IN THE
MISSOURI SUPREME COURT

In the Matter of Foreclosure of Liens
for Delinquent Land Taxes by Action in Rem:

COLLECTOR OF REVENUE, CITY OF ST. LOUIS
&
SHERIFF OF CITY OF ST. LOUIS
&
LEWIS MITCHELL COMPANY,
Respondents,
v.
PARCELS OF LAND ENCUMBERED WITH DELINQUENT TAX LIENS, LAND TAX SUIT 144, MOHAMMAD BHATTI,
Appellant.

No. SC90732

Appeal from the Circuit Court of City of St. Louis
22nd Judicial Circuit
The Honorable Michael F. Stelzer, Judge

APPELLANT'S OPENING BRIEF

ANGELA SEE-WAI YEE
Mo. Bar. No. 53978
YEE LAW FIRM, P.C.
7750 Clayton Road, Suite 108
St. Louis, MO 63117
(314) 503-3517 – phone
(314) 644-2516- fax
angelayeelaw@hotmail.com
Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. *Cases*

II. *Rules, Statutes, Constitutional Provisions, and Other Authorities*

JURISDICTIONAL STATEMENT

This appeal is brought by Mohammad Bhatti ("Mr. Bhatti"). Mr. Bhatti is challenging the judgment of the Circuit Court of the City of St. Louis, denying his motion to set aside the sale (and confirmation thereof) of realty. For three reasons, this Court has appellate jurisdiction.

(1) This Court has exclusive appellate jurisdiction under Article V, Section 3 of the Missouri Constitution. Section 3 provides that this Court has "exclusive appellate jurisdiction in all cases involving the validity . . . of a statute or provision of the constitution of this state, the construction of the revenue laws of this state, the title to any state office and in all cases where the punishment imposed is death." Section 3 encompasses this appeal, first of all, because Mr. Bhatti is raising an as applied challenge to the constitutional validity of Missouri statutes. See Alumax Foils, Inc. v. City of St. Louis, 939 S.W.2d 907, 912 (Mo. 1997) ("The grant of authority to this Court to exercise exclusive appellate jurisdiction over questions involving the validity of a statute or constitutional provision is limited to claims that the state law directly violates the constitution--either facially or *as applied*.") (Emphasis added). The statutes in question are the notice provisions of The Municipal Land Reutilization Law, Chapter 92.700- 92.920 RSMO., regarding tax delinquency sales by the City – in particular, Section 92.755 (notice by publication) and Section 92.760 (notice by single mailing of uncertified

mail). As established by the argument section of this brief, because these provisions failed to require the City to first send notice of the tax-delinquency sale to Mr. Bhatti's residential address in the City (or to both of his City addresses) and because these provisions failed to require the City to take additional steps to notify Mr. Bhatti of the tax-delinquency sale after its original notice was returned to the City by the U.S. Post Office as undeliverable, these notice provisions are unconstitutional as applied to the sale of Mr. Bhatti's realty. (Mr. Bhatti is not raising a facial challenge.)

There is a second, albeit ancillary, reason why Section 3 governs this appeal: This appeal involves the construction of the revenue laws of this State. Statutes passed by the Missouri General Assembly, contained in Chapter 92.700 et seq., of the Missouri Revised Statutes, authorize the collecting of "state, city, school, and other tax bills," MO. REV. STAT. §92.720.3 (2010), via in rem suits filed by the Collector of Revenue of the City in the Circuit Court of the City of St. Louis against realty encumbered with delinquent tax liens, MO. REV. STAT. §92.720.1 (2010). This is not the first time this Court has entertained an appeal from a circuit court judgment, challenging the notice provisions of Chapter 92. In Collector of Revenue of City of St. Louis v. Parcels of Land Encumbered with Delinquent Tax Liens, 585 S.W.2d 486 (Mo. banc 1979), this Court held that it had exclusive

appellate jurisdiction under Section 3 over a facial challenge[1] (which this Court rejected) to the notice provisions of Chapter 92.700 et seq., because such a challenge involved the construction of a revenue law. Id. at 486-87. Alumax Foils is not to the contrary. Alumax Foils did not involve the statutory provisions challenged here. Additionally, unlike the present appeal, Alumax Foils did not involve a constitutional challenge to a state statute, but rather to municipal ordinances – ordinances that, unlike the statutes here, could raise revenue only for the municipality, not for the State. See 939 S.W.2d at 911. Even if the reasoning of Alumax Foils undermines the jurisdictional holding of Collector of Revenue, this Court has never opined that Collector of Revenue's jurisdictional holding might be infirm, let alone expressly overruled it; and it is presumed that courts do not overrule prior precedent *sub silentio*. See, e.g., Shalala v. Illinois Council on Long Term Care, Inc., 529 U.S. 1, 18 (2000). Mr. Bhatti was entitled to rely on Collector of Revenue, and this is not the proper occasion, given the alternative

[1] Except in First Amendment challenges, a facial challenge requires proof that the challenged provision has no constitutional applications. State v. Richard, 298 S.W.3d 529, 531 (Mo. 2009); State v. Perry, 275 S.W.3d 237, 243 (Mo. 2009). Logically, that a statute has at least one constitutional application, and hence survives a facial challenge, does not mean, of course, that a particular application of the statute is necessarily constitutional.

basis for jurisdiction under Section 3, for this Court to reassess that case's jurisdictional holding.

