed to St. Louis County Collector of Taxes from Janice Metzger, IndyMac Bank/Tax Department, Ms. Metzger stated that IndyMac Bank provided St. Louis County with an incorrect legal description for the property, which in turn resulted in the assignment of an incorrect parcel identification number or locator number for

the tax payments made for 2004, 2005, and 2006 for the real estate with a street address of 10960 Warwick Hall Drive, Bridgeton, Missouri. LF at 506.

Procedural Background

The amended Petition filed by Plaintiffs contains eleven counts. LF at 88-176. Count I of the amended Petition is a declaratory judgment action to declare § 140.170, RSMo, to be facially unconstitutional in purported violation of the Due Process Clauses of the Missouri and United States Constitutions. LF at 96-97. Count II of the amended Petition is a declaratory judgment action to declare § 140.170, RSMo, to be unconstitutional under the Due Process Clauses of the Missouri and United States Constitutions as applied in this matter. LF at 97-98. Count III of the amended Petition is an action to quiet the title to Lot 253 of Westhaven Plat Eight. LF at 98-102. Count IV of the amended Petition is an action to quiet the title to Lot 252 of Westhaven Plat Eight. LF at 102-104. Count V of the amended Petition is purportedly a second quiet title action concerning Lot 253 of Westhaven Plat Eight. LF at 104-105. Count VI of the amended Petition is an action for a permanent injunction and preliminary injunction. LF at 105-109. Count VII of the amended Petition is an action for ejectment to obtain possession of Lot 253 of Westhaven Plat Eight. LF at 109-110. Count VIII of the amended Petition is an action for tortious interference with contracts. LF at 110-111. Count IX is an action for estoppel. LF at 111-114. Count X of said Petition is an action for negligence directed against IndyMac Bank. LF at 26-27. Count XI of the

amended Petition is an action for breach of fiduciary duty directed against IndyMac Bank. LF at 29.

Appellant filed its Answer and Defenses to Plaintiff's First Amended Petition and Counterclaims and Cross-claims. LF at 188-208. Of relevance to this appeal are the following: (1) Appellant's Fifth Defense, which alleges that the IndyMac Deed of Trust describes Lot 252 of Westhaven Plat Eight, not Lot 253 of Westhaven Plat Eight, and that Appellant had no obligation to provide any notice to the holder of the IndyMac Deed of Trust. L.F. at 196-197. (2) Appellant's Sixth Defense, wherein it is alleged that relevant case law has interpreted the Jones-Munger Act, Chapter 140, RSMo, as providing parties interested in real estate sold at a first offering delinquent tax sale a minimum redemption period of one year under § 140.340.1, RSMo, and a continuing right to redeem thereafter until a collector's deed is authorized to be issued or the tax sale certificate expires under § 140.410, RSMo, and that Appellant was under no obligation to inform interested parties that they have a fixed one year right of redemption under § 140.405, RSMo. LF at 197-198.

Appellant's Counterclaims and Cross-claims include three counts. LF at 200-208. Count I of the Counterclaims and Cross-claims is an action to confirm the Collector's Deed to Appellant under § 140.330, RSMo, an action to quiet the title to Lot 253 of Westhaven Plat Eight under §§ 527.150-527.250, RSMo, and Missouri Supreme Court Rule 93.01, and an action for a declaratory judgment to declare the rights of the parties in Lot 253 of Westhaven Plat Eight under §§ 527.010 to 527.130, RSMo, and Missouri Supreme Court

Rule 87. LF at 200-205. Count II of the Counterclaims and Cross-claims is an action in ejectment under § 140.580, RSMo, Chapter 524, RSMo, and Missouri Supreme Court Rule 89. LF at 204-205. Count III of the Counterclaims and Cross-claims is a Conditional Supplemental Counterclaim for Equitable Recoupment to recover certain expenditures if the Collector's Deed is invalidated. LF at 205-208.

St. Louis County and John Friganza, Collector of Revenue, filed a First Amended Answer to Plaintiff's First Amended Petition. LF at 633-644.

Respondent-Plaintiff filed an Answer, Defenses and Reply to Appellant's Counterclaims alleging that Catherine Ndegwa appears before the Court in her individual capacity and in her capacity as Co-Trustee of the Mrema Family Revocable Trust dated February 15, 2008 and in her capacity as the Co-Guardian and Co-conservator of John E.K. Mrema in Estate No. 08SL-PR0220 in the Probate Division of the Circuit Court of St. Louis County, Missouri. LF at 212-216. Respondent-Plaintiff filed an Amendment by Interlineation to the First Amended Petition to reflect the foregoing. LF at 267.

OneWest Bank filed its Answer to Plaintiff's First Amended Petition. LF at 218-241.

Plaintiffs-Respondent filed her Motion for Partial Summary Judgment as to Count III of Plaintiff's First Amended Petition. LF at 269-296.

Appellant filed its Motion for Partial Summary Judgment as to Count I of Appellant's Counterclaims and Cross-claims. LF at 297-337.

The Court entered its Order and Judgment granting Respondent-Plaintiff's Motion for Partial Summary Judgment as to Count III of Plaintiff's First Amended Petition and denying Appellant's Motion for Partial Summary Judgment as to Count I of Appellant's Counterclaims and Cross-claims. LF at 976-982.

Appellant filed a timely Notice of Appeal. LF at 983-995.

POINTS RELIED ON

I.

THE TRIAL COURT ERRED IN GRANTING RESPONDENTS-PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNT III OF THEIR FIRST AMENDED PETITION ON THE GROUND THAT THE SECTION 140.405 NOTICE LETTERS DATED SEPTEMBER 15, 2008 SENT BY APPELLANT WERE NOT MAILED AT LEAST 90 DAYS PRIOR TO THE EXPIRATION OF ONE YEAR FROM THE TAX SALE ON AUGUST 27, 2007, AND WERE PURPORTEDLY DEFECTIVE AND PURPORTEDLY FAILED TO COMPLY WITH SECTION 140.405, RSMO, BECAUSE RELEVANT CASE LAW, INCLUDING, WITHOUT LIMITATION, PRECEDENT DECIDED BY THIS COURT, INTERPRETING WHAT IS NOW CODIFIED IN SECTIONS 140.340, 140.360, 140.410, AND 140.420, RSMO, HAS HELD THAT THE TIME PERIOD SPECIFIED IN WHAT IS NOW CODIFIED IN SUBSECTION 1 OF SECTION 140.340, RSMO (CURRENTLY ONE YEAR FROM THE TAX SALE), GRANTS DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES A TIME PERIOD WHEN THEY HAVE AN ABSOLUTE RIGHT OF REDEMPTION THAT CANNOT BE DEFEATED BY THE TAX SALE PURCHASER, AND THAT THE DELINQUENT TAXPAYER AND OTHER INTERESTED PARTIES CONTINUE TO HAVE THE RIGHT TO REDEEM THEIR INTEREST FROM THE TAX SALE AFTER THAT ABSOLUTE

PERIOD CURRENTLY SPECIFIED IN SUBSECTION 1 OF SECTION 140.340, RSMO, UNTIL THE TAX SALE PURCHASER IS AUTHORIZED TO ACQUIRE A COLLECTOR'S DEED TO THE SUBJECT PROPERTY; PROVIDED, HOWEVER, THAT IF NO COLLECTOR'S DEED IS RECORDED WITHIN THE PERIOD SPECIFIED IN WHAT IS NOW CODIFIED IN SECTION 140.410, RSMO (CURRENTLY TWO YEARS FROM THE TAX SALE), THE TAX SALE CERTIFICATE EXPIRES AND THE TAX SALE PURCHASER LOSES ALL INTEREST IN THE SUBJECT PROPERTY.

Hobson v. Elmer, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942);

United Asset Mgmt. Trust Co. v. Clark, 332 S.W.3d 159 (Mo. App., W.D. 2010); and

Section 140.520, RSMo.

II.

THE TRIAL COURT ERRED IN GRANTING RESPONDENTS-PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNT III OF THEIR AMENDED PETITION ON THE GROUND THAT THE SECTION 140.405 NOTICES DATED SEPTEMBER 15, 2008 SENT BY APPELLANT IN THIS CASE PURPORTEDLY FAILED TO CORRECTLY INFORM ADDRESSEES THAT THE REDEMPTION PERIOD ENDED ON OR ABOUT AUGUST 27, 2008 AND PURPORTEDLY FAILED TO COMPLY WITH SECTION 140.405, RSMO, BECAUSE: (1) SECTION 140.405, RSMO, WAS DRAFTED TO INTEGRATE WITH RELEVANT CASE LAW, INCLUDING, WITHOUT LIMITATION, PRECEDENT DECIDED BY THIS COURT, ESTABLISHING THE *HOBSON* REDEMPTION PERIOD, AS THERE IS NO FIXED ONE-YEAR REDEMPTION PERIOD ENDING ON AUGUST 27, 2008; (2) THERE IS NO UNIVERSALLY APPLICABLE REDEMPTION PERIOD ALLOWING TAX SALE PURCHASERS TO PROVIDE ADVANCE NOTICE OF THE EXPIRATION OF THE REDEMPTION RIGHTS OF DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES, AS VARIOUS STATUTES PROVIDE FOR SPECIAL RIGHTS OF REDEMPTION BASED UPON INDIVIDUALIZED FACTS AND CIRCUMSTANCES SPECIFIC TO THE DELINQUENT TAXPAYER OR OTHER INTERESTED PARTY THAT VARY FROM THE *HOBSON* REDEMPTION PERIOD DEPENDING UPON FACTS AND

CIRCUMSTANCES THAT THE TAX SALE PURCHASER CANNOT KNOW OR WOULD KNOW ONLY WITH GREAT DIFFICULTY AT THE TIME THE SECTION 140.405 NOTICE IS SENT, INCLUDING, WITHOUT LIMITATION, SECTION 140.350, RSMO (APPLICABLE TO INFANTS, INCAPACITATED PERSONS AND DISABLED PERSONS AS DEFINED IN CHAPTER 475, RSMO), 11 U.S.C. SECTION 108(B) (APPLICABLE TO DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES FILING FOR PROTECTION UNDER THE BANKRUPTCY CODE BEFORE OR AFTER THE SECTION 140.405 NOTICE IS SENT), 18 U.S.C. § 3613 (APPLICABLE TO THE ENFORCEMENT OF CERTAIN FINES BY THE UNITED STATES), AND 26 U.S.C. SECTION 7425 (APPLICABLE TO THE INTERNAL REVENUE SERVICE); (3) TAX SALE PURCHASERS CANNOT GIVE ADVANCE NOTICE OF THE TIME WHEN THEY MAY BE AUTHORIZED TO ACQUIRE A COLLECTOR'S DEED, AS THE DATE WHEN ALL LAWFUL REQUIREMENTS HAVE BEEN SATISFIED AUTHORIZING THE TAX SALE PURCHASER TO ACQUIRE A COLLECTOR'S DEED CANNOT BE KNOWN IN ADVANCE; (4) NEITHER SECTION 140.405, RSMO, NOR CONSTITUTIONAL PRINCIPLES OF DUE PROCESS REQUIRE A TAX SALE PURCHASER TO PROVIDE ADVANCE NOTICE OF THE TIME LIMITS APPLICABLE FOR REDEMPTION, THE SPECIFIC PROCEDURES THAT MUST BE FOLLOWED, OR ANY OTHER DETAILS ATTACHING TO THE RIGHT OF

REDEMPTION FROM THE TAX SALE; AND (5) THE NOTICE LETTERS DATED SEPTEMBER 15, 2008, INFORMED THE DELINQUENT TAXPAYER AND OTHER INTERESTED PARTIES OF THEIR RIGHT TO REDEEM, WHICH IS ALL THAT IS REQUIRED BY SECTION 140.405, RSMO.

Hobson v. Elmer, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942)

United Asset Mgmt. Trust Co. v. Clark, 332 S.W.3d 159 (Mo. App., W.D. 2010); and

Boston v. Williamson, 807 S.W.2d 216 (Mo. App., W.D. 1991).

III.

THE TRIAL COURT ERRED IN GRANTING RESPONDENTS-PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNT III OF THE AMENDED PETITION ON THE GROUND THAT APPELLANT FAILED TO PROVIDE INDYMAC BANK WITH NOTICE IN COMPLIANCE WITH SECTION 140.405, RSMO, BECAUSE INDYMAC BANK WAS THE NAMED BENEFICIARY UNDER A PUBLICLY RECORDED DEED OF TRUST AFFECTING LOT 252 OF WESTHAVEN PLAT EIGHT AND THE REAL ESTATE SOLD AT TAX SALE WAS LOT 253 OF WESTHAVEN PLAT EIGHT; THUS, INDYMAC BANK HAD NO PUBLICLY RECORDED INTEREST IN THE REAL ESTATE SOLD AT TAX SALE AND WAS NOT ENTITLED TO NOTICE UNDER SECTION 140.405, RSMO.

