# IN THE MISSOURI COURT OF APPEALS
# WESTERN DISTRICT

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| **IN THE MATTER OF FORECLOSURE LIENS FOR DELINQUENT TAXES BY ACTION IN REM: COLLECTOR OF REVENUE BY AND THROUGH THE DIRECTOR OF COLLECTIONS FOR JACKSON COUNTY, MISSOURI,** | ) | |
| **Respondents,** | ) | |
| **v.** | ) | **WD75353** |
| | ) | |
| **PARCELS OF LAND ENCUMBERED WITH DELINQUENT LAND TAX LIENS; REALTY ACQUISITIONS, LLC,** | ) | **FILED: December 24, 2013** |
| **Appellant.** | ) | |

**Appeal from the Circuit Court of Jackson County**
**The Honorable Michael W. Manners, Judge**

**Before Division Two: Alok Ahuja, P.J., Karen King Mitchell and Anthony Rex Gabbert, JJ.**

Realty Acquisitions, LLC appeals a final judgment entered by the Circuit Court of Jackson County, which set aside a tax foreclosure sale at which Realty Acquisitions acquired a parcel of real property in Blue Springs (the "Property"). Respondents Seal-O-Matic Paving Co. and Beemer Construction Co. challenged the tax foreclosure sale in the circuit court, alleging that they were constitutionally entitled to notice of the sale because they hold mechanic's liens against the Property, and had filed mechanic's lien statements with the clerk of the circuit court

as required by § 429.080[1] prior to Jackson County's commencement of the tax foreclosure suit. Respondents also argued that the tax foreclosure suit was improper because it was filed while the Respondents had pending an equitable action to determine all claims against the property under § 429.270. We affirm.

**Factual Background**

The Property is located near the intersection of R.D. Mize Road and Chapman Drive in Blue Springs, and is commonly known as Sunny Pointe 2nd Plat. Prior to the tax foreclosure sale, the Property was owned by Sunnypointe, LLC, a Missouri limited liability company which has been administratively dissolved.

In 2006, Beemer installed sanitary sewers, storm sewers, and water mains on the Property. In 2007, Seal-O-Matic installed curbs and asphalt for streets on the Property. Neither party was fully paid, and both filed mechanic's lien statements with the clerk of the Circuit Court of Jackson County, as required by § 429.080, in 2007. Beemer's mechanic's lien statement asserted that it was owed $164,879.76, while Seal-O-Matic's mechanic's lien filing stated that it was owed $187,494.80. Seal-O-Matic had previously filed a Notice of Claim of Mechanic's Lien with the Jackson County Recorder of Deeds pursuant to § 429.100, notifying Sunnypointe of its intent to file a mechanic's lien statement within ten days unless its outstanding claim was paid.

Beemer and Seal-O-Matic both filed lawsuits to foreclose on their mechanic's liens, and the actions were consolidated (the "Mechanic's Lien Action"). A consent judgment was entered in the Mechanic's Lien Action on August 27, 2010, finding that Beemer and Seal-O-Matic were entitled to judgment against Sunnypointe and a second defendant in the amount claimed in their

[1] Statutory citations refer to the 2000 edition of the Revised Statutes of Missouri, updated through the 2012 Cumulative Supplement.

mechanic's lien filings, together with prejudgment and postjudgment interest, and attorney's fees and costs. Final judgment in the Mechanic's Lien Action was entered on April 12, 2011, giving Beemer and Seal-O-Matic the right to execute against the Property and have it sold at a foreclosure sale. The County was not made a party to the Mechanic's Lien Action.

Meanwhile, Sunnypointe failed to pay the 2007 taxes on the Property, which became delinquent after December 31, 2007. On May 24, 2010, the County filed a petition to foreclose on the Property for unpaid real estate taxes pursuant to §§ 141.210 to 141.810 (the "Tax Foreclosure Action"). Notice of the pendency of the Tax Foreclosure Action was given to Sunnypointe, the Property's registered owner, but was not provided to Beemer or Seal-O-Matic. The circuit court entered final judgment in the Tax Foreclosure Action on November 12, 2010, giving the County the right to have the Property sold at a foreclosure sale. Notice of the sale was provided to Sunnypointe, and was made by publication; no notice was provided to Beemer or Seal-O-Matic, however.