(2) Mr. Bhatti filed a timely notice of appeal, which is a jurisdictional prerequisite, Berger v. Cameron Mutual Ins. Co., 173 S.W.3d 639, 640 (Mo. 2005). Notice of appeal must be filed within ten days after the judgment (or order) being appealed from is entered. Rule 81.04(a). A judgment becomes final 30 days after its entry unless an authorized post-trial motion is timely filed, such as a motion for new trial, in which case the judgment becomes final either when the post-trial motion is denied or, at the latest, ninety days after the date the post-trial motion was filed. Rule 81.05(a)(2). Here, the judgment (denying Mr. Bhatti's motion to set aside) was entered on November 17, 2009. (LF 63). Because Mr. Bhatti's motion for new trial was timely, having been filed on December 9, 2009 (that is, within 30 days of entry of judgment, Rule 78.04), the judgment became final on February 5, 2010, when the Circuit Court denied the motion for new trial (and the amended motion for new trial), (LF 85). Notice of appeal was filed ten days later. (LF 88).

(3) Finally, the judgment before this Court is a final judgment. Generally, this Court can review only "final" judgments. Yale v. City of Independence, 846 S.W.2d 193, 194 (Mo. 1993). A judgment is a writing signed by a judge and expressly denominated a "judgment." Rule 74.01(a). Here, the appealed judgment

is a writing signed by a judge and denominated a "judgment." (LF 63-65). And as established above, that judgment became final when the Circuit Court denied Mr. Bhatti's motion (and amended motion) for new trial.

For these reasons, this Court can address the merits of Mr. Bhatti's appeal.

STATEMENT OF FACTS

Mohammad Bhatti was the fee simple owner of a house and land ("realty") located at 3243 Pennsylvania Avenue in the City of St. Louis ("City"), until the realty was sold at a tax delinquency sale, later confirmed by the Circuit Court of the City of St. Louis ("Circuit Court"), without ever receiving notice of the tax delinquency, the tax sale, or the subsequent confirmation action initiated by the purchaser, Respondent Lewis Mitchell Company ("Lewis Mitchell"). (LF 23; TR 13, 26, 29).

In 2005, Mr. Bhatti, who resides and works in the City (and thus pays City income tax), bought the realty. (TR 31). After getting multiple building and construction permits from the City in 2008 and 2009 (for, among other things, to repair the garage and rear deck, fence and rear basement joists), Mr. Bhatti began rehabbing the property. (TR 4, 37). In his applications for the permits, Mr. Bhatti had provided the City with the address of his City residence, regarding which he was current on his real estate taxes – namely, 3831 Potomac. (TR 4, 13, 26, 32). The permits – which were prominently affixed to the house's windows or "For

Sale" sign – listed Mr. Bhatti's address as "3831 Potomac Street, St. Louis MO 63316." (LF 60-61). In January 2009, after completing the rehab – hardwood floors, granite countertops, stainless steel appliances, as well as new plumbing and electrical and a new fence, had all been installed – Mr. Bhatti applied for and, after a City inspection, received an occupancy permit. (TR 5, 14-15, 28; LF 62). No prior occupancy permit had been issued. (TR 10).

Mr. Bhatti had the realty listed through the Mid America Regional Information System (which provides the Regional Multiple Listing Service for, among other locations, the City[2]), and placed a "For Sale" sign in the front yard. (TR 5). The sale price for the renovated house: $169,900. (TR 14; LF 44). The "For Sale" sign was posted for 150 days before October 12, 2009. (TR 5-6).

Lewis Mitchell Company purchased the realty at a tax delinquency sale on May 21, 2009. (The delinquency, which corresponded to the taxes incurred from 2005 to 2007, totaled around $1400 ($1,452.06). (TR 5) The purchase price was $7,600, (TR 4), less than five percent of the listing price. According to an affidavit filed with the Circuit Court of the City of St. Louis, the Sheriff of the City had mailed, pursuant to Mo. Rev. Stat. §92.760.1 (2009), a notice of the impending sale of the sale of the realty by U.S. mail to 3243 Pennsylvania, on April 17, 2009, but the notice was returned to the City as undeliverable and not forwarded to

[2] MARIS Website, http://marisnet.com/ (last visited Aug. 19, 2010).

another address. (LF 22, 24-25, 68, 71-73). Nor did the City follow-up by resending notice by certified mail; by posting notice on the realty; by sending notice to Mr. Bhatti's residence in the City, at 3831 Potomac; by having Mr. Bhatti personally served with notice; or by taking any other steps to provide actual notice to Mr. Bhatti. (See TR 6, 7). On July 16, 2009, a Thursday, Lewis Mitchell mailed a single notice a hearing to be held on Lewis Mitchell's motion to confirm the sale of the realty, the hearing to be held on July 23, 2009, in the Circuit Court. (LF 30-31, 33-35). Mr. Bhatti never received notice of either the tax-delinquency sale or the subsequent confirmation hearing. (LF 25; TR 7). On July 23, 2009, the Circuit Court issued its judgment confirming the sale, finding that the purchase price of $7,600 was "adequate consideration" for the realty. (LF 36-37).