Section 140.405, RSMo;

Section 59.005(6), RSMo; and

Section 59.330, RSMo.

ARGUMENT

I.

THE TRIAL COURT ERRED IN GRANTING RESPONDENTS-PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNT III OF THEIR FIRST AMENDED PETITION ON THE GROUND THAT THE SECTION 140.405 NOTICE LETTERS DATED SEPTEMBER 15, 2008 SENT BY APPELLANT WERE NOT MAILED AT LEAST 90 DAYS PRIOR TO THE EXPIRATION OF ONE YEAR FROM THE TAX SALE ON AUGUST 27, 2007, AND WERE PURPORTEDLY DEFECTIVE AND PURPORTEDLY FAILED TO COMPLY WITH SECTION 140.405, RSMO, BECAUSE RELEVANT CASE LAW, INCLUDING, WITHOUT LIMITATION, PRECEDENT DECIDED BY THIS COURT, INTERPRETING WHAT IS NOW CODIFIED IN SECTIONS 140.340, 140.360, 140.410, AND 140.420, RSMO, HAS HELD THAT THE TIME PERIOD SPECIFIED IN WHAT IS NOW CODIFIED IN SUBSECTION 1 OF SECTION 140.340, RSMO (CURRENTLY ONE YEAR FROM THE TAX SALE), GRANTS DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES A TIME PERIOD WHEN THEY HAVE AN ABSOLUTE RIGHT OF REDEMPTION THAT CANNOT BE DEFEATED BY THE TAX SALE PURCHASER, AND THAT THE DELINQUENT TAXPAYER AND OTHER INTERESTED PARTIES CONTINUE TO HAVE THE RIGHT TO REDEEM THEIR INTEREST FROM THE TAX SALE AFTER THAT ABSOLUTE

PERIOD CURRENTLY SPECIFIED IN SUBSECTION 1 OF SECTION 140.340, RSMO, UNTIL THE TAX SALE PURCHASER IS AUTHORIZED TO ACQUIRE A COLLECTOR'S DEED TO THE SUBJECT PROPERTY; PROVIDED, HOWEVER, THAT IF NO COLLECTOR'S DEED IS RECORDED WITHIN THE PERIOD SPECIFIED IN WHAT IS NOW CODIFIED IN SECTION 140.410, RSMO (CURRENTLY TWO YEARS FROM THE TAX SALE), THE TAX SALE CERTIFICATE EXPIRES AND THE TAX SALE PURCHASER LOSES ALL INTEREST IN THE SUBJECT PROPERTY.

Standard of Judicial Review

The standard of judicial review of the summary judgment considered in this appeal is stated in *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). This case is reviewed *de novo*, with the record reviewed in the light most favorable to Appellant. No deference is given to the trial court's summary judgment.

Argument

In part, the trial court invalidated the Collector's Deed to Appellant based upon the statutory construction of certain provisions of the Jones-Munger Act, Chapter 140, RSMo, particularly §§ 140.405 and 140.340, RSMo.

Section 140.420, RSMo, provides that collector's deeds issued under the provisions of the Jones-Munger Law, Chapter 140, RSMo, "shall vest in the grantee an absolute estate in

fee simple, subject, however, to [certain encumbrances not relevant here]”. *But see Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 468 (Mo. App., E.D. 2009) (finding that a delinquent tax payer was still the owner of record after the issuance and recordation of a collector’s deed to a tax sale purchaser).

Section 140.460, RSMo, provides that collector’s deeds:

shall be prima facie evidence that the property conveyed was subject to taxation at the time assessed, that the taxes were delinquent and unpaid at the time of sale, **of the regularity of the sale of the premises described in the deed, and of the regularity of all prior proceedings**, that said land or lot had not been redeemed and that the period therefore had elapsed, and prima facie evidence of a good and valid title in fee simple in the grantee of said deed.

(Emphasis added.)

Mitchell v. Atherton, 563 S.W.3d 13, 17-18 (Mo. Banc 1978) and *Stadium West Properties v. Johnson*, 133 S.W.3d 128, 136 (Mo. App., W.D. 2004) have interpreted § 140.460, RSMo, to mean that a collector’s deed is *prima facie* evidence of the regularity of notice in compliance with the law, because notice and sale would be “prior proceedings” under § 140.460, RSMo. Relevant case law places the burden upon those who wish to overcome the *prima facie* evidence of regularity and validity presented by a collector’s deed

to offer evidence at variance with the presumptive fee simple absolute title conveyed by the Collector's Deed to Appellant. *Stadium West Properties v. Johnson*, 133 S.W.3d 128, 136 (Mo. App., W.D. 2004).¹

Section 140.520, RSMo, provides, in part:

1 An action to set aside a deed is an extraordinary proceeding in equity requiring evidence to support the cancellation of the deed that is clear, cogent and convincing. *See, e.g., Jolly v. Clarkson*, 157 S.W.3d 290, 292 (Mo. App., S.D. 2005); *Robertson v. Robertson*, 15 S.W.3d 407, 411 (Mo. App., S.D. 2000); *Thurmon v. Ludy*, 914 S.W.2d 32, 34 (Mo. App., E.D. 1996); *Estate of Oden v. Oden*, 905 S.W.2d 914, 918-919 (Mo. App., E.D. 1995) (“An action to set aside a deed is a matter of equitable cognizance. Myriad cases hold that relief will be granted only on the basis of “clear and convincing” evidence.”); and *Queathem v. Queathem*, 712 S.W.2d 703, 706 (Mo. App., E.D. 1986). The foregoing cases state the common law and do not directly address the burden of proof needed to set aside a foreclosure deed protected by statutory presumptions of validity under §§ 140.460 or 443.380, RSMo. If “clear, cogent and convincing” evidence is needed to set aside an ordinary deed, then no lesser burden of proof should apply to this Collector's Deed. Respondents-Plaintiffs should have the burden of producing evidence that is clear, cogent and convincing in order to support the cancellation of the Collector's Deed to Appellant.

No ... **mere irregularity** of any kind in any of the proceedings, shall invalidate any such proceeding, or the title conveyed by the tax deed; nor shall **any failure of any officer or officers to perform the duties assigned him or them, on the day or within the time specified**, work any invalidation of any such proceedings, or of such deed, **Acts of officers de facto shall be as valid as if they were officers de jure**,

(Emphasis added.) *State ex rel. Howard v. Timbrook's Estate*, 240, Mo. 226, 144 S.W. 843, 846-847 (1912), construed § 11521, RSMo 1909, a predecessor of § 140.520, RSMo, as repealing the common law rule of strict construction of tax sale statutes and replacing that common law rule with a more liberal statutory rule of construction whereby technical objections, or “mere irregularities”, are insufficient to invalidate tax sale proceedings. In *Scherleth v. Hardy*, 280 S.W.3d 47 (Mo. banc 2009) this Court found tax sale purchasers providing notice under § 140.405, RSMo, to be state actors for constitutional Due Process purposes. Appellant was acting as a *de facto* officer under § 140.520, RSMo, in providing notice under § 140.405, RSMo.

“Appellate courts interpret statutes in such a manner as to ‘give effect to legislative intent as reflected in the plain language of the statute.’” *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159 (Mo. App., W.D. 2010) (*quoting Keylien Corp. v. Johnson*, 284 S.W.3d 606, 609 (Mo. App. E.D. 2009)). Statutes that are seemingly in conflict are not read

in isolation but should be harmonized, if possible, so that they stand together. *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 609-610 (Mo. App., E.D. 2009); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 167 (Mo. App., W.D. 2010). In ascertaining legislative purpose, it is appropriate to consider the legislative history of the statutes being construed. *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 167 (Mo. App., W.D. 2010).

Hobson v. Elmer, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942) construed some of the original provisions of the Jones-Munger Act, Chapter 140, RSMo, enacted in 1933 that are now codified in §§ 140.340, 140.360, 140.410, and 140.420, RSMo. Under the original enactment of the Jones-Munger Act, the annual delinquent tax auctions occurred in November of each year instead of August of each year under § 140.150.1, RSMo. In November 1936, two parcels were offered by the county collector for a third time for delinquent taxes. *Hobson*, 163 S.W.2d at 1021. Elmer purchased the tax interests in these two parcels at the third sale and was issued tax sale certificates of purchase. *Hobson*, 163 S.W.2d at 1021. “As the Jones-Munger Act was originally enacted in 1933, the owner or occupant of any property sold for taxes--whether at a first, second or third offering--had a two-year right to redeem their interest in the property. 1933 Mo. Laws 432-33. However, in 1939 the statute was amended to eliminate the two-year redemption period for property sold at a third offering tax sale. 1939 Mo. Laws 851-52.” *M & P Enterprises, Inc. v.*

Transamerica Financial Services, 944 S.W.2d 154, 157 (Mo. Banc 1997).²

On November 1, 1940, Hobson, by his guardian, paid redemption funds and was issued certificates of redemption for the two parcels by the county collector. *Hobson*, 163 S.W.2d at 1021. Although the facts were disputed, this Court held that Elmer “was prevented from receiving his deed by the acts of the collector and that he had done everything in his power to comply with the statutory requirements before the attempted redemption was made.” *Hobson*, 163 S.W.2d at 1024. Elmer’s attempts to obtain a collector’s deed occurred more than two years after the tax sale in 1936; there was testimony from the collector that these attempts occurred in October 1940; Elmer testified that the collector informed him that the time for securing a collector’s deed had already passed. *Hobson*, 163 S.W.2d at 1024.

At the time *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942) was decided, the time period in what is now codified in subsection 1 of § 140.340, RSMo, was

² For information on redemption procedures, if any, applicable to third sales, see *State ex rel. McGhee v. Baumann*, 349 Mo. 234, 160 S.W.2d 697, 700 (Mo. Banc 1942); *M & P Enterprises, Inc. v. Transamerica Financial Services*, 944 S.W.2d 154, 157 (Mo. Banc 1997); *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 612-13 (Mo. App., E.D. 2009); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 166 (Mo. App., W.D. 2010); see also §§ 140.250 and 140.405, RSMo, as amended by Senate Committee Substitute for House Committee Substitute for House Bill No. 1316, Second Regular Session, 95th General Assembly (hereinafter sometimes referred to as “HB 1316”), effective August 28, 2010.

two years from the date of the tax sale, and the time period in what is now codified in § 140.410, RSMo (the date of the expiration of the tax sale certificate), was four years from the date of the tax sale. House Committee Substitute for Senate Committee Substitute for Senate Bill No. 295, First Regular Session, 92nd General Assembly (hereinafter sometimes referred to as “SB 295”), enacted in 2003 changed the two-year time periods in subsections 1 and 4 of § 140.340, RSMo, subsection 2 of § 140.360, RSMo, and § 140.420, RSMo, to one year, and SB 295 changed the four-year time period in § 140.410, RSMo, to two years.³

³ Counsel for Appellant is aware of five amendatory enactments affecting the provisions of §§ 140.310, 140.340, 140.360, 140.410, or 140.420, RSMo, since their original enactment in 1933. First, the 1939 amendments changed the procedures applicable to third sales, among other things. Second, the referenced 2003 amendments enacted by SB 295 changed certain time periods. Third, House Committee Substitute for Senate Bill No. 1012, Second Regular Session, 92nd General Assembly, enacted in 2004 amended § 140.340, RSMo, to eliminate the payment of interest on the surplus paid for tax sale certificates. Fourth, Senate Committee Substitute for House Committee Substitute for House Bill No. 1316, Second Regular Session, 95th General Assembly (“HB 1316”), enacted in 2010 changes §§ 140.310, 140.340 and 140.420, RSMo, effective August 28, 2010. Fifth, Conference Committee Substitute for House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 117, First Regular Session, 96th General Assembly, enacted in 2011 changes to § 140.410, RSMo.

Hobson v. Elmer, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942) considered the issue of whether an owner of property sold for taxes may redeem more than two years subsequent to the sale date (the time period then specified in what is currently codified in subsection 1 of § 140.340, RSMo) but prior to the expiration of the tax sale certificate four years after the sale (the time period then specified in what is currently codified in § 140.410, RSMo). *Hobson*, 163 S.W.2d at 1022.

The *Hobson* court found the following conflicts or inconsistencies in determining the duration of redemption rights under the original enactment of the Jones-Munger Act, Chapter 140, RSMo, as originally enacted:

Subsection 1 of § 11145, RSMo 1939, cited in *Hobson*, 163 S.W.2d at 1022-23, and now codified in subsection 1 of § 140.340, RSMo, state in relevant part: “The owner or occupant of any land or lot sold for taxes, or any other persons having an interest therein, may redeem the same at any time during the ... [two years or one year, respectively] next ensuing, in the following manner ...”