The tax foreclosure sale was conducted on August 22, 2011, and the property was sold to Realty Acquisitions for $51,000. The Notice of Sale indicates that $341.47 in taxes, interest, penalties, attorney's fees and costs were owing on the Property at the time of the sale.

Seal-O-Matic and Beemer later became aware that the property had been sold, and entered their appearances in the Tax Foreclosure Action. Seal-O-Matic and Beemer opposed the confirmation of the tax foreclosure sale, and moved to have it set aside. The circuit court set aside the tax foreclosure sale, and Realty Acquisitions now appeals. Although the Collector of Revenue for Jackson County commenced the underlying action and is listed as a respondent, it has not participated in this appeal.

## Standard of Review

In appeals from a court-tried case, the trial court's judgment will be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). "We view the evidence and all reasonable inferences drawn therefrom in the light most favorable to the judgment and disregard all evidence and inferences to the contrary." *Thompson v. Koenen*, 396 S.W.3d 429, 434 (Mo. App. W.D. 2013) (citation and internal quotation marks omitted). "Questions of law, however, are reserved for the independent judgment of the appellate court without deference to the trial court's determination." *Langdon v. United Rests., Inc.*, 105 S.W.3d 882, 886 (Mo. App. W.D. 2003). In this case, the parties stipulated to the facts, and the only questions presented are issues of law subject to our *de novo* review.

## Analysis

Respondents challenged the tax foreclosure sale on two grounds: (1) that the sale was conducted without providing them with pre-sale notice, to which they were entitled under the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and (2) that the Collector of Revenue improperly commenced the Tax Foreclosure Action while the Mechanic's Lien Action was pending, in violation of § 429.300. Because we find that the Respondents' first argument has merit, we need not address the second.

Realty Acquisitions emphasizes that the County fully complied with the notice requirements imposed by statute. Section 141.540.5 provides that, prior to conducting a tax foreclosure sale, the County must provide written notice "to the persons named in the petition as being the last known persons in whose names tax bills affecting the respective parcels of real estate described in said petition were last billed or charged on the books of the collector, or the last known owner of record, if different." Sections 141.540.1 to .3 also require publication of

notice of the impending sale in a general-circulation newspaper, while § 141.540.4 provides that "the county collector shall enter upon the property subject to foreclosure . . . and post a written informational notice in any conspicuous location thereon." Respondents do not dispute that the County complied with these statutory requirements.

We have previously held, however, that "[c]ompliance with the technical statutory requirements for providing notice does not relieve the County of its overarching obligation to insure that its efforts to provide notice satisfy the requirements of due process." *In re Foreclosure of Liens for Delinquent Land Taxes by Action in Rem v. Frey*, 328 S.W.3d 728, 734-35 (Mo. App. W.D. 2010); *see also, e.g., Schlereth v. Hardy*, 280 S.W.3d 47, 52 (Mo. banc 2009). In addition to any statutory notice requirements, "[d]ue process requires that known parties whose rights would be affected by a tax sale be afforded notice reasonably calculated under all of the circumstances to apprise them of the pendency of the action." *Harpagon MO, LLC v. Clay Cnty. Collector*, 335 S.W.3d 99, 103 (Mo. App. W.D. 2011)[2]; *see also, e.g., In re Foreclosure of Liens for Delinquent Land Taxes by Action in Rem v. Maximilian Invs.*, 190 S.W.3d 416, 420 (Mo. App. W.D. 2006) (notice to mortgagee required under due process principles, although not specified in § 141.540.5).