Mr. Bhatti did not learn about Lewis Mitchell's purchase of his realty until October 12, 2009. (TR 29, 35-36). On that date, his real estate agent at ReMax, Tiffany R. Debmath, with whom he had listed the real estate on June 22nd, had called and told him that she had received a call on her cell phone from Lewis Bernstein, President of Lewis Mitchell Company, who had told Ms. Debmath about the sale and to withdraw her listing immediately. (TR 35-36, 39). (Mr. Bernstein had discovered the listing of the property through the Multiple Listing Service since he is a realtor and had access to that contact information before the

confirmation of the sale. (TR 38-39).) Mr. Bhatti was shocked; he immediately went to City hall to find out what was going on. (TR 36).

Mr. Bhatti then promptly retained counsel who, four dates after Mr. Bhatti learned about the sale, moved the Circuit Court of the City of St. Louis to set aside its judgment confirming the sale of the realty, pursuant to Rule 74.06 and Section 92.700 et seq. (LF 38-40). Mr. Bhatti argued that the tax-delinquency sale and the subsequent confirmation initiated by Lewis Mitchell were invalid because he had not been provided adequate notice of either, and thus his due process rights, under both the Missouri and federal constitutions, had been violated. (LF 39-40). An evidentiary hearing was held, at which Mr. Bhatti and Ms. Debmath testified. At the evidentiary hearing, as well as in his motion, Mr. Bhatti cited, among other cases, Schlereth v. Hardy, 280 S.W.3d 47 (Mo. 2009) and Jones v. Flowers, 547 U.S. 220 (2006).

Though finding Mr. Bhatti's testimony credible – in particular, his testimony that he never received notice of the tax delinquency, the tax-delinquency sale, or the confirmation action; though agreeing that the City could "easily" have sent notice to Mr. Bhatti's City residence, at 3831 Potomac; though accepting Mr. Bhatti's legal theory; and though intimating that Mr. Bhatti's loss of his $169,000 home, into which he had invested "substantial monies," was manifestly unfair, the Circuit Court denied Mr. Bhatti's motion to set aside. (LF 63-64; TR 14). The

Circuit Court gave one reason for its decision: Mr. Bhatti had presented no evidence that the notices of the tax-delinquency sale and the subsequent confirmation hearing had been returned, and hence neither the City nor Lewis Mitchell had a constitutional duty to take additional steps to notify Mr. Bhatti of these matters. (LF 64). Consequently, the Circuit Court rejected Mr. Bhatti's as applied challenge to Section 92.760, as well as any facial challenge thereto.

Within 30 days of the Circuit Court's judgment, Mr. Bhatti filed a motion for new trial, proffering evidence that regular mail sent to the realty's address (3243 Pennsylvania Avenue), had all been returned within seven days of being sent, and stamped "RETURN TO SENDER, ATTEMPTED – NOT KNOWN, UNABLE TO FORWARD." (LF 68, 71-73). (The mail was three envelopes mailed to the realty (one addressed to "Mohammad Bhatti," one to "Lewis Mitchell Company," and one with only the recipient's address on it) on three separate days in November 2009.) After the parties consented to a continuance, Mr. Bhatti filed an amended motion for new trial on February 4, 2010, which added an allegation, substantiated by an affidavit from the U.S. mail carrier for the area where the realty is located, that the U.S. Post Office declined to deliver mail to 3243 Pennsylvania Avenue since October 2005, because the property had been deemed vacant. (LF 78).

Two days later, the Circuit Court (Judge Barbara T. Peebles presided since by that date, February 4, 2010 the St. Louis City Circuit Court had rotated Judge Stelzer to Division 26 and Judge Peebles began her term in Division 29 at the beginning of 2010.) (LF 74) denied the motions for new trial. Procedurally, the Circuit Court concluded that the amended motion for new trial, having been filed more than 30 days after the original judgment, was a nullity. (LF 85-86). On the substance, the Circuit Court, after treating the motions for new trials as motions filed under Rule "78.01(d)," rejected the motions because, the Circuit Court found, Mr. Bhatti had failed to exercise due diligence in discovering the proffered evidence before trial and hence the evidence did not qualify as newly discovered evidence. (LF 86-87).

POINT RELIED ON

The Circuit Court erred in denying Mr. Bhatti's motion to set aside the judgment confirming the tax-delinquency sale of his realty to Respondent Lewis Mitchell Company, (1) because the City failed to provide adequate notice of the sale under the Missouri and federal due process clauses, in that the City knew or should have known of the address of Mr. Bhatti's actual residence in the City, and yet the only notice employed by the City was newspaper publication and a single notice mailed, 30 days before the sale, to the realty's address, not Mr. Bhatti's actual residence; and (2) because

Respondent Lewis Mitchell provided inadequate notice, under the Missouri and federal due process clauses, of the hearing to confirm the sale, in that Lewis Mitchell did not personally serve notice on Mr. Bhatti, but rather sent mailed a single notice to the realty's address seven days before the confirmation hearing.

Jones v. Flowers, 547 U.S. 220 (2006)

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)

Schlereth v. Hardy, 280 S.W.3d 47 (Mo. 2009)

U.S. Const. amend. XIV

Mo. const. art. I, § 10.

