

Summary of SC92074, *Harpagon MO LLC v. Edward L. Bosch and Nancy Z. Bosch, et al.*
Appeal from the Clay County circuit court, Judge Larry Dale Harman
Argued and submitted April 24, 2012; opinion issued July 3, 2012

Attorneys: Harpagon was represented by Scott F. Walterbach of Larry Enkelmann LLC in Kansas City, (816) 436-7033; and the Bosches were represented by Jerome E. Brant and Robb A. Denney of Withers, Brant, Igoe & Mullennix PC in Liberty, (816) 781-4788.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: An entity that purchased certain property in Clay County at a tax sale appeals a decision holding that it is not entitled to have title to the property. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the circuit court’s judgment. Because a purchaser is authorized to acquire a deed to property purchased at a tax sale one year after the sale, the purchaser must notify the property owner of the right to redeem at least 90 days before one year after the tax sale. If the purchaser does not provide timely or sufficient notice but still acquires the deed by presenting the certificate of purchase to the collector, then the owner can file a petition to set aside the tax sale. Because it is undisputed here that the notices sent to the owners here were not sent at least 90 days before the one-year anniversary of the tax sale, they are entitled to judgment as a matter of law.

Facts: After Edward and Nancy Bosch failed to pay taxes in 2005 and 2006 on certain property they owned in Clay County, the property was offered for a second tax sale in 2007. Sunrise Atlantic LLC, a predecessor to Harpagon MO LLC, was the successful bidder at the tax sale and received a certificate of purchase for the property in August 2007. Sunrise sent the Bosches notices of their right to redeem the property in July 2008. In October 2008, Harpagon – as successor to Sunrise’s interest in the property – presented the certificate to the county collector, who sent a collector’s deed to the property to Harpagon. The company subsequently filed suit against the Bosches to quiet title (gain legal title) to the property. In their response, the Bosches asserted that Harpagon failed to comply with the notice requirements of section 140.405, RSMo. The parties filed cross-motions for summary judgment (judgment on the pleadings), and, following a hearing, the court granted summary judgment to the Bosches, awarding them quiet title to the property and ordering them to reimburse Harpagon for the amount of taxes it had paid on the property, plus interest. Harpagon appeals.

AFFIRMED.

Court en banc holds: (1) The resolution of this case turns on when the purchaser becomes “authorized to acquire” a collector’s deed to the property. The plain language of section 140.420, RSMo, indicates that the county collector is to issue a deed to the purchaser if the purchaser produces a certificate of sale after the one-year redemption period. Section 140.340, RSMo, gives the owner of property sold at a tax sale the right to redeem that property by paying the county collector the taxes owed on the property. The purchaser receives the certificate of purchase after the tax sale upon paying the property’s sale price pursuant to section 140.290, RSMo. As such, it follows that the purchaser is “authorized to acquire the deed” to the property

exactly one year after the tax sale. Pursuant to section 140.410, RSMo, the purchaser has two years from the date of the sale to have the collector's deed for the property executed and recorded properly, although section 140.310, RSMo, entitles the purchaser to take immediate possession of the property. Because a purchaser is authorized to acquire a deed to property purchased at a tax sale one year after the sale, the purchaser must notify the property owner, pursuant to section 140.405, of the right to redeem at least 90 days before one year after the tax sale. To the extent that *United Asset Management Trust Co. v. Clark*, 332 S.W.3d 159 (Mo. App. 2010); *Drake Development & Construction LLC v. Jacob Holdings Inc.*, 306 S.W.3d 171 (Mo. App. 2010); *Hames v. Bellistri*, 300 S.W.3d 235 (Mo. App. 2009); *CedarBridge LLC v. Eason*, 239 S.W.3d 462 (Mo. App. 2009); *Keylien Corp. v. Johnson*, 284 S.W.3d 606 (Mo. App. 2009); and *Boston v. Williamson*, 807 S.W.2d 216 (Mo. App. 1991), are to the contrary, they no longer should be followed.

(2) The text of section 140.420 does not require the collector to verify compliance with the notice provisions of section 140.405 before issuing the deed. To determine what remedy an owner has if the collector issues the deed even though the purchaser has not complied with all of the requirements of chapter 140, this Court considers all the statutory provisions in context of all related material. Section 140.600, RSMo, allows an owner to file a petition to set aside the deed and recover possession of the land even after a collector's deed and immediate possession of the property are given to the purchaser. Further, section 140.590, RSMo, allows a suit seeking recovery of lands sold for taxes within three years of when the tax deed is recorded.

(3) The circuit court did not err in awarding the Bosches quiet title to the property. Given the material facts of this case, which are not disputed, the notices sent to the Bosches were not timely as they were sent barely a month – not at least 90 days – before the one-year anniversary of when the property was sold at the tax sale. The Bosches are entitled to judgment as a matter of law.