Beemer and Seal-O-Matic were entitled to notice under the Due Process Clause. In *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), the Supreme Court of the United States held that the Due Process Clause required that a mortgagee of real property receive notice at its last known address of a tax foreclosure sale, even though the relevant Indiana statutes – like Missouri's – required mailed notice only to the property's owner (in addition to notice by

[2] *Harpagon* applied chapter 140, RSMo, as opposed to chapter 141 (which is applicable here). Chapters 140 and 141 apply to property located in different classes of counties. Despite differences in the statutory provisions contained in the two chapters, the general due process-notice principles are the same.

publication). *Id.* at 793. *Mennonite* noted that, in its seminal decision in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), the Court had held that "prior to an action which will affect an interest in life, liberty, or property protected by the Due Process Clause of the Fourteenth Amendment, a State must provide 'notice 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.'" *Mennonite*, 462 U.S. at 795 (quoting *Mullane*, 339 U.S. at 314). *Mennonite* held that this notice requirement applied to a mortgagee of property subject to a tax foreclosure, because "a mortgagee possesses a substantial property interest that is significantly affected by a tax sale." *Id.* at 798. The Court explained:

> Under Indiana law, a mortgagee acquires a lien on the owner's property which may be conveyed together with the mortgagor's personal obligation to repay the debt secured by the mortgage. A mortgagee's security interest generally has priority over subsequent claims or liens attaching to the property, and a purchase money mortgage takes precedence over virtually all other claims or liens including those which antedate the execution of the mortgage. The tax sale immediately and drastically diminishes the value of this security interest by granting the tax-sale purchaser a lien with priority over that of all other creditors. Ultimately, the tax sale may result in the complete nullification of the mortgagee's interest, since the purchaser acquires title free of all liens and other encumbrances at the conclusion of the redemption period.

*Id.* (citations omitted).

Based on its conclusion that the mortgagee had "a substantial property interest" that was "significantly affected" by the challenged tax sale, *Mennonite* held that notice by publication was insufficient where the mortgagee's identity and address were reasonably available: "Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party . . . if its name and address are reasonably ascertainable." *Id.* at 800 (emphasis omitted).[3]

[3] Notice by publication may be sufficient when no other notice options are reasonably available. *See United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 183 (Mo. App. W.D. 2010),

Missouri courts have previously applied *Mennonite* to hold that, whether required by statute or not, notice to mortgagees of sales which will extinguish their liens is constitutionally required. *See, e.g.*, *Anheuser-Busch Employees' Credit Union v. Davis*, 899 S.W.2d 868, 869 (Mo. banc 1995) ("a mortgagee, whose interest in the property is publicly recorded, has a constitutionally protected property interest in real estate, and the due process clause of the Fourteenth Amendment to the United States Constitution requires the tax authority to give written notice of a tax sale to a mortgagee by 'notice mailed to the mortgagee's last known available address, or by personal service.'" (quoting *Mennonite*, 462 U.S. at 798)); *Maximilian Invs.*, 190 S.W.3d at 420. To our knowledge, however, no Missouri decision has addressed whether due process principles require taxing authorities to give notice of a tax foreclosure sale to mechanic's lien claimants.

Although this issue has apparently not been previously addressed in Missouri, we conclude that the due process principles articulated in *Mennonite* require that mechanic's lien claimants who have filed lien statements in the manner required by Missouri statutes must be given notice, at their last known address, of an impending tax sale. Like the mortgagee in *Mennonite*, mechanic's lien claimants have "a substantial property interest that is significantly affected by a tax sale." 462 U.S. at 798. Mechanic's liens, like the mortgage lien at issue in *Mennonite*, are assignable after the filing of a mechanic's lien statement in the circuit court. *See* § 429.160; *Williams Lumber & Mfg. Co. v. Ginsburg*, 146 S.W.2d 604, 606 (Mo. 1940) (Missouri's mechanic's lien statutes do "not authorize an assignment until after the lien is perfected" by filing in the circuit court).

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overruled on other grounds, *Sneil, LLC v. Tybe Learning Ctr., Inc.*, 370 S.W.3d 562, 573 (Mo. banc 2012).

Mechanic's liens also have priority over other interests in the property, including some interests which were perfected prior to the filing of a mechanic's lien statement. As the Missouri Supreme Court explained in *Bob DeGeorge Assocs., Inc. v. Hawthorn Bank*, 377 S.W.3d 592 (Mo. banc 2012):