Subsection 4 of § 11145, RSMo 1939, cited in *Hobson*, 163 S.W.2d at 1022-23, and now codified in subsection 4 of § 140.340, RSMo, provide in relevant part: “In case the party purchasing said land, his heirs or assigns fails to take a tax deed for the land so purchased within six months after the expiration of the ... [two years or one year, respectively] next following the date of sale, no interest shall be charged or collected from the redemptioner after that time.”

Section 11147, RSMo, cited in *Hobson*, 163 S.W.2d at 1022-23, and now codified in § 140.360, RSMo, require the redeemer to pay to the tax sale purchaser the value of certain improvements made to the real estate sold at tax sale, but provide in subsection 2 thereof: “No compensation shall be allowed for improvements made before the expiration of ... [two years or one year, respectively] from the date of sale for taxes.”

Hobson v. Elmer, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942) indicates that if the right of redemption absolutely ceases at the end of the period now specified in subsection 1 of § 140.340, RSMo, there would be no purpose in a provision that the redemptioner could not be charged interest after the end of that period, and it would be unnecessary to state that the redemptioner was not required to make compensation for improvements placed on the land before the expiration of that period, and impliedly that he was required to make such compensation after the end of that period, if the redemptioner could not redeem at all after the end of that period. *Hobson*, 163 S.W.2d at 1023.

Hobson also noted that § 11149, RSMo 1939, now codified in § 140.420, RSMo, provide in part: “If no person shall redeem the lands sold for taxes within ... [two years or one year, respectively] from the date of the sale, at the expiration thereof, and on production of the certificate of purchase, the collector of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the state, a

conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple ...” *Hobson*, 163 S.W.2d at 1023.4

The Court in *Hobson* stated:

There is one manner and, in our opinion, only one manner in which these seemingly conflicting provisions may be harmonized. We construe them to mean that the owner of the lands has an absolute power of redemption which cannot be defeated by the purchaser during and up to the end of the two-year period. Thereafter the purchaser has a right to obtain a collector's deed at any time within the next two years by complying with the various statutory provisions, to-wit: by producing to the collector his certificate of purchase, paying the

4 Additional statutory support for conflict in these statutes can be seen in § 140.410, RSMo, previously codified in § 11148, RSMo 1939, which establishes the date of the expiration of tax sale certificate, which was four years prior to the enactment of SB 295 in 2003 and is now two years, and § 140.310, RSMo, previously codified in § 11135, RSMo, which establishes the date the tax sale purchaser is authorized to take possession of non-homestead property prior to the issuance of a collector's deed, which was two years after the tax sale prior to the enactment of SB 295 in 2003 and is now one year after the tax sale. *But see Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 468-469 (Mo. App., E.D. 2009).

subsequently accrued taxes and legal fees and demanding his deed. If, after the end of the two-year period and before the purchaser has complied with these conditions precedent to obtaining his deed, the owner or transferee applies for a redemption and makes the required payments he thereby destroys the power of the purchaser to obtain a deed.

Hobson, 163 S.W.2d at 1023. The foregoing holding is sometimes referred to in this Brief as the “*Hobson* Redemption Period”, whether or not the 2003 time period changes made in SB 295 are applicable.

Section 1.120, RSMo, provides: “The provisions of any law or statute which is reenacted, amended or revised, so far as they are the same as those of a prior law, shall be construed as a continuation of such law and not as a new enactment.” The general rule is that when an amendment is made to part of a legislative act, the provisions retained are considered to be a continuation of the former law. *Atchison v. Retirement Board of Police Retirement System of Kansas City*, 343 S.W.2d 25, 33-34 (Mo. 1961); *Jackman v. Century Brick Corporation of America*, 412 S.W.2d 111, 115-116 (Mo. 1967); *Sell v. Ozarks Medical Center*, 333 S.W.3d 498, 508 (Mo. App., S.D. 2011). In this case, the only relevant amendments to or repeals and reenactments of what is now codified in §§ 140.310, 140.340, 140.360, 140.410, and 140.420, RSMo, were the changes made by SB 295 in 2003 in certain time periods. The substantive parts of §§ 140.310, 140.340, 140.360, 140.410, and 140.420,

RSMo, generally applicable to facts occurring prior to August 28, 2010, have not been changed since their original enactment in 1933 as construed in *Hobson*, 163 S.W.2d at 1023. Based on § 1.120, RSMo, the *Hobson* Redemption Period should still be good law, except the time periods stated in *Hobson* were changed by the enactment of SB 295 in 2003.

The *Hobson* Redemption Period has been followed or recognized in the following cases: *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942), *Bullock v. Peoples Bank of Holcomb*, 351 Mo. 587, 173 S.W.2d 753, 758 (Mo. 1943), *State ex rel. Baumann v. Marburger*, 348 Mo. 164, 182 S. W.2d 163, 165-166 (Mo. 1944), *Wetmore v. Berger*, 354 Mo. 166, 188 S.W.2d 949, 953 (Mo. 1945), *Strohm v. Boden*, 359 Mo. 573, 222 S.W.2d 772, 776 (Mo. 1949); *Powell v. City of Creve Coeur*, 452 S.W.2d 258, 261-262 (Mo. App., St. L. 1970); *Boston v. Williamson*, 807 S.W.2d 216, 217 n.3 (Mo. App., W.D. 1991) (discussing the integration of the *Hobson* Redemption Period and § 140.405, RSMo); *Campbell v. Siegfried*, 823 S.W.2d 156, 158 (Mo. App., E.D. 1992) (concluding the parties entitled to notice under § 140.405, RSMo, to “include anyone who has not received prior notice of the sale, but who has *an interest that could be lost when the collector's deed is issued.*”) (emphasis added); *York v. Authorized Investors Group, Inc.*, 931 S.W.2d 882, 888 (Mo. App., E.D. 1996) (“Until the execution of a tax deed, defendant and all other parties in interest, including plaintiffs, have the right to redeem the property by paying the delinquent taxes.”); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 164 (Mo. App., W.D. 2010); *Harpagon Mo, LLC v. Clay County Collector*, 335 S.W.3d 99, 104-105 (Mo. App.,

W.D. 2011); and *U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)*, 437 B.R. 346 (Bankr., E.D.Mo. 2010). The Missouri Court of Appeals, Western District, recognized the *Hobson* Redemption Period in its opinion in *Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court), Slip Op. at 6.

In part, *Ndegwa v. KSSO, LLC*, Appeal No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at footnote 6, found that the enactment of § 140.405, RSMo, is a legislative abrogation of the interpretation of subsection 1 of § 140.340, RSMo, established in *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942). Section 140.405, RSMo,⁵ provides, in part:

At least ninety days prior **to the date when a purchaser is authorized to acquire the deed**, the purchaser shall notify any person who holds a publicly recorded deed of trust, mortgage, lease, lien or claim upon that real estate of the latter person's right to redeem such person's publicly recorded security or claim.

⁵ Section 140.405, RSMo, was amended by Senate Committee Substitute for House Committee Substitute for House Bill No. 1316, Second Regular Session, 95th General Assembly (“HB 1316”), effective August 28, 2010. The language of § 140.405, RSMo, emphasized above was not changed by HB 1316.

(Emphasis added.) The emphasized language referring to the date when a purchaser is authorized to acquire the deed was included in the original enactment of § 140.405, RSMo, in 1984. *M & P Enterprises Inc. v. Transamerica Financial Services*, 944 S.W.2d 154, 158 (Mo. banc 1997).

The legislature is presumed to have acted with knowledge of the existing law. *Sell v. Ozarks Medical Center*, 333 S.W.3d 498, 508 (Mo. App., S.D. 2011). The phrase “authorized to acquire the deed” in § 140.405, RSMo, should be presumed to be a direct reference to the *Hobson* case (which was the existing law prior to the 1984 enactment of § 140.405, RSMo). Stated simplistically, *Hobson* held that the right of redemption expires when the tax sale purchaser is authorized to acquire the collector’s deed, so long as the tax sale certificate has not expired. *Hobson*, 163 S.W.2d at 1023; *Boston v. Williamson*, 807 S.W.2d 216, 217-218 (Mo. App., W.D. 1991). The “authorized to acquire the deed” language in § 140.405, RSMo, recognizes *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942) and cannot be read to legislatively abrogate *Hobson*.

The foregoing establishes that the “date when a purchaser is authorized to acquire the deed” under § 140.405, RSMo, is not one year from the tax sale under subsection 1 of §140.340, RSMo, and there was no fixed, maximum one-year redemption period after the first offering delinquent tax sale of occurring on August 27, 2007 in this case.

The Missouri Court of Appeals, Eastern District, has opined that § 140.405, RSMo, requires that notices of the right of redemption from a first or second offering delinquent tax

sale conducted under the Jones-Munger Act, Chapter 140, RSMo, must give notice of a purported one-year right of redemption purportedly created by subsection 1 of § 140.340, RSMo. *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 613 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009), and *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009). See also *Valli v. Glasgow Enterprises, Inc.*, 204 S.W.3d 273 (Mo. App., E.D. 2006) and *Glasgow Enterprises, Inc. v. Brooks*, 234 S.W. 3d 407 (Mo App E.D. 2007).⁶

The 2009 Eastern District Opinions⁷ are patently and irreconcilably inconsistent with *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942), *Bullock v. Peoples*

⁶ The Missouri Court of Appeals, Southern District, has opined that § 140.405, RSMo, requires that notices of the right of redemption from first or second offering delinquent tax sales conducted under the Jones-Munger Act, Chapter 140, RSMo, “must inform persons of the time frame in which they must act to redeem their property or be forever barred from doing so.” *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 306 S.W.3d 171, 174 (Mo. App., S. D. 2010); *Crossland v. Thompson*, 317 S.W.3d 635, 643-644 (Mo. App., S.D. 2010). The Missouri Court of Appeals, Southern District cases do not decide the applicable “time frame”. See *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 306 S.W.3d 171, 174 & n.2 (Mo. App., S. D. 2010).

⁷ *Keylien Corporation v. Johnson*, 284 S.W.3d 606 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009), and *Hames v. Bellistri*, 300 S.W.3d

Bank of Holcomb, 351 Mo. 587, 173 S.W.2d 753, 758 (Mo. 1943), *State ex rel. Baumann v. Marburger*, 348 Mo. 164, 182 S. W.2d 163, 165-166 (Mo. 1944), *Wetmore v. Berger*, 354 Mo. 166, 188 S.W.2d 949, 953 (Mo. 1945), *Strohm v. Boden*, 359 Mo. 573, 222 S.W.2d 772, 776 (Mo. 1949); *Powell v. City of Creve Coeur*, 452 S.W.2d 258, 261-262 (Mo. App., St. L. 1970); *Boston v. Williamson*, 807 S.W.2d 216, 217-218 & n.3 (Mo. App., W.D. 1991); *Campbell v. Siegfried*, 823 S.W.2d 156, 158 (Mo. App., E.D. 1992); *York v. Authorized Investors Group, Inc.*, 931 S.W.2d 882, 888 (Mo. App., E.D. 1996); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 164 (Mo. App., W.D. 2010); *Harpagon Mo, LLC v. Clay County Collector*, 335 S.W.3d 99, 104-105 (Mo. App., W.D. 2011); and *U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)*, 437 B.R. 346 (Bankr., E.D.Mo. 2010), as the right of redemption from a first or second offering delinquent tax sale under the Jones-Munger Act, Chapter 140, RSMo, is not a fixed, maximum one-year period under subsection 1 of § 140.340, RSMo, but is the “Hobson Redemption Period” under the applicable and binding precedent of this Court. *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 164 & 171 n.9 (Mo. App., W.D. 2010) (“[T]he purchaser must obtain the collectors deed and record it during the one year period beginning one year after the date of sale”).

235 (Mo. App., E.D. 2009).

The 2009 Eastern District Opinions⁸ holding that there is a maximum, fixed one-year redemption period under subsection 1 of § 140.340, RSMo, fail to mention, consider or discuss the relevant opinions of this Court⁹ that are purportedly binding precedent on the Missouri Court of Appeals, Eastern District, under Mo. Const. art. V, § 2; *Doe v. Roman Catholic Archdiocese of St. Louis*, 311 S.W.3d 818, 822-823 (Mo. App., E.D. 2010). The 2009 Eastern District Opinions fail to mention, consider or discuss prior precedent on the duration of the right of redemption after first or second offering delinquent tax sales issued by the Missouri Court of Appeals, St. Louis District, in *Powell v. City of Creve Coeur*, 452 S.W.2d 258, 261-262 (Mo. App., St. L. 1970).

Boston v. Williamson, 807 S.W.2d 216, 217-218 (Mo. App., W.D. 1991) and the opinion in *Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court upon transfer), Slip Op. at 4-6, correctly integrate the

⁸ *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 613 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009), and *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009).

