

Summary of SC93982, *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, v. Parcels of Land Encumbered with Delinquent Land Tax Liens; Realty Acquisition, LLC*

Appeal from the Jackson County circuit court, Judge Michael Manners

Argued and submitted September 3, 2014; opinion issued January 13, 2014

Attorneys: Realty Acquisition was represented by Michael J. Gallagher of Gallagher & Kaiser LLP of Kansas City, (816) 471-4500; Seal-O-Matic Paving Company was represented by Robert M. Pitkin of Horn Aylward & Bandy LLC in Kansas City, (816) 421-0700; and Beemer Construction Company was represented by Ryan T. Fry of Oswald Roam Rew & Fry LLC in Blue Springs, (816) 229-8121.

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: After purchasing property at a tax sale, the purchaser of that property, which was encumbered by two mechanic's liens, appeals the trial court's decision to set aside that tax sale on the grounds that the two mechanic's lienholders did not receive constitutionally adequate notice of the tax sale. In a decision written by Judge Laura Denvir Stith and joined by four other judges, the Supreme Court of Missouri affirms the trial court's judgment. Because a properly filed mechanic's lien is a substantial property interest subject to due process protections and because a mechanic's lienholder's name and address is reasonably ascertainable in the public record, a mechanic's lienholder is entitled to personalized notice by mail, and not mere publication notice, of a tax sale on property encumbered by that mechanic's lienholder's interest.

Judge Paul C. Wilson wrote a concurring opinion. He writes separately to emphasize that the Court's holding applies only to an entity that has prosecuted a claim for a mechanic's lien to judgment, which converts a worker's statutory claim for a lien into a lien itself. The worker has no substantial interest in the property until the mechanic's lien judgment is entered.

Facts: Beemer Construction Company and Seal-O-Matic Paving Company filed mechanic's liens on a parcel of real property owned by Sunnypointe LLC. Unbeknownst to Beemer and Seal-O-Matic, Sunnypointe failed pay the 2007 taxes on the property. The taxes became delinquent, and the Jackson County director of collections foreclosed and arranged to sell the property at a tax sale. He provided publication notice of the sale as well as personalized mailed notice to Sunnypointe but did not check with the circuit clerk to see whether there were any mechanic's liens on the property and did not provide personalized mailed notice to either Beemer or Seal-O-Matic. Neither was aware of the tax sale. Realty Acquisition LLC purchased the property at the tax sale. After learning about the tax sale, Beemer and Seal-O-Matic entered appearances in the trial court to oppose confirmation of the tax sale, arguing that the failure to give them personal notice of the tax sale violated their due process rights as mechanic's lienholders. The trial court held in favor of Beemer and Seal-O-Matic and set aside the tax sale. Realty Acquisition appeals.

AFFIRMED

Court en banc holds: Because Beemer and Seal-O-Matic did not receive notice, the trial court properly set aside the tax sale. Mechanic's lienholders are entitled to personalized mailed notice of a tax sale. First, a mechanic's lien that is filed properly with the circuit clerk constitutes a substantial property interest that is entitled to due process protections. The Missouri legislature has given a mechanic's lienholder priority over almost every other type of lien, but a tax sale extinguishes a mechanic's lienholder's interest. Similar concerns led the United States Supreme Court to find that a mortgagee's interest constitutes a substantial property interest entitled to due process protections. Second, because a properly filed mechanic's lien constitutes a substantial property interest, a mechanic's lienholder is entitled to notice reasonably calculated under the circumstances to reach the lienholder. Mechanic's liens are filed with the circuit clerk. That filing contains all the information needed to give notice to a mechanic's lienholder, including the lienholder's name and address. Searching the circuit clerk's records is not an unreasonable burden. Beemer and Seal-O-Matic were not given personalized notice despite the fact that their names and addresses were reasonably ascertainable from the circuit clerk's public records.

Concurring opinion by Judge Wilson: The author writes separately to emphasize that the Court's holding applies only to an entity that has prosecuted a claim for a mechanic's lien to judgment -- not to an entity that merely has filed a mechanic's lien claim or a subsequent mechanic's lien petition but for which judgment has not been entered. It is the judgment that converts a worker's statutory claim for a lien into a lien itself, and the worker has no substantial interest in the property until the mechanic's lien judgment is entered. Both a mechanic's lien claim and a mechanic's lien petition are filed in pursuit of -- but neither, by itself, constitutes -- a legally protected property interest. The county was not obligated to give individual notice to Beemer and Seal-O-Matic when it filed the tax foreclosure action or when it received the tax foreclosure judgment because those events occurred before the companies received judgment in their mechanic's lien cases. But they were entitled to individual notice of the foreclosure sale itself, held almost 18 weeks after they received judgment on their mechanic's lien cases.