> Two statutory provisions govern the priority of a mechanic's lien against other encumbrances on real property. For encumbrances on the land, the "first spade rule" under section 429.060 gives the mechanic's lien relation-back priority to the date when work commenced:
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> > The lien for work and materials as aforesaid shall be preferred to all other encumbrances *which may be attached* to or upon such buildings, bridges or other improvements, or the ground, or either of them, *subsequent to the commencement of such buildings or improvements*.
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> (Emphasis added). So long as a mechanic's lien arises on the land and is filed properly, it will have priority over any third-party encumbrance attaching after the date work began. In contrast to a mechanic's lien attached to the land, section 429.050 gives a mechanic's lien attached to the structure or improvements priority over all other encumbrances:
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> > The lien for things aforesaid, or work, shall attach to the buildings, erections or improvements for which they were furnished or the work was done, in preference to any prior lien or encumbrance or mortgage upon the land upon which said buildings, erections, improvements or machinery have been erected or put[.]
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> . . . Under these provisions, the priority of a mechanic's lien will vary based on the type of property. A mechanic's lien on land is given relation-back priority under section 429.060, whereas a mechanic's lien on a building, erection, or improvement is given complete priority under section 429.050.

*Id.* at 598-99 (citations omitted). Thus, given that a mechanic's lien attaches in Missouri no later than the date that the work commences, the filing of a lien statement in the circuit court as required by § 429.080 "does not create the lien; it gives notice of the previous existence of the lien and perfects it." *In re Houts*, 23 B.R. 705, 707 (Bankr. W.D. Mo. 1982).

Moreover, as in *Mennonite*, "[t]he tax sale immediately and drastically diminishes the value of this security interest." 462 U.S. at 798. Unlike tax sales conducted under chapter 140, a

property owner has no further opportunity to redeem the property following a tax sale conducted under chapter 141. *Modern Home Inv. Co. v. Boyle*, 219 S.W.2d 346, 348 (Mo. 1949) ("in a foreclosure proceeding, instituted and carried out pursuant to the Land Tax Collection Act, the purchaser at the sale obtains a title not subject to redemption by the former owner.").[4] And the relevant statutes make clear that the tax sale extinguishes preexisting mechanic's liens. Section 141.550.3 provides that, with respect to a tax foreclosure sale conducted under chapter 141,

> [s]uch sale shall convey the whole interest of every person having or claiming any right, title or interest in or lien upon such real estate, whether such person has answered or not, subject to rights-of-way thereon of public utilities upon which tax has been otherwise paid, and subject to the lien thereon, if any, of the United States of America.

Section 141.570.2 underscores that the majority of prior interests in the property are extinguished by the tax foreclosure sale:

> The title to any real estate which shall vest in any purchaser, upon confirmation of such sale by the court, shall be an absolute estate in fee simple, subject to rights-of-way thereon of public utilities on which tax has been otherwise paid, and subject to any lien thereon of the United States of America, if any, and all persons, including the State of Missouri, infants, incapacitated and disabled persons as defined in chapter 475, and nonresidents who may have had any right, title, interest, claim, or equity of redemption in or to, or lien upon, such lands, shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption, and the court shall order immediate possession of such real estate be given to such purchaser . . . .

Thus, the tax foreclosure sale in this case had the effect of completely extinguishing Beemer and Seal-O-Matic's mechanic's liens. "[M]echanic's liens constitute a charge on the land to secure a priority of payment for labor and materials contributed to the improvement of property, based on the principle that those who have contributed labor or material to the improvement of property are entitled to look to the property for compensation." *Winters*

[4] Section 141.420.1 provides that a right of redemption exists only "at any time prior to the time of the foreclosure sale of such real estate by the sheriff."

*Excavating, Inc. v. Wildwood Dev., L.L.C.*, 341 S.W.3d 785, 790 (Mo. App. S.D. 2011); *see also, e.g., R.K. Matthews Inv., Inc. v. Beulah Mae Housing, LLC*, 379 S.W.3d 890, 900 (Mo. App. W.D. 2012). Yet, despite the public policy considerations affording contractors a lien against property which they have labored to improve, the tax foreclosure sale would have the effect of eliminating Respondents' liens, leaving them instead only with a claim against the surplus proceeds generated by the sale. *See* §§ 141.480.4, 141.580.3. We believe that, in these circumstances, Respondents have established "a substantial property interest that is significantly affected by a tax sale." *Mennonite*, 462 U.S. at 798.[5]