STANDARD OF REVIEW

The standard of review in a civil, court-tried case, such as the present case, is set forth by Murphy v. Carron, 536 S.W.2d 30 (Mo. banc 1976). The judgment must be reversed if it is unsupported by substantial evidence or is against the weight of the evidence or if the judgment rests on a misinterpretation or misapplication of law. Id.

ARGUMENT

The Circuit Court erred in denying Mr. Bhatti's motion to set aside the judgment confirming the tax-delinquency sale of his realty to Respondent Lewis Mitchell Company, (1) because the City failed to provide adequate notice of the sale under the Missouri and federal due process clauses, in that the City knew or should have known of the address of Mr. Bhatti's actual residence in the City, and yet the only notice employed by the City was newspaper publication and a single notice mailed, 30 days before the sale, to the realty's address, not Mr. Bhatti's actual residence; and (2) because Respondent Lewis Mitchell provided inadequate notice, under the Missouri and federal due process clauses, of the hearing to confirm the sale, in that Lewis Mitchell did not personally serve notice on Mr. Bhatti, but rather sent mailed a single notice to the realty's address seven days before the confirmation hearing.

A. The Municipal Land Reutilization Law

Passed in 1971, the Municipal Land Reutilization Law ("MLRL"), MO. REV. STAT. §§92.700-.920 (2010), authorizes the City of St. Louis (and Kansas City) to

sell real estate subject to delinquent taxes. As noted above, for the City to foreclose on outstanding tax liens, the Collector of Revenue of the City must file an in rem action against the land in the Circuit Court of the City. MO. REV. STAT. §92.720.1 (2010). Within 30 days of filing suit, the Collector of Revenue must publish, on four separate occasions, notice of the foreclosure in a "daily newspaper of general circulation regularly published in such city," MO. REV. STAT. §92.755.1 (2010), and also send a single notice by regular mail to the addresses listed in the assessor's office of the realty's owners, MO. REV. STAT. §92.760.1 (2010). If the Circuit Court concludes that the realty is subject to delinquent taxes, it "may decree that the lien upon the parcels of real estate described in the tax bill be foreclosed and such real estate sold by the sheriff." MO. REV. STAT. §92.805 (2010). Six months after any challenges to the judgment are over and there has been no redemption by the property owner(s), the sheriff can then sell the property, but must provide notice, "[n]o later than twenty days prior to" the sale, to the addresses of the property owners in the files of the assessor's office. MO. REV. STAT. §92.810.1-.2 (2010). After the realty is purchased at the tax-delinquency sale, the sale must be confirmed, either on motion by the purchaser or by the Circuit Court *sua sponte*. MO. REV. STAT. §92.840.1 (2010). Notice of the confirmation hearing must be sent to all record owners (as well as any other interested parties), though the nature of such notice and how many days in advance

of the hearing it must be provided are both unspecified. MO. REV. STAT. §92.840.1 (2010). At the confirmation hearing, the Circuit Court must, among other things, "hear evidence of the value of the property offered on behalf of any interested party to the suit" and "immediately determine whether an adequate consideration has been paid for each such parcel [of land sold]." MO. REV. STAT. §92.840.1 (2010).

Besides the City of St. Louis and Kansas City, all other tax-delinquency sales of realty in Missouri counties are governed by the provisions of Chapter 140. These provisions, in contrast to the MLRL, requires a purchaser at a tax-delinquency sale to file with the recorder's office a certificate of purchase within two years of the sale, MO. REV. STAT. §140.410 (2010). No deed is acquired by the purchaser until, at least 90 days before sale, notice is provided by certified mail to, among others, the "publicly recorded owner of the property" at "such person's last known available address," MO. REV. STAT. §140.405.1 (2010), and until the expiration of the one-year (formerly two-year) redemption period, MO. REV. STAT. §§140.340.1 & 140.420 (2010). (Had these provisions been in force in the City, there is no question that Mr. Bhatti would have quickly redeemed his property, for, as noted before, Mr. Bhatti learned about the sale five months afterwards, in October 2009, long before the redemption period would have expired.)

B. The Notice Requirements of the State & Federal Due Process Clauses

No person may be deprived of property without due process of law. U.S. Const. amend. XIV; Mo. const. art. I, § 10. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is 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." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Though "[d]ue process does not require that a property owner receive actual notice before the government may take his property," property rights may not be extinguished by, for instance, a tax sale, unless the means employed to notify the owner are "such as one desirous actually informing the absentee might reasonably adopt to accomplish it." Jones v. Flowers, 547 U.S. 220, 229 (2006) (internal quotations omitted); Schlereth v. Hardy, 280 S.W.3d 47, 52 (Mo. 2009). (The characterization of the action used to extinguish property rights – as a proceeding "in rem" or "quasi in rem" or "in the nature of a proceeding in rem" – is immaterial. Mullane, 339 U.S. at 312.) If the means employed by a government to give notice are "substantially less likely to bring home notice" than a feasible substitute that would place no "impractical obstacles" in the government's way, a due process violation has been established. Mullane, 339 U.S. at 314-15.