⁹ *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942), *Bullock v. Peoples Bank of Holcomb*, 351 Mo. 587, 173 S.W.2d 753, 758 (Mo. 1943), *State ex rel. Baumann v. Marburger*, 348 Mo. 164, 182 S. W.2d 163, 165-166 (Mo. 1944), *Wetmore v. Berger*, 354 Mo. 166, 188 S.W.2d 949, 953 (Mo. 1945), and *Strohm v. Boden*, 359 Mo. 573, 222 S.W.2d 772, 776 (Mo. 1949).

Hobson Redemption Period with § 140.405, RSMo, by establishing the deadline for mailing tax sale redemption notices under § 140.405, RSMo, as being at least 90 days prior to the time when the tax sale purchaser is authorized to acquire the collector's deed. That part of *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009) and the opinion in *Ndegwa v. KSSO, LLC*, Appeal No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 22, holding that the deadline for mailing tax sale redemption notices under § 140.405, RSMo, as being at least 90 days prior to the expiration of the time period set forth in subsection 1 of § 140.405, RSMo, are inconsistent with prior case law, *Boston v. Williamson*, 807 S.W.2d 216, 217-218 (Mo. App., W.D. 1991), and are dependent upon the incorrect conclusion that subsection 1 of § 140.340, RSMo, establishes a fixed, mandatory, maximum redemption period made in *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 613 (Mo. App., E.D. 2009) and followed in *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009), and *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009). See also *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 172 n.10 (Mo. App., W.D. 2010), and *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 306 S.W.3d 171, 174 n.2 (Mo. App., S.D. 2010).

There is simply no legal basis for the conclusion stated *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 613 (Mo. App., E.D. 2009) and repeated in *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009), and *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009) that subsection 1 of § 140.340, RSMo, creates a maximum, fixed

one-year redemption period from first or second offering delinquent tax sales under the Jones-Munger Act, Chapter 140, RSMo.

In this case, the tax auction occurred on August 27, 2007. LF at 284, 366, 448, 459, 466, 628, 645. The Notice Letters are dated September 15, 2008. LF at 287-292, 449, 628-629, 645-646. The Collector's Deed was issued on or about January 9, 2009 and recorded on or about February 4, 2009 in Book 18202 Page 1341 of the St. Louis County Records. LF at 285, 301, 327-330, 366, 450, 461, 563, 628, 645. The right of redemption did not expire on August 27, 2008 (one year from the date of the tax auction) in this case. The right of redemption expired on January 9, 2009 (the date the Collector's Deed was issued or authorized to be issued). The trial court erred in invalidating the collector's deed on the ground that the § 140.405 Notice Letters were not sent at least 90 days before August 27, 2008.

II.

THE TRIAL COURT ERRED IN GRANTING RESPONDENTS-PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNT III OF THEIR AMENDED PETITION ON THE GROUND THAT THE SECTION 140.405 NOTICES DATED SEPTEMBER 15, 2008 SENT BY APPELLANT IN THIS CASE PURPORTEDLY FAILED TO CORRECTLY INFORM ADDRESSEES THAT THE REDEMPTION PERIOD ENDED ON OR ABOUT AUGUST 27, 2008 AND PURPORTEDLY FAILED TO COMPLY WITH SECTION 140.405, RSMO, BECAUSE: (1) SECTION 140.405, RSMO, WAS DRAFTED TO INTEGRATE WITH RELEVANT CASE LAW, INCLUDING, WITHOUT LIMITATION, PRECEDENT DECIDED BY THIS COURT, ESTABLISHING THE *HOBSON* REDEMPTION PERIOD, AS THERE IS NO FIXED ONE-YEAR REDEMPTION PERIOD ENDING ON AUGUST 27, 2008; (2) THERE IS NO UNIVERSALLY APPLICABLE REDEMPTION PERIOD ALLOWING TAX SALE PURCHASERS TO PROVIDE ADVANCE NOTICE OF THE EXPIRATION OF THE REDEMPTION RIGHTS OF DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES, AS VARIOUS STATUTES PROVIDE FOR SPECIAL RIGHTS OF REDEMPTION BASED UPON INDIVIDUALIZED FACTS AND CIRCUMSTANCES SPECIFIC TO THE DELINQUENT TAXPAYER OR OTHER INTERESTED PARTY THAT VARY FROM THE *HOBSON* REDEMPTION PERIOD DEPENDING UPON FACTS AND

CIRCUMSTANCES THAT THE TAX SALE PURCHASER CANNOT KNOW OR WOULD KNOW ONLY WITH GREAT DIFFICULTY AT THE TIME THE SECTION 140.405 NOTICE IS SENT, INCLUDING, WITHOUT LIMITATION, SECTION 140.350, RSMO (APPLICABLE TO INFANTS, INCAPACITATED PERSONS AND DISABLED PERSONS AS DEFINED IN CHAPTER 475, RSMO), 11 U.S.C. SECTION 108(B) (APPLICABLE TO DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES FILING FOR PROTECTION UNDER THE BANKRUPTCY CODE BEFORE OR AFTER THE SECTION 140.405 NOTICE IS SENT), 18 U.S.C. § 3613 (APPLICABLE TO THE ENFORCEMENT OF CERTAIN FINES BY THE UNITED STATES), AND 26 U.S.C. SECTION 7425 (APPLICABLE TO THE INTERNAL REVENUE SERVICE); (3) TAX SALE PURCHASERS CANNOT GIVE ADVANCE NOTICE OF THE TIME WHEN THEY MAY BE AUTHORIZED TO ACQUIRE A COLLECTOR'S DEED, AS THE DATE WHEN ALL LAWFUL REQUIREMENTS HAVE BEEN SATISFIED AUTHORIZING THE TAX SALE PURCHASER TO ACQUIRE A COLLECTOR'S DEED CANNOT BE KNOWN IN ADVANCE; (4) NEITHER SECTION 140.405, RSMO, NOR CONSTITUTIONAL PRINCIPLES OF DUE PROCESS REQUIRE A TAX SALE PURCHASER TO PROVIDE ADVANCE NOTICE OF THE TIME LIMITS APPLICABLE FOR REDEMPTION, THE SPECIFIC PROCEDURES THAT MUST BE FOLLOWED, OR ANY OTHER DETAILS ATTACHING TO THE RIGHT OF

REDEMPTION FROM THE TAX SALE; AND (5) THE NOTICE LETTERS DATED SEPTEMBER 15, 2008, INFORMED THE DELINQUENT TAXPAYER AND OTHER INTERESTED PARTIES OF THEIR RIGHT TO REDEEM, WHICH IS ALL THAT IS REQUIRED BY SECTION 140.405, RSMO.

The existing case law does not prescribe any consistent rules for the required content of a notice of tax sale redemption rights after a first or second offering delinquent tax sale under § 140.405, RSMo.

As indicated in Point I of this Brief, requiring notices of the right of redemption from first or second offering tax sales under § 140.405, RSMo, to state that there is a maximum, fixed one-year redemption period consistent with *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 613 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009), *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009), is in irreconcilable conflict with *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942), *Bullock v. Peoples Bank of Holcomb*, 351 Mo. 587, 173 S.W.2d 753, 758 (Mo. 1943), *State ex rel. Baumann v. Marburger*, 348 Mo. 164, 182 S. W.2d 163, 165-166 (Mo. 1944), *Wetmore v. Berger*, 354 Mo. 166, 188 S.W.2d 949, 953 (Mo. 1945), *Strohm v. Boden*, 359 Mo. 573, 222 S.W.2d 772, 776 (Mo. 1949); *Powell v. City of Creve Coeur*, 452 S.W.2d 258, 261-262 (Mo. App., St. L. 1970); *Boston v. Williamson*, 807 S.W.2d 216, 217-218 & n.3 (Mo. App., W.D. 1991); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 164 171 n. 9 (Mo. App., W.D. 2010); *Harpagon Mo, LLC v. Clay County Collector*, 335 S.W.3d 99,

104-105 (Mo. App., W.D. 2011); and *U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)*, 437 B.R. 346 (Bankr., E.D.Mo. 2010); see also *Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court), Slip Op. at 6, and is inconsistent with *Campbell v. Siegfried*, 823 S.W.2d 156, 158 (Mo. App., E.D. 1992) (concluding those entitled to notice under § 140.405, RSMo, includes anyone “who has an interest that could be lost when the collector's deed is issued”), and *York v. Authorized Investors Group, Inc.*, 931 S.W.2d 882, 888 (Mo. App., E.D. 1996) (“Until the execution of a tax deed, defendant and all other parties in interest, including plaintiffs, have the right to redeem the property by paying the delinquent taxes.”).

Cedarbridge LLC v. Eason, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009) held that § 140.405, RSMo, requires notices of tax sale redemption rights from first or second offering delinquent tax sales to “inform the recipient that s/he has one year from the date of the tax sale to redeem the property or be forever barred from doing so,” citing *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 612-613 (Mo. App., E.D. 2009). *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 306 S.W.3d 171, 174 (Mo. App., S.D. 2010) held that § 140.405, RSMo, requires notices of tax sale redemption rights from first or second offering delinquent tax sales to “inform persons of the time frame in which they must act to redeem their property or be forever barred from doing so”, citing *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009), citing *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 612-613 (Mo. App., E.D. 2009), citing *Valli v. Glasgow Enterprises, Inc.*, 204

S.W.3d 273, 277 (Mo. App., E.D. 2006). *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 306 S.W.3d 171, 174 (Mo. App., S.D. 2010) fails to state the “time frame” that must be included in a tax sale redemption notice. *See also Crossland v. Thompson*, 317 S.W.3d 635, 643-644 (Mo. App., S.D. 2010).

Formulating the required content of a tax sale redemption notice from a first or second offering delinquent tax sale under § 140.405, RSMo, to require notice that delinquent taxpayers and other interested parties will be “forever barred” if they fail to redeem their interest at any pre-determined time is inconsistent with the formulation of the duration of the right of redemption from first or second offering delinquent tax sales in *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942). *Hobson* allows redemption at any time prior to the time when a tax sale purchaser is authorized to acquire a collector’s deed to the property, so long as the tax sale certificate of the tax sale purchaser has not expired under § 140.410, RSMo. Informing delinquent taxpayers and other interested parties that they have one year to redeem or else they are “forever barred” would be incorrect. *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 171 n.9 (Mo. App., W.D. 2010).

The pre-HB 1316 version of § 140.405, RSMo, contained two “90-day” provisions: A provision requiring notice “[a]t least ninety days prior to the date when a purchaser is authorized to acquire the deed”, and a second “90-day” provision in the second sentence of the 1998 amendments to § 140.405, RSMo, that measured the duration of the right of redemption from third sales by stating that interested parties have “ninety days to redeem said

property or be forever barred from redeeming said property.” Section 140.405, RSMo.10 *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009) held that a notice of tax sale redemption rights from a first or second offering delinquent tax sale that told the delinquent taxpayer and other interested parties to contact the county collector within 90 days was inaccurate and misleading as a matter of law (without evidence that the delinquent taxpayer or other interested parties relied on such statement to their detriment). The notice letter in *Hames* was admittedly inartfully drafted, and no evidence is cited in *Hames* as to which of the two “90-day” provisions in § 140.405, RSMo, is being referenced in the notice letter. However, the mere mention of the “at least 90-day” period in a redemption notice for a first or second offering should not be found to be inaccurate and misleading as a matter of law,

10 Subsection 6 of § 140.405, as enacted by HB 1316, measures the right of redemption for third offering sales from the date of mailing of the notice. HB 1316 legislatively abrogates prospective application of holdings in *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 170 (Mo. App., W.D. 2010), *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 613 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 466 (Mo. App., E.D. 2009), and *Brock v. Caldwell*, Appeal No. SD31206 (Mo. App., S.D. January 27, 2012) (may be subject to post-opinion motions or applications), Slip Op. at 5, that the redemption period for third offering sales begins when an affidavit of proper notice is filed with the county collector to facts occurring after August 28, 2010. See also *Valli v. Glasgow Enterprises, Inc.*, 204 S.W.3d 273 (Mo. App., E.D. 2006).

because the “at least 90-day” provision of the pre-HB 1316 version of § 140.405, RSMo, applies to first or second offerings.

The Missouri Court of Appeals, Western District, has held that “there is no due process requirement to inform those receiving notice of the specific time limits applicable for redemption, the specific procedures that must be followed, or any other details, nor is there any such requirement in § 140.405.” *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 175 (Mo. App., W.D. 2010); *Harpagon MO LLC v. Clay County Collector*, 335 S.W.3d 99, 105 (Mo. App., W.D. 2011). *See also Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court upon transfer), Slip Op. at 6-7; and *U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)*, 437 B.R. 346 (Bankr., E.D.Mo. 2010).