Our conclusion that mechanic's lien claimants possess property interests entitling them to individualized notice of a tax sale is bolstered by the Supreme Court's decision in *Armstrong v. United States*, 364 U.S. 40 (1960). In *Armstrong*, companies supplied materials to a government contractor for use in building ships for the United States Navy. *Id.* at 41. After the contractor defaulted in its performance obligations, the United States exercised its contractual right to take title to the incomplete ships, and transported them out of the state for completion. *Id.* The suppliers contended that, under Maine law, they had materialmen's liens against the ships while the ships were owned by the contractor; however, once the United States took title to the ships-in-process, the materialmen's liens were extinguished because sovereign immunity prevents the attachment of liens to property owned by the United States. *Id.* at 41-42. The suppliers argued that the United States' exercise of its contractual right to take possession of the incomplete ships, which extinguished their liens, constituted a taking of their property for public use, for which they were entitled to compensation. *Id.* at 42.

[5] Chapter 141 itself recognizes that lienholders possess a significant interest in tax foreclosure proceedings, since it provides in § 141.400.2 that "[a]n answer may be filed . . . by any person owning or claiming any right, title, or interest in or to, or lien upon, [the affected] real estate." *See also* § 141.430.2 (terms of published notice of suit).

*Armstrong* held that the suppliers' materialmen's liens constituted compensable property interests; the Court reached this conclusion by likening the materialmen's liens to the security interests created by a mortgage.

> It is contended that petitioners' asserted liens gave them no compensable property interests within the meaning of the Fifth Amendment. Under Maine law, materialmen become entitled to a lien when they furnish supplies; however, the lien must subsequently be enforced by attachment of the vessel or supplies. There is no allegation that any of the petitioners had taken steps to attach the uncompleted work. Nevertheless, they were entitled to resort to the specific property for the satisfaction of their claims. That such a right is compensable by virtue of the Fifth Amendment was decided in *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555. In that case, a bank acquired a mortgage which under state law constituted a lien enforceable only by suit to foreclose. Subsequently, Congress amended the Bankruptcy Act so as to deprive mortgagees of substantial incidents of their rights to resort to mortgaged property. This Court held that the bank's property had been taken without just compensation in violation of the Fifth Amendment. No reason has been suggested why the nature of the liens held by petitioners should be regarded as any different, for this purpose, from the interest of the bank held compensable in the *Radford* case.

*Id.* at 44.[6]

It appears that the mechanic's liens created under Missouri law in this case are similar to the materialmen's liens at issue in *Armstrong*, and the holding of *Armstrong* thus appears fully applicable here. Moreover, it is generally understood that the definition of "property" for purposes of the Fifth Amendment's Takings Clause is *narrower* than the definition of "property" for purposes of the Fourteenth Amendment's Due Process Clause.[7] Therefore, *Armstrong*'s

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[6] *See also Shelden v. United States*, 7 F.3d 1022, 1026 (Fed. Cir. 1993) ("There is no difference, for Fifth Amendment purposes, between a mortgage lien and the materialmen's liens at issue in *Armstrong*."), overruled on other grounds, *Kam-Almaz v. United States*, 682 F.3d 1364, 1372 n.1 (Fed. Cir. 2012); *Hogan v. Bleeker*, 193 N.E.2d 844, 849 (Ill. 1963) ("it is clear from the decisions of this court and of the Supreme Court of the United States that liens, including those authorized solely by statute, . . . have been considered to be sufficiently substantial so as to fall within the concept of 'property' that is protected by the provisions of both the Federal and State constitutions prohibiting . . . the taking of property without due process").

[7] *See, e.g., Burns v. Penn. Dep't of Corrs.*, 544 F.3d 279, 285-86 n. 3 (3d Cir. 2008) ("'Property' as used in the Takings Clause is defined much more narrowly than in the due process clause." (citation and internal quotation marks omitted)); *Federal Lands Legal Consortium ex rel. Robart*

holding that similar liens constitute "property" for purposes of the Fifth Amendment leads, *a fortiori*, to the conclusion that such liens constitute "property" under the broader definition applied under the Fourteenth Amendment.