C. Analysis: Mr. Bhatti's Due Process Rights Were Violated

In compliance with the MLRL, the Circuit Court ratified the sale of Mr. Bhatti's house and land, worth $169,900, but sold for a paltry $7,600, to recover $1452.06 in delinquent taxes – despite agreeing that Mr. Bhatti had never received notice of the sale (or even prior notice of outstanding taxes), despite agreeing that the City could have "easily" mailed notice to Mr. Bhatti's actual residence in the City, and despite intimating that the result was manifestly unfair. Cf. Shaw v. Armstrong, 235 S.W.2d 851, 858-59 (Mo. 1951) (" Justice certainly requires us to pass upon this question for, in this case, plaintiffs seek to deprive the defendant of his rights to the property for a consideration of less than 13% of the actual market value."). The Circuit Court's flawed rationales to the contrary, Mr. Bhatti's due process rights, under the Missouri and federal due process clauses, to adequate notice of tax-delinquency sale and of the subsequent confirmation hearing were violated. There are three reasons why this is so.

(1) The City failed to employ means one desirous of actually informing Mr. Bhatti of the impending tax sale would have used. The City used two forms of notice – publication of the impending tax sale in the St. Louis Post Dispatch newspaper and mailing by regular mail notice of the sale to the realty's address (at 3243 Pennsylvania Avenue). Regarding the former notice, ever since Mullane, "no one pretends that the notice by publication of a tax sale [is] reasonably calculated

to give notice" to a property owner of a tax sale. Schlereth, 280 S.W.3d at 51. Nor can notice by publication suffice when, as is the case here, the name and address of the person to be notified are "known or easily ascertainable." Robinsons v. Hanrahan, 409 U.S. 38 (1972) (per curiam); Walker v. City of Hutchinson, 352 U.S. 112 (1956).

Regarding the City's single mailing of notice by uncertified mail: the City knew, or at least should have known, that Mr. Bhatti's actual residence was 3831 Potomac, not 3243 Pennsylvania Avenue. Mr. Bhatti was current with all property taxes with respect to the 3831 Potomac realty. In his numerous applications for building and construction permits, all of which informed the City that Mr. Bhatti was doing serious rehab work on the realty, Mr. Bhatti listed the address to which the permits should be, and were mailed, by the City as 3831 Potomac. These permits were affixed as required by the City to the window for the public before the City had inspected the house and issued an occupancy permit (in January 2009). And from October 2005 when Mr. Bhatti bought the realty until January 2009 – when the unpaid taxes leading to the tax sale had been accruing – no occupancy permit regarding the realty had been issued by the City, so the City knew, or should have known, that the realty was vacant. Moreover, as the Circuit Court noted, the City could have easily mailed notice to Mr. Bhatti's actual residence. (TR 14). As opposed to absentee owners or investors or those trying to

dodge service by their actions the nature of Mr. Bhatti's actions communicate to the public, "I own this house on Potomac where you can contact me. I have been working on this house to sell it and have spent at least $7,800.00 to fix it up. (LF 60-61) I am selling this house and you can call my agent to see this house or buy it and she will contact me." (LF56-58) Easily accessible methods existed for the City Sheriff, Purchaser and the pubic to contact and notify him of a sale or give him an opportunity to be heard prior to the important and irreversible prospect of losing his property. And that Mr. Bhatti had not paid the real estate taxes for the realty located at 3243 Pennsylvania Avenue, but was current with his real estate taxes for his residence in the City, strongly indicated that Mr. Bhatti had not been receiving his real estate tax bills and hence that he would not receive any notice of the tax delinquency sale. It is also notable that "[m]any States already require in their statutes that the government do more than simply mail notice to delinquent owners, *either at the outset* or as a follow[-]up measure if initial mailed notice is ineffective." Flowers, 547 U.S. at 228. In light of the foregoing facts, it is clear that if the City had actually desired to inform Mr. Bhatti of the impending tax delinquency sale, the City would have, at a minimum, mailed notice to 3831 Potomac or posted notice on the property itself, something more should have been done to satisfy his due process rights.

This conclusion is supported by Robinsons v. Hanrahan, 409 U.S. 38 (1972) (per curiam) and Conseco Finance Ser. v. Mo Dept. of Revenue, 195 S.W.3d 410, 416 (Mo. 2006). In Robinson, the State of Illinois had sought to forfeit a vehicle owned by Robinson, who was incarcerated in the Cook County jail. The sheriff did not provide the notice directly to Robinson, but rather mailed it to the address of the car's owner on file with the Illinois Secretary of State. The Court held that because the State knew that Robinson was not at the address to which notice was mailed, and could not get to that address, the notice provided by the State was inadequate. The same reasoning and conclusion applies here: As in Robinson, the sheriff here knew, or should have known, that it was highly unlikely that that it was highly unlikely that Mr. Bhatti would receive actual notice of the impending tax simply by advertising the sale in the newspaper, which there is no reason for property owners, as opposed to real estate investors and speculators, to read, and by mailing a single notice to an address for realty that had been vacant during the multiple years in which the unpaid real estate taxes had accrued. See Mennonite Board of Missions v. Adams, 462 U.S. 791, 799 (1983) ("Because they are designed primarily to attract prospective purchasers to the tax sale, publication and posting are unlikely to reach those who, although they have an interest in the property, do not make special efforts to keep abreast of such notices."). Like the sheriff in Robinson, the sheriff could have easily ensured that Mr. Bhatti received

actual notice – simply by mailing notice to Mr. Bhatti's residence in the City, payment of the property taxes regarding which were current. Likewise, just as this Court found the notice in Conseco Finance – "a single notice by regular mail to an address believed [by the sender to have been] abandoned" – so this Court should find the single notice mailed by regular mail to an address for a house that for at least four years had been vacant (at a minimum, until January 2009) and whose owner, Mr. Bhatti, the City knew lived elsewhere, constitutionally inadequate.