United Asset Mgmt. Trust Co. v. Clark, 332 S.W.3d 159, 175 (Mo. App., W.D. 2010) is extensive and exhaustively covers the law regarding the required content of notices of tax sale redemption rights from first or second offering delinquent tax sales under § 140.405, RSMo. The reasoning and rationale of that opinion on the required content of § 140.405 notices is far superior to anything on that subject stated in *Keylien Corporation v. Johnson*, 284 S.W.3d 606 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009), *Hames v. Bellistri*, 300 S.W.3d 235 (Mo. App., E.D. 2009), *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 306 S.W.3d 171, 174 (Mo. App., S.D. 2010), *Crossland v. Thompson*, 317 S.W.3d 635, 643-644 (Mo. App., S.D. 2010), or

Ndegwa v. KSSO, LLC, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 11-24. Of these cases, the most extensive opinion on the subject of the required content of tax sale redemption notices from first or second offering delinquent tax sales is *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011).

Ndegwa v. KSSO, LLC, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 18-22, cites various rules or canons of statutory construction, including: The doctrine of *in pari materia* (statutes relating to the same subject are considered together and harmonized if possible), *Ndegwa*, Slip Op. at 19-20; that absent an express definition, statutory language is to be given its plain and ordinary meaning, *Ndegwa*, Slip Op. at 19; that meaning is to be given to each word used in the legislative enactment, insofar as possible, and one word of the statute should not be considered a needless repetition of another, *Ndegwa*, Slip Op. at 21; that courts presume every word in a statute has meaning, *Ndegwa*, Slip Op. at 21; and that there is a presumption that the legislature does not intend to create meaningless legislative provisions, *Ndegwa*, Slip Op. at 21.

The correct application of these rules or canons of statutory construction support the statutory construction of what is now codified in §§ 140.340, 140.360, 140.410, and 140.420, RSMo, in *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942), *Bullock v. Peoples Bank of Holcomb*, 351 Mo. 587, 173 S.W.2d 753, 758 (Mo. 1943), *State ex rel. Baumann v. Marburger*, 348 Mo. 164, 182 S. W.2d 163, 165-166 (Mo. 1944), *Wetmore v. Berger*, 354 Mo. 166, 188 S.W.2d 949, 953 (Mo. 1945), *Strohm v. Boden*, 359 Mo. 573, 222

S.W.2d 772, 776 (Mo. 1949); *Powell v. City of Creve Coeur*, 452 S.W.2d 258, 261-262 (Mo. App., St. L. 1970); *Boston v. Williamson*, 807 S.W.2d 216, 217-218 & n.3 (Mo. App., W.D. 1991); *Campbell v. Siegfried*, 823 S.W.2d 156, 158 (Mo. App., E.D. 1992); *York v. Authorized Investors Group, Inc.*, 931 S.W.2d 882, 888 (Mo. App., E.D. 1996); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 164 & 171 n. 9 (Mo. App., W.D. 2010); *Harpagon Mo, LLC v. Clay County Collector*, 335 S.W.3d 99, 104-105 (Mo. App., W.D. 2011); and *U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)*, 437 B.R. 346 (Bankr., E.D.Mo. 2010); *see also Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court), Slip Op. at 6-7.

Subsection 1 of what is now codified in § 140.340, RSMo, does not state that interested parties “shall” redeem their interest in the time period specified or be forever barred from doing so, nor does subsection 1 specify any consequence or any other result if one fails to redeem within the subsection 1 time period. The plain and ordinary meaning of the word “may” connotes the permissive and directory, not a mandatory duty. *Deming v. Metropolitan Engineering & Construction Co.*, 154 Mo. App. 540, 136 S.W. 740, 742 (K.C. 1911).

It is true that § 140.405, RSMo, exists to protect the Due Process rights of those with substantive interest in property, *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009); *Brock v. Caldwell*, Appeal No. SD31206 (Mo. App., S.D. January 27, 2012) (may be subject to post-opinion motions or applications), Slip Op. at 4. It is also true that § 140.405,

RSMo, is mandatory, because of its use of the word, “shall”, and because of the specification of the consequence for failure to comply with that statute as being a loss of all interest in the property. *See, e.g. Hutchison v. Cannon*, 29 S.W.3d 844, 847 (Mo. App., S.D. 2000); *Valli v. Glasgow Enterprises, Inc.*, 204 S.W.3d 273, 276-277 (Mo. App., E.D. 2006); *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 467 (Mo. App., E.D. 2009); *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 306 S.W.3d 171, 174 (Mo. App., S.D. 2010).¹¹

None of the cases holding that § 140.405, RSMo, is mandatory have considered the effect of § 140.520, RSMo, on whether substantial compliance or strict compliance with § 140.405, RSMo, is required. Section 140.520, RSMo, states in part: “No ... mere irregularity of any kind in any of the proceedings, shall invalidate any such proceeding, or the title conveyed by the tax deed;” *State ex rel. Howard v. Timbrook’s Estate*, 240, Mo. 226, 144 S.W. 843, 846-847 (1912) construed § 11521, RSMo 1909, a predecessor of § 140.520, RSMo, as repealing the common law rule of strict construction of tax sale statutes and replacing that common law rule with a more liberal statutory rule of construction

¹¹ The cases holding that non-compliance with § 140.405, RSMo, requires that the tax sale purchaser to lose all interest in the property fail to consider the effect of §§ 140.550 and 140.570, RSMo, which transfer the lien for taxes back to the tax sale purchaser under certain circumstances if the collector’s deed is found to be invalid. The priority of the judgment lien for recoupment costs of the tax sale purchaser is important if a lienholder’s interest in the property is resurrected by the setting aside of a collector’s deed.

whereby technical objections, or “mere irregularities”, are insufficient to invalidate tax sale proceedings. In this case, the delinquent taxpayer or other interested parties have not alleged that they relied to their detriment on any purported defects in the Notice Letters sent under § 140.405, RSMo. Without such allegations, it is difficult to see how any purported defects in such a notice can be anything other than a “mere irregularity” or technical objection that does not invalidate a collector’s deed under § 140.520, RSMo.

The mandatory nature of § 140.405, RSMo, or its role in protecting Due Process rights should not be read as recasting subsection 1 of § 140.340, RSMo, as a mandatory, maximum and fixed redemption period under § 1.120, RSMo. *Hobson* interpreted the predecessor of subsection 1 of § 140.340, RSMo, as establishing a minimum, not maximum redemption period in a manner that has been followed under the principle of *stare decisis* for approximately seventy years ago. The substantive language of § 140.340, RSMo, has not changed since *Hobson* was handed down, except as to the changes in time periods enacted by SB 295 in 2003.

Subsection 4 of § 140.340, RSMo, provides that tax sale purchasers lose the right to collect interest on tax sale certificates if purchasers fail to obtain a collector’s deed within six months after the expiration of the one-year period specified in subsection one. *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942) indicates that if the right of redemption absolutely ceases at the end of the period now specified in subsection 1 of § 140.340, RSMo, there would be no purpose in a provision that the redemptioner could not be

charged interest after the end of that period. *Hobson*, 163 S.W.2d at 1023. In essence, the reconciliation of subsections 1 and 4 of what is now codified in § 140.340, RSMo, in *Hobson* is this Court's application of the rules or canons of statutory construction cited in *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 18-22, such as: (1) that meaning is to be given to each word used in the legislative enactment, insofar as possible, and one word of the statute should not be considered a needless repetition of another, *Ndegwa*, Slip Op. at 21; (2) that courts presume every word in a statute has meaning, *Ndegwa*, Slip Op. at 21; and (3) that there is a presumption that the legislature does not intend to create meaningless legislative provisions, *Ndegwa*, Slip Op. at 21. This Court's adoption of the opinion in *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011) would make subsection 4 of § 140.340, RSMo, meaningless.

Subsection 2 of § 140.360, RSMo, prohibits compensation to tax sale purchasers for improvements made prior to redemption if those improvements are made before the end of one year from the tax sale. *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942) indicates that it would be unnecessary to state that the redemptioner was not required to make compensation for improvements placed on the land before the expiration of the period specified in what is now codified in subsection 1 of § 140.340, RSMo, and impliedly that the redemptioner was required to make such compensation after the end of that period, if the redemptioner could not redeem at all after the end of that period. *Hobson*, 163 S.W.2d at 1023. Again, the reconciliation of what is now codified in subsection 1 of § 140.340, RSMo,

and subsection 2 of § 140.360, RSMo, in *Hobson* is this Court's application of the following rules or canons of statutory construction cited in *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 18-22: (1) that meaning is to be given to each word used in the legislative enactment, insofar as possible, and one word of the statute should not be considered a needless repetition of another, *Ndegwa*, Slip Op. at 21; (2) that courts presume every word in a statute has meaning, *Ndegwa*, Slip Op. at 21; and (3) that there is a presumption that the legislature does not intend to create meaningless legislative provisions, *Ndegwa*, Slip Op. at 21. This Court's adoption of the opinion in *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011) would make subsection 2 of § 140.360, RSMo, meaningless.

Section 140.410, RSMo, provides that tax sale certificates expire two years after the tax sale. If the "date when a purchaser is authorized to acquire the deed" under § 140.405, RSMo, is a date certain one year from the date of the tax sale under subsection 1 of § 140.340, RSMo, then all collector's deeds would be required to be issued in a single day one year from the date of the tax sale, as there would be only one day when a purchaser could be authorized to acquire the collector's deed, even though the tax sale certificates of purchase do not expire for another year under § 140.410, RSMo. This Court's adoption of the opinion in *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011) would make that part of § 140.410, RSMo, providing for the expiration of tax sale certificates two years after the tax sale meaningless.

Section 140.420, RSMo (as enacted after SB 295 and prior to H.B. 1316), provides that the Collector's Deed shall be issued at the expiration of one year upon production of the tax sale certificate. *Hobson* seems to recognize that the language of the original version of § 140.420, RSMo, tends to support a conclusion that the time period specified in subsection 1 of § 140.340, RSMo, is a fixed period; however, *Hobson* found that that language of § 140.420, RSMo, could only be reconciled with the other provisions of the Jones-Munger Act, Chapter 140, RSMo, in the manner described herein. *Hobson*, 163 S.W.2d at 1023.

Although the enactment of HB 1316 in 2010 may be largely in response to *Scherleth v. Hardy*, 280 S.W.3d 47 (Mo. banc 2009) and *Investment Corporation of the Virginias, Inc. v. Acquaviva*, 302 S.W.3d 195 (Mo. App., E.D. 2009), some of the provisions of that legislative enactment refer to a one-year right of redemption, *e.g.* the post-HB 1316 versions of §§ 140.310.6 and 140.420, RSMo, presumably based upon legislative knowledge of cases such as *Keylien Corporation v. Johnson*, 284 S.W.3d 606 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009), and *Hames v. Bellistri*, 300 S.W.3d 235 (Mo. App., E.D. 2009) holding that there is a fixed one-year redemption period from first or second offering sales. *See, e.g. Sell v. Ozarks Medical Center*, 333 S.W.3d 498, 508 (Mo. App., S.D. 2011) (The legislature is presumed to have acted with knowledge of the existing law). The 2010 amendments enacted in HB 1316 did not change any of the language of the substantive provisions of §§ 140.340, 140.360, and 140.410, RSMo, interpreted in *Hobson*. The post-HB 1316 versions of §§ 140.310.6 and 140.420, RSMo,

refer to a one-year redemption period. The 2010 amendments to § 140.420, RSMo, stating that there is a one-year right of redemption does not clear up the other inconsistent provisions of the Jones-Munger Act, Chapter 140, RSMo, discussed in *Hobson*.

Subsection 1 of § 140.310, RSMo, provides that tax sale purchasers have the right to possession of non-homestead property one year from the date of the tax sale, and provides in subsection 4 thereof that upon subsequent redemption, the actual rent collected is credited toward the redemption price. *But see Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 468-471 (Mo. App., E.D. 2009) (where the Court refused to apply this statute and awarded damages based on reasonable rental value rather than actual rent collected under subsection 4 of § 140.310, RSMo). The 2010 amendments adding subsection 6 to § 140.310, RSMo, do not answer the conundrum presented why subsection 1 of § 140.310, RSMo, specifies that a tax sale purchaser is authorized to take possession of non-homestead property at the expiration of one year without the issuance of a collector's deed if the total redemption period is one year from the date of the tax sale? Again, § 140.310, RSMo, would be meaningless if this Court adopts the opinion in *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011), assuming *arguendo* that § 140.310, RSMo, has any continuing validity after *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., 2009).

Hobson is correct in holding that there is one and only one manner in which these conflicting provisions can be harmonized; that is, to reconcile these conflicting provisions by holding that the time period in what is now codified in subsection 1 of § 140.340, RSMo, is

an absolute right of redemption, but that the right of redemption continues thereafter until the tax sale purchaser has the right to obtain a collector's deed or the tax sale certificate expires under the provisions of what is now codified in § 140.410, RSMo. *Hobson*, 163 S.W.2d at 1023. Application of the rules of statutory construction espoused in *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 18-22, requires the recognition of the validity of the reasoning in *Hobson* and the cases following *Hobson*.