Realty Acquisitions cites *Teerling Landscaping, Inc. v. Chicago Title and Trust Co.*, 649 N.E.2d 538 (Ill. App. 1995), to support its argument that the County had no obligation under the Due Process Clause to identify, and provide notice to, mechanic's lien claimants. But in *Teerling*, the court concluded that a lien claimant was not entitled to notice because at the time a foreclosure proceeding was commenced, the mechanic's lien claimant "had not yet recorded its lien claim or brought an action to enforce the lien." *Id.* at 544. Here, of course, both Beemer and Seal-O-Matic had filed their mechanic's lien statements, in the manner required by Missouri law, prior to the County's filing of the Tax Foreclosure Action. *Teerling* is distinguishable.

We note that in *Redland Genstar, Inc. v. Mahase*, 841 A.2d 413, 418-19 (Md. App. 2004), the Maryland Court of Special Appeals held that a mechanic's lien claimant had no due process right to notice of a foreclosure sale prior to entry of a judicial order finding that a lien existed. In reaching its decision, *Redland* relied on principles of Maryland law holding that "[a] 'claimant does not get his lien until the court establishes it, and the court may not establish it until, after considering any response by the owner to the claimant's petition, the court finds at least probable cause to believe that the claimant is entitled to a lien.'" *Id.* at 418-19 (citation omitted). As explained above, Missouri's mechanic's lien law is significantly different than Maryland's. Under Missouri law, a mechanic's lien attaches no later than the time work is

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*Est. v. U.S.*, 195 F.3d 1190, 1197 (10th Cir. 1999); *Corn v. City of Lauderdale Lakes*, 95 F.3d 1066, 1075 (11th Cir. 1996); *Pittman v. Chicago Bd. of Educ.*, 64 F.3d 1098, 1104 (7th Cir. 1995); *Pro-Eco, Inc. v. Bd. of Comm'rs of Jay Cnty.*, 57 F.3d 505, 513 (7th Cir. 1995) ("[P]roperty as contemplated by the Takings Clause and property as contemplated by the Due Process Clause cannot be coterminous. . . . The Due Process Clause . . . recognizes a wider range of interests as property than does the Takings Clause."); *Carney v. Attorney Gen.*, 890 N.E.2d 121, 131 (Mass. 2008) (following *Pro-Eco*); *Bronco Wine Co. v. Jolly*, 29 Cal. Rptr.3d 462, 494 (App. 2005) (same).

commenced, and the lien is perfected by the filing of a mechanic's lien statement – all of which had happened in this case prior to the commencement of the Tax Foreclosure Action. We also note that, in *Armstrong v. United States*, the United States Supreme Court held that materialmen's liens constituted "property" subject to the Takings Clause, even though in that case there was "no allegation that any of the petitioners had taken steps to attach the uncompleted work" (presumably including the filing of a lien statement). 364 U.S. at 44. We do not find *Redland* controlling here.

We recognize that the issue of whether mechanic's liens are subject to *Mennonite*'s notice requirements may be an unsettled question.[8] We nevertheless conclude for the reasons explained above that the Respondents' mechanic's liens implicated the principle that, "prior to an action which will affect an interest in life, liberty, or property protected by the Due Process Clause of the Fourteenth Amendment, a State must provide 'notice 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.'" *Mennonite*, 462 U.S. at 795 (quoting *Mullane*, 339 U.S. at 314).[9]

Respondents' identities and addresses were "reasonably ascertainable" by the County. *Id.* at 800. Under § 429.080, a mechanic's lien claimant must file "a just and true account of the

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[8] Dustin G. Hall, *Constitutional Law: What To Do when a State Fails To Take Notice that its Notice Has Failed?*, 59 FLA. L. REV. 453, 456 n. 28 (2007) (stating that, under *Mennonite*, "it is not clear whether holders of less obvious interests (e.g., . . . mechanics' liens) have a right to receive notice of a pending state action"); Ellen F. Friedman, *The Constitutionality of Request Notice Provisions in in Rem Tax Foreclosures*, 56 FORDHAM L. REV. 1209, 1223 (1988) ("the sufficiency of published notice to . . . those with lesser interest, such as . . . mechanics' liens, . . . remains in doubt").