Granted, Mr. Bhatti is imputing to the Sheriff of the City the knowledge of other branches of the City. But the imputation of knowledge from an agent or sub-agent (here, City employee's and departments) to a principal (here, the City) is a longstanding, perfectly proper, and essential practice. See American Sur. Co. v. Pauly, 170 U.S. 133, 153 (1898) ("It is the rule that the knowledge of the agent is the knowledge of his principal, and notice to the agent of the existence of material facts is notice thereof to the principal, who is taken to know everything about a transaction which his agent in it knows."); RESTATEMENT (SECOND) OF AGENCY §283(a) (1958). Cf. Brady v. Maryland, 373 U.S. 83 (1963) (imputing knowledge of exculpatory information known by police to the State); State v. Goff, 129 S.W.3d 857, 864 n.3 (Mo. 2004) (imputing "collective knowledge" of police to arresting officers in ascertaining probable cause under Fourth Amendment). Government entities and business organizations, such as corporations, are not

flesh-and-blood persons, but rather principals that can only act through their flesh-and-blood agents. Consequently, the knowledge acquired by an agent within the scope of his or her agency is imputed to the principal. Moreover, if such imputation of actual knowledge from agent to principal were forbidden, governments would have a perverse incentive to magnify the complexity of the bureaucracy, decreasing both efficiency and fairness to the public.

(2) The City also violated Mr. Bhatti's procedural due process rights by failing to take any additional steps, after the U.S. Post Office returned to the City the single notice mailed to the realty. As the Circuit Court correctly recognized, this Court and the U.S. Supreme Court required the City to send or provide a follow-up notice to Mr. Bhatti.[3] See Flowers, 547 U.S. at 229; Schlereth, 280

[3] Neither this Court nor Mr. Bhatti must prescribe the additional notice the City had to provide Mr. Bhatti to satisfy due process. To partially quote the U.S. Supreme Court: "[I]t is not our responsibility to prescribe the form of service that the [government] should adopt . . . It suffices for present purposes that we are confident that additional reasonable steps were available for [the City] to employ before [selling Mr. Bhatti's] property." Flowers, 547 U.S. at 228. Mailing notice (by certified mail or otherwise) to Mr. Bhatti's City residence or posting notice on realty' address or personally serving Mr. Bhatt, either at his City employer or

S.W.3d at 51. See also Schwartz v. Dey, 665 S.W.2d 933, 935 (Mo. 1984) (remanding to hold evidentiary hearing to ascertain whether "upon further inquiry the Collector could easily have obtained their actual address[,]" whether "resort to other official records would have disclosed that address[,]" and whether "a visit to the property itself would have put the Collector in touch with a tenant who would have seen that the Collector received a proper address"). The Circuit Court erred, however, in finding that there was no evidence that the sole letter sent by the City had been returned and also in finding that the evidence proffered by Mr. Bhatti in his motion (and amended motion) for new trial didn't qualify as newly discovered evidence under Rule 78.01.[4]

---

residence are all steps that the City could have taken to notify Mr. Bhatti of the impending tax sale.

[4] To be sure, the Circuit Court denied the amended motion for new trial on the alternative grounds that the amended motion had been filed more than 30 days after the judgment had been entered. But the only newly discovered evidence in the amended motion that was not in the (timely) original motion for new trial was the affidavit from the mail carrier and thus leaves unaffected all the letters mailed to the realty's address that went undelivered and returned to sender. Furthermore, though the Circuit Court is correct that Rule 78.04 provides that no motion for new trial can be filed after 30 days following the judgment with respect to which a new

The Circuit Court clearly erred in finding no evidence that the single letter mailed by the Sheriff to the realty's address, 3243 Pennsylvania, was returned to the City before the property was sold at the tax delinquency sale. In fact, the City *admitted* that the letter had been returned to it before the sale, in its "Affidavit of Service of Notice," which Respondent Collector of Revenue filed with the Circuit Court on April 20, 2009. (LF 18-22). Exhibit A thereto, which is entitled "City of St. Louis, Office of the Collector of Revenue, Sheriff's Sale Register," lists the names of the owner(s), lien holders, and addresses of various property to be sold at the tax delinquency sale and to which notice of sale was mailed on April 17, 2009. One such listing is: "Mohammad A. Bhatti, 3243 Pennsylvania, St. Louis, MO 63118." To the right of the listing appears, in handwriting, the following: "4-29-09 – RTS, ANK, UTF." A legend on the next page of the exhibit defines "RTS" as "return to sender"; "ANK" as "attempt not known"; and "UTF" as "unable to forward." In other words, on April 19, 2009 (the date of the Affidavit), fully one

---

trial is sought, that rule is not a jurisdictional rule, but rather a case-processing rule, whose limitations can be waived by the parties, see generally J.C.W. ex rel. Webb v. Wyciskalla, 275 S.W.3d 249 (Mo. 2009), as it was here. On January 21, 2010, jointly the parties continued the new-trial motion, to try to get Judge Stelzer to hear it, without any objection lodged by any party. (LF 74). Nothing prevented the Circuit Court from considering the mail carrier's affidavit.

month before the sale, the City knew that the notice it had mailed had not been delivered to Mr. Bhatti – and yet it did nothing else to inform him of the sale.