Ndegwa v. KSSO, LLC, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 16-17, concludes that the citations to *City of West Covina v. Perkins*, 525 U.S. 234, 236-237, 119 S.Ct. 678, 142 L.Ed.2d 636 (1999) in *United Asset Management Trust Company*, 332 S.W.3d at 173-175, are not applicable, because *West Covina* did not involve a permanent taking of rental property for a fraction of its worth or the time-sensitive right of the rental property owner to redeem it or forever lose it. *Ndegwa*, Slip Op. at 16-17.

In *Dusenbery v. United States*, 534 U.S. 161, 122 S.Ct. 694, 151 L.Ed.2d 597 (2002) (which involved civil forfeiture proceedings involving an automobile and cash in the amount of \$21,939), the Court rejected the balancing of factors test of *Matthews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) (one factor of which is the private interest affected) as an all-inclusive test in determining the adequacy of the method used to provide notice, and the Court adopted the more "straightforward test" of reasonableness under the circumstances set forth in *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950).

Under the *Mullane* standard, notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." 393 U.S. at 314. "Th[e] right to be heard has little reality or worth unless one . . . can choose for himself whether to appear or default, acquiesce or contest." *Id.*; see also *West Covina*, 525 U.S. at 240 (citing *Mullane* for this proposition).

The nature of the private interest affected—in this case, loss of a four-family rental property—is not an explicit factor used in determining the content or adequacy of the notice provided under *Mullane*. *Dusenbery*, 534 U.S. at 168.

One court has applied the *Mullane* standard and found that the repudiation of a general rule that the government must always provide affirmative notice of the right to and procedures for requesting a hearing in *West Covina* does not mean that "statutory notice" (notice by publicly available statutes and case law) is always sufficient to satisfy due process; there is still a duty to apply the *Mullane* standard to determine whether, under the circumstances, the notice was reasonably calculated to provide notice. *Grayden v. Rhodes*, 345 F.3d 1225, 1242-1244 (11th Cir. 2003) (finding that "statutory notice" by way of publicly available municipal ordinances was insufficient when tenants were given 36 hours to vacate a condemned building). *But compare Arrington v. Helms*, 438 F.3d 1336 (11th Cir. 2006) (where the same court found that "statutory notice" of appeal rights to custodial parents was consistent with *Mullane* when the custodial parents had 30 days to request a hearing, were

provided a brochure describing child support rights, and were provided with a 24-hour automated voice response hotline and a web site to educate themselves as to their rights).

This case concerns the right to redeem under § 140.340, RSMo. Under § 140.340, RSMo, there is no right to a hearing to determine whether one may redeem; before the right to redeem expires, an interested party has the absolute right to redeem by paying redemption funds to the county collector, a presumably unbiased governmental official. Because interest is earned on all or a part of the amount paid for the tax sale certificate and on subsequent taxes paid by the tax sale purchaser, § 140.340, RSMo, the amount of redemption funds to be paid changes from day to day. This means that: (1) it is impossible to exercise the right of redemption under § 140.340, RSMo, without contact with the county collector's office; and (2) it is impossible to inform interested parties in a § 140.405 notice of the amount needed to redeem their interest without knowing the proposed date of the redemption. Prospectively giving a universally applicable notice of the duration of the right to redeem that is dependent upon the date of issuance of an as-yet not issued collector's deed is impossible or extremely difficult, as set forth elsewhere in this Brief. Notice must be mailed at least 90 days before the collector's deed can be issued. Section 140.405, RSMo. None of these circumstances make the failure to give notice of the duration of the right of redemption unreasonable under *Mullane*, *West Covina*, *Dusenbery*, and *United Asset Management Trust Company*, as well as *State v. Goodbar*, 297 S.W.2d 525 (Mo. 1957) and *Bishop v. Bd. of Educ. of Francis Howell Sch. Dist.*, 575 S.W.2d 827 (Mo. App., E.D. 1978).

The notice in this case gave the addressee notice of the right of redemption and requested that the addressee contact the Collector's Office should the addressee have any questions whatsoever. *See, e.g.* LF at 288. The notice letter dated September 15, 2008 described the then-current interpretation of *Valli v. Glasgow Enterprises, Inc.*, 204 S.W.3d 273 (Mo. App., E.D. 2006), wherein the right of redemption was held to expire 90 days after the filing of an affidavit with the collector. As originally handed down, the *Valli* holding was not limited to third sales under the Jones-Munger Acts. *See Keylien*, 284 S.W.3d at 614. The Notice Letters in this case presaged changes in *Valli*, by noting that the current handling of notices by the collector could change without notice. LF at 288. Any information in the Notice Letters that is inconsistent with the current understanding of the law was consistent with *Valli* as originally handed down and understood as being applicable to this case at the time the Notice Letters were drafted.

Ndegwa v. KSSO, LLC, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 18, expresses concern that allowing tax sale purchasers to set the date for a property owner to "reclaim" property promotes the potential for error, uncertainty, and deception. No one can redeem without contact with the collector's office, as the collector calculates the redemption amount and collects the redemption funds. Section 140.340, RSMo. Wholesale deception of delinquent taxpayers as to their rights of redemption of the type feared in *Ndegwa* would necessarily depend upon the involvement of the county collector.

Foreclosure of rights of redemption from enforcement of a lien by private parties is delegable and is not an exclusively public function. *Flagg Brothers v. Brooks*, 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978). Missouri law has long allowed foreclosure of the rights of redemption under deeds of trust by non-judicial action (without involvement of any governmental official), without notice of the duration of statutory post-sale redemption rights. See §§ 443.290 to 443.440, RSMo.

Allowing tax sale purchasers the flexibility to decide when they have completed their statutory and constitutional duties to provide notice allows tax sale purchasers greater chances for compliance with statutory and constitutional requirements. See, e.g. *Jones v. Flowers*, 547 U.S. 220 (2006) and *Scherleth v. Hardy*, 280 S.W.3d 47 (Mo. banc 2009) (requiring additional reasonable steps be taken, if practicable, if certified mail is returned). The enactment of H.B. 1316 requiring documentation of various steps taken by the tax sale purchaser in foreclosing tax liens lessens the chances for error, uncertainty or deception. See, e.g. § 140.405.5(3), as enacted by HB 1316 (requiring copies of the envelopes containing notices of tax sale redemption rights as they appear immediately prior to mailing to be attached to the affidavit filed as part of the application for a collector's deed).

Ndegwa v. KSSO, LLC, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 18, does nothing to further certainty in the law, despite its language otherwise. From 1942 to 2006, the duration of the right of redemption was undisputedly determined under *Hobson* and the cases following *Hobson*. The only significant changes in the relevant

statutes interpreted in *Hobson* were amendments in 2003 that changed certain time periods but did not change the operative language of those statutes.

In 2006, *Valli v. Glasgow Enterprises, Inc.*, 204 S.W.3d 273 (Mo. App., E.D. 2006) was handed down. The opinion in *Valli* does not recite definitively whether the sale involved in that case was a first, second or third offering delinquent tax sale under the Jones-Munger Act, Chapter 140, RSMo. See *Keylien*, 284 S.W.3d at 614 (“Whether or not the redemption notices in *Valli* and *Brooks* were accurate in describing the sales in those cases as third offering sales, the notice requirement set out by this court in the opinions in those cases is the requirement for redemption notices in third offering sales.”). From the hand-down date of *Valli* until 2009, when *Keylien* correctly “revised” *Valli* to apply only to third sales, there was no certainty as to whether *Hobson* and its progeny or *Valli* and *Brooks* determined the duration of the right of redemption. Since 2009 when *Keylien* determined that the duration of the right of redemption is specified in § 140.340.1, RSMo, there has been no certainty as to whether *Hobson* and its progeny or *Keylien* and its progeny determined the duration of the right of redemption. Paul J. Simon, a former Judge of the Missouri Court of Appeals, Eastern District, participated in the drafting of the Notice Letters used in this case in association with another attorney with more than 40 years of experience in real estate matters, including the foreclosure of tax liens. LF at 459-460. According to *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011), those gentlemen were not able to correctly draft a § 140.405 notice letter in this case. No reported appellate opinion of the

Missouri Court of Appeals, Eastern District, has approved a § 140.405 notice since 2006. Following the long-established precedent of this Court originating with *Hobson* and continuing the manner in which the relevant statutes have been interpreted and applied for approximately seventy years under principles of *stare decisis* promotes stability, adherence to precedent, and settled rules that are necessary and necessarily relied upon in the transfer of real estate. *See Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 18.

While counsel for Appellant can add little of value that might improve any understanding of the legal analysis in *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159 (Mo. App., W.D. 2010), counsel for Appellant can provide other considerations of a more practical character that support the holding in *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 175 (Mo. App., W.D. 2010).

The phrase “authorized to acquire the deed” in § 140.405, RSMo, refers to the window of time, which is currently more than one year and less than two years from the date of the tax sale, in which tax sale purchaser elects to acquire the deed with lawful authority. *Boston v. Williamson*, 807 S.W.2d 216, 217-219 (Mo. App., W.D. 1991); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 164 (Mo. App., W.D. 2010) (“[T]he purchaser must obtain the collectors deed and record it during the one year period beginning one year after the date of sale”).

There are a number of legal requirements that the tax sale purchaser must meet in order to be authorized to acquire a collector's deed. The tax sale purchaser must:

- (1) Pay subsequent taxes, § 140.440, RSMo;
- (2) Tender the original of the certificate of purchase, § 140.420, RSMo,
- (3) Tender recording fees for the collector's deed under § 140.410, RSMo,
- (4) Comply with statutory noticing requirements and any noticing requirements set forth in applicable administrative rules or decisions¹², such as § 140.405, RSMo, or 18 U.S.C. § 3613, or 26 U.S.C. § 7426 and 26 C.F.R. §§ 301.7425-1, 301.7425-2, 301.7425-3, and 301.7425-4;

¹² Conference Committee Substitute for House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 117, First Regular Session, 96th General Assembly, enacted in 2011 repealed § 140.660, RSMo, which stated:

The state tax commission shall prescribe the forms of all certificates, blanks and books required under the provisions of this law and shall, with the advice of the attorney general, decide all questions that arise in reference to the true construction or interpretation of this law, or any part thereof, with reference to the powers and duties of county or township tax officers, and the decision shall have force and effect until modified or annulled by the judgment or decree of a court of competent jurisdiction.

- (5) Comply with any noticing requirements imposed by the United States or Missouri Constitutions, *e.g.*, *Jones v. Flowers*, 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006) and *Scherleth v. Hardy*, 280 S.W.3d 47 (Mo. banc 2009) (requiring tax sale purchasers to take additional reasonable steps, when practicable, to provide notice when certified mail is returned); and
- (6) Comply with any other requirements imposed by any other laws applicable to the particular circumstances involved in any particular tax sale.

Within the one-year (formerly two year) window beginning one year from the date of the tax sale for obtaining a collector's deed established by §§ 140.340 and 140.410, RSMo, the purchaser at a first or second sale has wide latitude in determining when a collector's deed is authorized to be issued. *Boston v. Williamson*, 807 S.W.2d 216, 218 (Mo. App., W.D. 1991); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 164 (Mo. App., W.D. 2010) (“[T]he purchaser must obtain the collectors deed and record it during the one year period beginning one year after the date of sale”).

The tax sale purchaser cannot know in advance when or if the tax sale purchaser will become authorized to obtain a collector's deed (as the delinquent taxpayer and other interested parties have the right to redeem prior to the issuance of the collector's deed), and the tax sale purchaser cannot provide advance notice of that date in a § 140.405 notice letter.

This is especially true if § 140.405 notices are returned for reasons making *Jones v. Flowers*, 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006) and *Scherleth v. Hardy*, 280 S.W.3d

47 (Mo. banc 2009) applicable. *Jones v. Flowers*, 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006) and *Scherleth v. Hardy*, 280 S.W.3d 47 (Mo. banc 2009) may require the tax sale purchaser to begin the § 140.405 noticing process over again by taking additional reasonable steps to provide certified and first class mailed notice to a new last known available address if the return of the notices previously sent by certified mail to the then last known available address shows that the address to which the prior § 140.405 notices of tax sale redemption rights were mailed is no longer valid. This extends the time when the tax sale purchaser will be lawfully authorized to acquire a collector's deed under *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942).