[9] Although they involve a different type of lien, we find some support for our decision in cases which have held that *Mennonite*'s notice principles apply to the holders of judgment liens. *See New Brunswick Sav. Bank v. Markouski*, 587 A.2d 1265, 1275 (N.J. 1991) ("a judgment lien is a property interest subject to due-process protections"); *Central Trust Co., N.A. v. Spencer*, 535 N.E.2d 347, 349 (Ohio App. 1987) (holding that under *Mennonite*, holder of a judgment lien entitled to notice before foreclosure on property to which lien attaches).

demand due" with the clerk of the circuit court for the relevant county "within six months after the indebtedness shall have accrued." Realty Acquisitions argues that requiring taxing authorities to search for mechanic's lien filings in the office of the clerk of the circuit court, in addition to searching the land records in the Recorder of Deeds' office, is unreasonable in these circumstances. We disagree.

We recognize that the Due Process Clause does not require taxing authorities "to make impracticable and extended searches" to discover the identity of persons holding interests in property. *Maximilian Invs.*, 190 S.W.3d at 421. Nevertheless, the purpose of the filing of mechanic's lien statements in the circuit court "is to provide notice to owners and other interested parties" of the claimant's mechanic's lien. *Schott Elec. Distribs., Inc. v. Mac Elec., Inc.*, 998 S.W.2d 566, 568 (Mo. App. E.D. 1999). The General Assembly has chosen to provide notice of mechanic's liens by requiring their filing with the circuit clerk; we will not question or undermine this legislative scheme by holding that the filings required by statute are not reasonably accessible to interested parties.

The statutes contemplate that mechanic's lien filings will be maintained in a manner that permits members of the public to identify liens associated with particular properties or property owners. The legislature has imposed on the circuit clerk the obligation of "maintain[ing] an abstract thereof, containing the date of [the lien statement's] filing, the name of the person seeking to enforce the lien, the amount claimed, the name of the person against whose property the lien is filed, and a description of the property charged with the same." § 429.090. The Missouri Supreme Court has held that this abstract is "[c]ertainly . . . a proper public record within the meaning of [what is now § 429.280] and all persons whose names are disclosed by it should be made parties when an equitable action is commenced" under § 429.270. *State ex rel.*

*Erbs v. Oliver*, 237 S.W.2d 128, 130 (Mo. banc 1951). Realty Acquisitions' counsel acknowledged at argument that it would have been possible to locate Respondents' lien statements using the abstract maintained by the circuit clerk.

The Missouri Supreme Court has consistently held that notice by publication is insufficient where an interest in real property is "publicly recorded." *See, e.g., Anheuser-Busch Employees' Credit Union*, 899 S.W.2d at 869; *Lohr v. Cobur Corp.*, 654 S.W.2d 883, 886 (Mo. banc 1983). The circuit court records of mechanic's lien filings constitute such public records. By establishing the mechanic's lien filing scheme as it did, the General Assembly has implicitly recognized that filing with the circuit clerk is all the notice required to put third parties – including entities like the County – on notice of the lien. Although searching the circuit clerk's records imposes some additional burden on the County, this is the inevitable by-product of the General Assembly's decision to require filing of mechanic's lien statements only in the circuit clerk's office, rather than requiring that they be filed instead, or in addition, with the Recorder of Deeds. Requiring that the County check the circuit clerk's records is justifiable in this case, where – by statute – that office is the only location in which a holder of a substantial interest in property is required to file notice of its claim.

Accordingly, we conclude that the circuit court did not err in ruling that the tax sale should be set aside for failure to give pre-sale notice to the Respondents, at their last known addresses as reflected in the mechanic's lien statements they had filed with the Clerk of the Circuit Court of Jackson County.[10]

[10] Given our disposition, we need not address Respondents' separate argument that Seal-O-Matic's filing of a Notice of Claim of Mechanic's Lien with the Jackson County Recorder of Deeds triggered the County's due-process obligation to notify Seal-O-Matic of the tax foreclosure sale. As Realty Acquisitions points out, the Notice was intended only to notify Sunnypointe of Seal-O-Matic's *intent to file* a mechanic's lien statement in the future if its claim was not satisfied. *See* § 429.100.

## Conclusion

The circuit court's judgment is affirmed.

Alok Ahuja, Judge

All concur.