Though ultimately immaterial (given the City's admission), the Circuit Court also erred in finding that the evidence proffered by Mr. Bhatti in his motion (and amended motion) for new trial (i.e., the three letters mailed in November 2009 to Mr. Bhatti's residence that were all returned as undeliverable and the mail carrier's affidavit) didn't qualify as newly discovered evidence. Rule 78.01 authorizes granting a new trial for "good cause shown," which includes the discovery of new evidence, so long as "the evidence was not known at trial; its being unknown was not attributable to a failure of due diligence by the defense; and the newly discovered evidence is not merely cumulative or impeaching" and the evidence is "likely to produce a different result on retrial." State v. Stewart, No. SC90503, slip op. (Mo. May 25, 2010). The proposed evidence satisfies these requirements. The evidence was not known at trial: The evidence adduced in the motion for new trial did not even *exist* until *after* the Circuit Court had denied the motion to set aside the judgment, and the affidavit from the mail carrier likewise was not procured until after trial. Nor is the proposed evidence merely cumulative or impeaching. The City presented no evidence contrary to Mr. Bhatti's and Mr. Bhatti certainly didn't present any evidence at the hearing on his motion that undermined his motion, so the evidence could not impeach his evidence.

Moreover, because Mr. Bhatti had presented no evidence at the evidentiary hearing that the single notice mailed to the realty had been returned to the City, the proposed evidence could not be cumulative. And it is clear that the proposed evidence would likely result in a different outcome. The dispositive reason the Circuit Court gave for denying Mr. Bhatti's motion to set aside was the (alleged) lack of evidence that notice had been returned to the City before the sale. (LF 64).

Neither the Circuit Court nor the City disagreed with the foregoing analysis. Rather, the sole reason the Circuit Court refused to deem the proposed evidence newly discovered evidence is that Mr. Bhatti had failed to plead the particular facts establishing what steps had been taken before the evidentiary hearing on the motion to set aside to discover the proposed. The Circuit Court's reasoning is flawed. First of all, the letters sent by undersigned counsel, having been sent, and returned, after the evidentiary hearing, could not, *ex hypothesi*, been discovered before trial. It appears, then, that the Circuit Court was assuming that Mr. Bhatti had an obligation to *create* this evidence before the evidentiary hearing, but the due diligence requires reasonable steps to *discover* relevant evidence, not to *create* it. Moreover, Mr. Bhatti cannot be faulted for failing to get the mail carrier's affidavit before the evidentiary hearing. Given that Mr. Bhatti had never received any tax notices respecting the realty and given that he never received any notice of foreclosure or the tax delinquency sale, he could reasonably assume that the City

had not mailed the notice to him (mistakes happen) or that the notice had been lost in the mail or delivered to the wrong address. (Plus, as established above, even if the notice had not been returned to the City, there still was a due process violation, so proof of return of the notice was not a necessary part of Mr. Bhatti's case.) Mr. Bhatti had no reason to believe that his mail carrier had systemically declined to deliver mail to the residence *after* January 2009, after he had rehabbed the place and acquired an occupancy permit. Ideally, Mr. Bhatti would have interviewed the mail carrier before the evidentiary hearing. But it should be remembered that there is no apparent formal rule or statute authorizing discovery on a Rule 74.06(b) motion, making the posture of this case different from the ordinary normal case where a motion for new trial based on newly discovered evidence is filed after a full round of discovery had already been afforded the parties, including subpoenas, depositions, interrogatories, and requests for admission and for production of documents. It should also be remembered that, even in such quotidian cases, due diligence "does not require impeccable, flawless investigation in all situations." Young v. St. Louis Public Service Co., 326 S.W.2d 107, 112 (Mo. 1959).

(3) Even if the evidence proffered by Mr. Bhatti did not qualify as newly discovered evidence under Rule 78.01 and even if the City never admitted that the sole notice it sent of the tax delinquency sale had been returned before the sale, there would still be a due process violation, because Respondent Lewis Mitchell

failed to have Mr. Bhatti personally served with notice of the confirmation hearing, and the only notice of the confirmation hearing was notice mailed seven days before the confirmation hearing.