Not only was there no fixed redemption period of one year ending on August 27, 2008 under subsection 1 of § 140.340, RSMo, there is no uniform redemption period applicable to all delinquent taxpayers or other interested parties allowing tax sale purchasers to give advance notice of the expiration or duration of redemption rights. Certain special statutory rights of redemption exist that may make the right of redemption an individualized matter that is specific to the facts and circumstances of the delinquent taxpayer or other interested party. For example, under § 140.350, RSMo, if the delinquent taxpayer or other interested party is an infant, incapacitated or disabled person as defined in Chapter 475, RSMo, there are special rights of redemption. See *Roberts v. Glasgow*, 860 S.W.2d 26 (Mo. App., E.D. 1993) (concluding that no adjudication of disability is required by this statute, and that partially disabled persons are disabled persons for purposes of § 140.350, RSMo) and *Covey*

v. Town of Somers, 351 U.S. 141, 76 S. Ct. 724, 100 L. Ed. 1021 (1956) (notice provided to a person without a guardian or conservator who was known to be mentally incompetent did not comport with principles of Due Process of law).

In this case, Lot 253 of Westhaven Plat Eight was conveyed by Quit Claim Deed dated on or about February 20, 2008 and recorded on or about February 20, 2008 in Book 17796 Page 5783 of the St. Louis County Records, to John E. K. Mrema and Respondent-Plaintiff Catherine W. Ndegwa, as Trustees of the Mremra Family Revocable Trust dated February 15, 2008. LF at 285, 296, 301A-301, 322-326, 366, 453, 463, 563, 645. On November 17, 2008, Respondents-Plaintiffs Catherine Ndegwa and Anale Mrema were appointed co-guardians of John E.K. Mrema by the Probate Division of the Circuit Court of St. Louis County, Missouri. LF at 281, 294, 366. The Judgment of the Probate Division of the St. Louis County Circuit Court found that John E.K. Mrema is an incapacitated and disabled person by reason of dementia-Alzheimer's disease. LF at 370, 372-373.¹³ The Notice Letters sent by KSSO were dated September 15, 2008, after the conveyance of Lot 253 of Westhaven Plat Eight into the Mrema Family Revocable Trust dated February 15, 2008.

Section 456.7-703, RSMo, provides, in part:

¹³ To the best of counsel for Appellant's knowledge, no inventory showing that Lot 253 of Westhaven Plat Eight was included in the Estate of John E.K. Mrema has been included in the Record on Appeal.

2. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

4. If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

Section 456.7-704, RSMo, provides, in part:

1 A vacancy in a trusteeship occurs if:

(7) a guardian or conservator is appointed for an individual serving as trustee.

2. If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

Based upon the foregoing, § 140.350, RSMo, has no application to the facts in this case. Upon the appointment of Respondents-Plaintiffs Catherine Ndegwa and Anale Mrema as co-guardians of John Mrema, his co-trusteeship of the Mrema Family Revocable Trust dated February 15, 2008 was vacated under § 456.7-704.1(6), RSMo. Under § 456.7-704.2, RSMo, the vacancy in the co-trusteeship of the Mrema Family Revocable Trust dated February 15, 2008, need not be filled. Under § 456.7-703.2, RSMo, Respondent-Plaintiff Catherine Ndegwa was authorized to act for the trust as the remaining co-trustee of record. Under § 456.7-703.4, RSMo, Respondent-Plaintiff Catherine Ndegwa, as co-trustee, was authorized to take prompt action in order to avoid injury to the trust property, such as causing the redemption of Lot 253 of Westhaven Plat Eight from the tax lien foreclosure process.

The 2009 Eastern District opinions¹⁴ have not mentioned, discussed or considered § 140.350, RSMo, in elucidating the content of a notice of the “right to redeem” that must be contained in a notice under § 140.405, RSMo.

Also complicating the duration of tax sale redemption rights are federal laws, such as 26 U.S.C. § 7425 (giving the IRS a redemption period of 120 days after the issuance of the

¹⁴ *Keylien Corporation v. Johnson*, 284 S.W.3d 606 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009), and *Hames v. Bellistri*, 300 S.W.3d 235 (Mo. App., E.D. 2009).

collector's deed), *Glasgow Realty LLC v. Withington*, 345 F.Supp.2d 1025 (E.D. Mo., 2004), 18 U.S.C. § 3613 (giving the United States that authority to collect certain fines), and 11 U.S.C. § 108(b) (providing a minimum 60 day period for a trustee in bankruptcy to exercise redemption rights), *U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)*, 437 B.R. 346 (Bankr., E.D.Mo. 2010).

Because of the complexities of determining any delinquent taxpayer's redemption rights and the lack of information available to tax sale purchasers to determine the facts necessary to legally and correctly advise delinquent taxpayers of the duration of their redemption rights, unreasonable, oppressive or absurd results are reached if the "right to redeem", as that phrase is used in § 140.405, RSMo, is interpreted to require notices of tax sale redemption rights under § 140.405, RSMo, to accurately state the duration or expiration of the right to redeem. *See United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 167 (Mo. App., W.D. 2010) (one canon of statutory construction is to avoid unreasonable, oppressive or absurd results in interpreting statutes).

The Notice Letters dated September 15, 2008, informed the delinquent taxpayers and other interested parties that they had a right to redeem the property and told them to contact the county collector's office. These Notice Letters informed the delinquent taxpayers and other interested parties of their right to redeem in compliance with § 140.405, RSMo, and applicable principles of Due Process as set forth in *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 175 (Mo. App., W.D. 2010).

If Respondents-Plaintiffs may now want to claim that the Notice Letters contain information on the duration of the right to redeem that is inaccurate or incorrect or otherwise defective based upon any purported defects in the Notice Letters that are not based upon *Keylien* or the cases following *Keylien*, this Court may find it appropriate to remand this matter for further proceedings to determine whether any purported defect or defects in the Notice Letters prevent substantial compliance with § 140.405, RSMo, by being more than a “mere irregularity” under § 140.520, RSMo, for which the collector’s deed may not be invalidated, or whether such purported defect or defects in the Notice Letters make those notices non-compliant with § 140.405, RSMo.

III.

THE TRIAL COURT ERRED IN GRANTING RESPONDENTS-PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNT III OF THE AMENDED PETITION ON THE GROUND THAT APPELLANT FAILED TO PROVIDE INDYMAC BANK WITH NOTICE IN COMPLIANCE WITH SECTION 140.405, RSMO, BECAUSE INDYMAC BANK WAS THE NAMED BENEFICIARY UNDER A PUBLICLY RECORDED DEED OF TRUST AFFECTING LOT 252 OF WESTHAVEN PLAT EIGHT AND THE REAL ESTATE SOLD AT TAX SALE WAS LOT 253 OF WESTHAVEN PLAT EIGHT; THUS, INDYMAC BANK HAD NO PUBLICLY RECORDED INTEREST IN THE REAL ESTATE SOLD AT TAX SALE AND WAS NOT ENTITLED TO NOTICE UNDER SECTION 140.405, RSMO.

The trial court's Judgment invalidates the Collector's Deed under § 140.405, RSMo, on the ground that IndyMac Bank was a beneficiary under a publicly recorded deed of trust claiming an interest in the "Property" and was entitled to notice of its right to redeem the "Property" pursuant to § 140.405, RSMo. LF at 978.

The IndyMac Deed of Trust describes the real estate affected by that instrument as being Lot 252 of Westhaven Plat Eight. LF at 301A, 302-321, 367, 452, 463. The IndyMac Deed of Trust contains a street or common address of 10960 Warwickhall Drive, Bridgeton, Missouri 63044. LF at 302-321, 630. The IndyMac Deed of Trust does not contain a locator

or parcel identification number assigned by the St. Louis County Assessor to the real estate affected by that instrument. LF at 302-321.

The Tax Sale Certificate of Purchase describes the real estate affected by the certificate as being Lot 253 of Westhaven Plat Eight. LF at 451, 461, 466, 628, 645. The Collector's Deed dated on or about January 9, 2009 and recorded on or about February 4, 2009 in Book 18202 Page 1341 of the St. Louis County Records, describes the real estate affected by that instrument as being Lot 253 of Westhaven Plat Eight. LF at 285, 301, 327-330, 366, 450, 461, 563, 628, 645.

None of the title searches of Lot 253 of Westhaven Plat Eight that Appellant caused to be prepared as part of the foreclosure of tax liens against said real estate under § 140.405, RSMo, identify the IndyMac Deed of Trust as affecting Lot 253 of Westhaven Plat Eight. LF at 451, 452, 453, 461-462, 463-464, 466-469, 470-472, 473-475, 630, 646-649.15

15 The incorrect legal description in the IndyMac Deed of Trust is the only explanation in the Record on Appeal for the non-payment of the real estate taxes for Lot 253 of Westhaven Plat Eight. See the letter dated March 19, 2009 addressed to St. Louis County Collector of Taxes from Janice Metzger, IndyMac Bank/Tax Department, wherein Ms. Metzger states that IndyMac Bank provided St. Louis County with an incorrect legal description for the property, which in turn resulted in the assignment of an incorrect parcel identification number or locator number to the tax payments made for 2004, 2005, and 2006 for the real estate with a street address of 10960 Warwick Hall Drive, Bridgeton, Missouri. LF at 506.

Section 140.405, RSMo (as in effect at all relevant times),¹⁶ provides that a tax sale purchaser at a first or second offering delinquent tax sale is not entitled to a collector's deed under § 140.420, RSMo,

until the person meets with the following requirement or until such person makes affidavit that a **title search** has revealed no publicly recorded deed of trust, mortgage, lease, lien or claim on the real estate. At least ninety days prior to the date when a purchaser is authorized to acquire the deed, the purchaser shall notify any person who holds a **publicly recorded** deed of trust, mortgage, lease, lien or claim **upon that real estate** of the latter person's right to redeem such person's publicly recorded security or claim.

(Emphasis added.)

Section 140.405, RSMo, was enacted in response to *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 77 L. Ed. 2d 180 (1983) and *Lohr v. Cobur Corporation*, 654 S.W.2d 883 (Mo. banc 1983), *subsequent appeal*, 721 S.W.2d 763 (Mo. App., E.D. 1986). *M & P Enterprises Inc. v. Transamerica Financial Services*, 944 S.W.2d

¹⁶ Section 140.405, RSMo, was amended by Senate Committee Substitute for House Committee Substitute for House Bill No. 1316, Second Regular Session, 95th General Assembly (“HB 1316”), effective August 28, 2010.

154, 157 (Mo. banc 1997); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 165 (Mo. App., W.D. 2010); *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 610 (Mo. App., E.D. 2009). The words “publicly recorded” that appear in § 140.405, RSMo, come from the *Mennonite* and *Lohr* cases. *Mennonite*, 462 U.S. at 798; *Lohr*, 654 S.W.2d at 886. *Mennonite* and *Lohr* require a property interest to be “publicly recorded” as a threshold requirement before constitutional Due Process principles protect that interest. *Crager v. Fry*, 479 N.E.2d 613, 614 (Ind. App. 1985) (“In order to receive protection under *Mennonite*, Crager need to have recorded his contract with Thacker.”)

Because one alternative for compliance with § 140.405, RSMo, is an affidavit that a title search has revealed no publicly recorded deed of trust, mortgage, lease, lien or claim on the real estate, the plain language of the statute would lead one to conclude that one can rely on title searches to determine whether a deed of trust is publicly recorded on the relevant real estate. In this case, none of the title searches of Lot 253 of Westhaven Plat Eight report the IndyMac Deed of Trust as encumbering Lot 253 of Westhaven Plat Eight.

Robson v. Diem, 317 S.W.3d 706 (Mo. App., W.D. 2010) considered the meaning of the word “owner” in § 443.325, RSMo, which requires notice of non-judicial foreclosure of deeds of trust to be sent to “the person shown by the records of the office of the recorder of deeds to be the owner of the property as of forty days prior to the scheduled date of foreclosure sale.” Robson entered into a contract to purchase Lot 15 of Shelly Estates from the owners of Lots 15 and 20 of Shelly Estates. Before the sale of Lot 15 to Robson closed,

the sellers conveyed both Lots 15 and 20 of Shelly Estates to Johnson, who encumbered both parcels with a deed of trust. Subsequently, the sellers purported to convey Lot 15 of Shelly Estates to Robson by recorded deed. Robson encumbered Lot 15 of Shelly Estates with a deed of trust. A scrivener's error affidavit was filed of record to correct the Johnson Deed. Johnson then defaulted on the Deed of Trust encumbering both parcels, and there was a foreclosure sale of both lots and an eventual resale by FNMA to the Diems. Robson claimed an equitable ownership of Lot 15 from the time of the execution of his purchase contract. The Court found that the recorded deed conveying Lot 15 to Robson, Robson's encumbrance of Lot 15 with a recorded deed of trust, the recorded scrivener's error affidavit, and Robson's possession of Lot 15 created genuine issues of material fact that prevented the granting of a motion for summary judgment on the issue of who was an owner of Lot 15 of Shelly Estates according to the records of the Recorder of Deeds. *Robson*, 317 S.W.3d at 716.

In this case, IndyMac Bank did not have possession of the subject real estate, there is no recorded scrivener's affidavit giving recorded or constructive notice of any mistake in the legal description of the IndyMac Deed of Trust, there was no re-recordation of the IndyMac Deed of Trust to correct any mistake in the legal description, there was no correction deed or correction deed of trust filed of record to correct any mistake in the legal description in the IndyMac Deed of Trust, there is no recorded subordination agreement, assignment or other recorded instrument referring to the IndyMac Deed of Trust with a legal description of Lot 253 of Westhaven Plat Eight, there was no parcel identification or locator number on the

Deed of Trust associated with Lot 253 of Westhaven Plat Eight, and the only evidence that the IndyMac Deed of Trust was **not** intended to convey a publicly recorded security interest in Lot 252 of Westhaven Plat Eight (the adjacent real estate legally described in said deed of trust) is a street or common address appearing on the IndyMac Deed of Trust.¹⁷ No evidence was produced in the trial court of an index or other method of matching street or common addresses to legal descriptions, nor was any evidence introduced giving any opinion that one skilled in title examinations should have known that the IndyMac Deed of Trust was intended to encumber Lot 253 of Westhaven Plat Eight from the street or common address on the IndyMac Deed of Trust when the IndyMac Deed of Trust described Lot 252 of Westhaven Plat Eight.

Section 59.330, RSMo, states, in part:

1. It shall be the duty of recorders to record:
 - (1) All deeds, mortgages, conveyances, deeds of trust, assignments, bonds, covenants, defeasances, or other instruments of writing, of or concerning any lands and tenements, or goods and chattels, which shall be proved or acknowledged, and authorized to be recorded in their offices;

¹⁷ Prior to entry of the trial court's Judgment and Order herein, no action for reformation of the IndyMac Deed of Trust or any notice of lis pendens had been filed in this matter.

2. All deeds, mortgages, conveyances, deeds of trust, assignments, bonds, covenants or defeasances, except supplemental indentures of utility companies and rural electric cooperatives, must contain a legal description of the lands affected. All deeds, except deeds of easement or right-of-way conveying any lands or tenements must contain a mailing address of one of the grantees

(Emphasis added.)

Section 59.005, RSMo, provides, in part:

As used in this chapter, unless the context clearly indicates otherwise, the following terms mean:

(6) "Legal description" includes but is not limited to the lot or parts thereof, block, plat or replat number, plat book and page and the name of any recorded plat or a metes and bounds description with acreage, if stated in the description, or the quarter/quarter section, and the section, township and range of property, or any combination thereof. The address of the property shall not be accepted as legal description;

(Emphasis added.)¹⁸

Section 442.380, RSMo, provides:

Every instrument in writing that conveys any real estate, or whereby any real estate may be affected, in law or equity, proved or acknowledged and certified in the manner herein prescribed, shall be recorded in the office of the recorder of the county in which such real estate is situated.

Section 442.390, RSMo, provides:

Every such instrument in writing, certified and recorded in the manner herein prescribed, shall, from time of filing the same with the recorder for record, impart notice to all persons of the contents thereof and all subsequent purchasers and mortgagees shall be deemed, in law and equity, to purchase with notice.

(Emphasis added.)

¹⁸ In addition, the Jones-Munger Act, Chapter 140, RSMo, does not accept street addresses as legal descriptions of real estate being sold. *See* Section 140.530, RSMo; *Braun v. Petty*, 31 S.W.3d 521, 523 (Mo. App., E.D. 2000), *subsequent appeal*, *Braun v. Petty*, 129 S.W.3d 449 (Mo. App., E.D. 2004); *Firma, Inc. v. Twillman*, 126 S.W.3d 790 (Mo. App., E.D. 2004); *Stadium West Properties LLC v. Johnson*, 133 S.W.3d 128 (Mo. App., W.D. 2004).

Section 442.400, RSMo, provides:

No such instrument in writing shall be valid, except between the parties thereto, and such as have actual notice thereof, until the same shall be deposited with the recorder for record.

For purposes of the recording statutes used to determine whether the IndyMac Deed of Trust is a publicly recorded deed of trust affecting Lot 253 of Westhaven Plat Eight, the street or common address of the property is not accepted as the legal description of the property. Nowhere is there any requirement placed on Missouri Recorders of Deeds to index properties by street or common address. The IndyMac Deed of Trust perfected a publicly recorded security interest in Lot 252 of Westhaven Plat Eight (the adjacent property).

Part of Appellant's argument can be reduced to the following syllogism:

1. Major Premise: Under § 59.330, RSMo, all deeds of trust must contain a legal description to be publicly recorded by the recorder of deeds of a county, and under § 59.005(6), the legal description of an instrument cannot be a street address.
2. Minor Premise: The IndyMac Deed of Trust contains a legal description to property adjacent to the subject real estate (Lot 252 of Westhaven Plat Eight), and the street address in the IndyMac Deed of Trust cannot be the legal description of the real estate affected by that instrument.

3. Conclusion: The IndyMac Deed of Trust is a publicly recorded deed of trust as to Lot 252 of Westhaven Plat Eight (the adjacent property) and is not a publicly recorded deed of trust as to Lot 253 of Westhaven Plat Eight (the subject real estate). Therefore, § 140.405, RSMo, does not require notice to those named on the IndyMac Deed of Trust in the foreclosure of tax liens encumbering Lot 253 of Westhaven Plat Eight, because that IndyMac Deed of Trust is not a publicly recorded deed of trust as to Lot 253 of Westhaven Plat Eight.

See, e.g., Chase Home Finance, LLC v. Calloway (In re Lisa L. Calloway), 429 B.R. 802 (Bankr., N.D. Ala. 2010) (deed of trust that was intended to encumber two adjoining parcels—one improved parcel and one vacant parcel—that only contained a legal description for the vacant parcel but contained a street address for the improved parcel failed to encumber the improved parcel); *Hanrahan v. University of Iowa Community Credit Union (In re Michael B. Thomas)*, 387 B.R. 4 (Bankr., N.D. Iowa) (mortgage that contained correct street address but legally described adjacent property failed to provide constructive notice to third parties, because a title searcher would have no occasion to look beyond the index book until he found a piece of property which in description would correspond with that the title of which he was investigating, and it would be strange indeed that he should, under such circumstances, be charged with a knowledge of facts recited in a mortgage given on another and distinct piece of property); *Hamilton v. Washington Mut. Bank, FA (In re Colon)*, 376

B.R. 22, 29-30 (Bankr. D. Kan. 2007), *affirmed*, 376 B.R. 33 (10th Cir. BAP 2007), *reversed*, 563 F.3d 1171 (10th Cir. 2009) (a three-part legal description in a mortgage consisting of a lot number, street address and parcel identification number containing an error “only” in the lot number did not impart constructive notice according to the bankruptcy court and the bankruptcy appellate panel, because the Register of Deeds does not maintain an index of properties by street address or parcel number that would allow an examiner to cross-check other public records in the office of the Register of Deeds to determine whether the legal description and the street address or parcel identification number conflict; on appeal before the United States Court of Appeals for the Tenth Circuit the judgment was reversed on the ground that a subordination agreement referred to the mis-described mortgage by correct book and page number and also correctly described the property, thereby putting a third-party purchaser on notice that the underlying mortgage was intended to affect the real estate correctly described in the subordination agreement; note: there is no such subordination agreement or other recorded instrument in this case); *Chase Manhattan Mortgage Corp. v. Bird (In re Hiseman)*, 330 B.R. 251 (Bankr. D. Utah 2005) (constructive notice of a recorded instrument extends only to the legal description in the document).

Before the trial court, the Respondents argued that *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., 2009) is controlling. In *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009), the legal descriptions to the real estate were completely missing from the deed of trust. The Deed of Trust in *Eason* contained only street addresses to several

properties (including the subject properties with other property) and parcel identification numbers. The Deed of Trust in *Eason* was released prior to the entry of judgment in that case, and, although named as a party, the lender was never served in that case after the deed of trust was released of record. None of the foregoing facts are recited in *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009).¹⁹

Cedarbridge LLC attempted to present to the trial court and to the Missouri Court of Appeals, Eastern District, on appeal in *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009) the following argument in the form of a syllogism:

1. Major Premise: Under § 59.330, RSMo, all instruments publicly recorded in the office of the recorder of deeds are required to contain a legal description.
2. Minor Premise: The Deed of Trust in *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009) did not contain a legal description.
3. Conclusion: The Deed of Trust in *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009) was not a publicly recorded deed of trust as to any particular parcel of real estate.

See, e.g., Drown v. Argent Mortgage Company, LLC (In re Michelle Monick Bunn), 376 B.R. 835 (Bankr. S.D. Ohio 2007); *Richardson v. Wells Fargo Home Mortgage, Inc. (In re Mary P. Brandt)*, 421 B.R. 426 (Bankr., W.D. Mich. 2009) (presence of a street address and a

¹⁹ Counsel for Appellant KSSO LLC in this matter was also counsel for Appellant Cedarbridge LLC in *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009).

permanent parcel number in the absence of any legal description is not sufficient to provide constructive notice of a mortgage).

The Missouri Court of Appeals, Eastern District, in *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009) completely ignored the above argument and failed to recite any of the facts relevant to such argument. *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009) has no discussion of or ruling on the foregoing argument. Accordingly, Appellant concludes that *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009) is not authority for the proposition that deeds of trust can be publicly recorded for purposes of §§ 59.005(6), 59.330, RSMo, and 140.405, RSMo, if the deeds of trust do not contain a legal description at all.

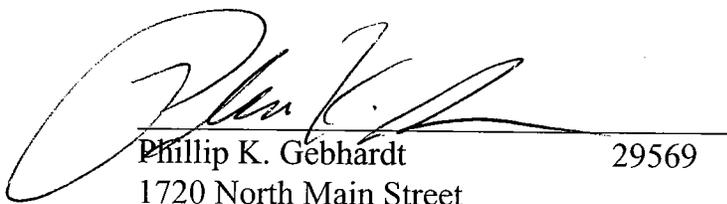
But assuming *arguendo* that *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009) stands for such a proposition, the argument here is different and distinguishable. Appellant is not stating that the IndyMac Deed of Trust was not publicly recorded as to any real estate because it lacks any legal description. Appellant is stating that the IndyMac Deed of Trust is publicly recorded as to Lot 252 of Westhaven Plat Eight (the adjacent property) and not as to Lot 253 of Westhaven Plat Eight (the subject real estate). Therefore, because the IndyMac Deed of Trust is not a publicly recorded deed of trust as to Lot 253 of Westhaven Plat Eight, Appellant was not required to notify any parties named on the IndyMac Deed of Trust of any rights of redemption in the foreclosure of tax liens encumbering Lot 253 of Westhaven Plat Eight under § 140.405, RSMo.

CONCLUSION

For the foregoing reasons, Appellant concludes that the trial court erred in granting Respondents-Plaintiffs' Motion for Partial Summary Judgment on Count III of their First Amended Petition. This Court should reverse the trial court's Judgment, and this Court should remand this matter for entry of a judgment consistent with such instructions as this Court may deem appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that electronic mail, together with an attachment containing an electronic version of the Appellant's Brief in pdf form was sent to the following persons on the 20th day of February, 2012: Elizabeth K. Thompson at Thompsonlaw@live.com, to Robert E. Fox, Jr., at rfox@stlouisco.com, to Elizabeth Kayser at attykayser@sbcglobal.net, and to Aaron Weishaar at aweishaar@rwalawfirm.com,



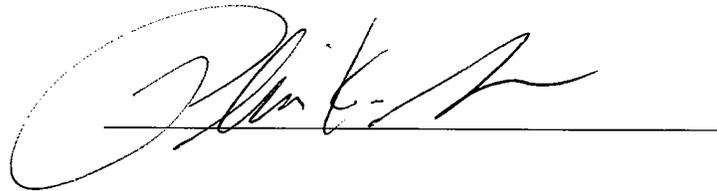
COMPLIANCE CERTIFICATION

In compliance with Missouri Supreme Court Rule 84.06(c), the undersigned does hereby certify that:

1. To the best of the undersigned’s knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that the claims, defenses, requests, demands, objections, contentions, or arguments stated herein are not presented or maintained for any improper purpose; that said claims, defenses, requests, demands, objections, contentions, or arguments stated herein are warranted by existing law or a non-frivolous argument for the extension, modification or reversal of existing law or the establishment of new law; that the allegations and other factual contentions stated herein have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and that the denials of factual contentions made herein are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

2. To the best of the undersigned’s knowledge, information and belief, this brief complies with the limitations contained in Missouri Supreme Court Rule 84.06(b).

3. To the best of the undersigned’s knowledge, information and belief, this brief contains 20,762 words, more or less, according to the word count function in the Word program.



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