Six years after the MLRL was passed, the U.S. Supreme Court, in Shaffer v. Heitner, 433 U.S. 186 (1977), recognized that, contrary to Pennoyer v. Neff, 95 U.S. 714 (1878), an "adverse judgment in rem directly affects the property owner by divesting him of his rights in the property before the court," Id. at 206. Consequently, the Court, noting that jurisdiction in rem is just "a customary elliptical way of referring to jurisdiction over the interests of persons in a thing," held that the test for whether the Court can exercise jurisdiction, consistent with the Due Process Clause, is whether the requirements of International Shoe Company, 326 U.S. 310 (1945), and its progeny have been met. Id. at 207, 212. These cases, which mandate compliance with "traditional notions of fair play and substantial justice," express a preference for personal service, the ideal form of service. See Greene v. Lindsey, 456 U.S. 444 (1982). Though these cases recognize that "judicial proceedings [can] be prosecuted in some situations on the basis of procedures that do not carry with them the same certainty of actual notice that inheres in personal service," they require that these alternative forms *notice reasonably calculated, under all the circumstances, to apprise interested parties of* an opportunity to present their objections," Id. at 449-50 (emphasis in the original)

(emphasis in the original). In addition, "Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded[.]" In re. Gault, 387 U.S. 1, 33 (1967).

Here, Lewis Mitchell's failed to satisfy the foregoing notice requirements. To begin with, Lewis Mitchell made no attempt to effect personal service on Mr. Bhatti. As a functional and practical matter, the motion to confirm a tax delinquency sale is analogous to filing a petition to quiet title, which, in an ordinary civil case, requires personal service of a summons and petition and 30 days to file an answer to the latter. It is an oddity that while Chapter 92.700 et seq., authorizes private parties to extinguish property rights after the City forecloses on property, even in the most insignificant small claims suit (e.g., a suit over a $100 TV) the defendant gets 30 days to respond to the petition.

But even if personal service was not required here, Lewis Mitchell's half-hearted attempt to notify Mr. Bhatti still failed to satisfy due process. Lewis Mitchell sent a single notice by regular mail to the realty's address, even though it knew or should have known that the realty, given the improvements made thereto by Mr. Bhatti – such as the repairs of the fence, garage, and exterior decking, as well as installing granite counters in the kitchen – was highly valuable. After all, the house was listed in the MLS for $169,900, there was a "For Sale" sign posted

in the house's front yard for 150 days before October 12, 2009, and presumably Lewis Mitchell had a formal (or informal) appraisal of the value of the house done before deciding to bid on the realty. Furthermore, because the realty was quite valuable, because the City had foreclosed on the house and put up the sale to recover a, comparatively speaking, paltry sum of $1452.06, and because Mr. Bhatti had not filed an answer in the foreclosure action, there was a good chance, especially given the City's (defective) notice provisions that he did not know that his house was on the auction block. In fact, as noted above, a simple review of the Circuit Court record would have informed Lewis Mitchell that on April 29, 2009 – a month before Lewis Mitchell bought the property and months before Lewis Mitchell filed its motion to confirm the sale with the Circuit Court – the Sheriff's single notice mailed to the realty's address had been returned to sender and as unable to be forwarded. But instead of sending notices to *both* of Mr. Bhatti's City addresses or having Mr. Bhatti personally served for $30.00 or at least posting a notice on the "For Sale" posted in front of the Mr. Bhatti's house, Lewis Mitchell sent a single notice to the realty's address, which Lewis Mitchell should have known would fail to notify Mr. Bhatt of the confirmation hearing to be held on July 23, 2009.

Even if the form of Lewis Mitchell's notice were sufficient, the notice was still defective, for it wasn't sent sufficiently in advance of the July 23rd hearing to

afford Mr. Bhatti enough time to prepare for the hearing. Lewis Mitchell's notice was not sent until 7 days before the July 23rd confirmation hearing. As a practical matter, that means, assuming (contrary to fact) that the notice would be delivered to the realty, Mr. Bhatti had, at most, five or six days, maybe even only four days to prepare for a hearing to confirm the sale of realty whose sale he was ignorant of. Due process requires meaningful notice under the circumstances.

Purchaser's follow-up measure after the sale, to call the listing agent on her cell phone was a further simple and cost effective step that was taken when it was convenient for him to do so. That he had already confirmed the sale precluded Mr. Bhatti an opportunity to be heard and due process provides that this step as *one actually desirous to inform* should have been used before his property rights were extinguished. In the absence of a legislated corrective, those who use governmental authority to take property, even in tax delinquency situation, will have to take heed of the notice requirements of the Mullane through Jones line of constitutional cases. Schlereth, 280 S.W.3d 47 at 54.

For these three distinct and dispositive reasons – the deficiencies of the City's first notice, the City's failure to take additional steps to notify Mr. Bhatti of the impending tax-delinquency sale after learning that its sole uncertified mail had been returned to sender, and Lewis Mitchell's substantively inadequate and untimely notice of the confirmation hearing – Mr. Bhatti has established that the

extinction of his property rights in the realty violated the Missouri and federal due process clauses. Consequently, the sale of a $169,900 house and land for $7,600, to recuperate $1452.06 in tax delinquencies of should have been set aside by the Circuit Court.

CONCLUSION

For the foregoing reasons, this Court should hold that the City of St. Louis violated Mr. Bhatti's procedural due process rights and hence reverse the Circuit Court's judgment to the contrary. The circuit court's judgment holding that the sheriff's deed is valid and determining that Mr. Bhatti's right to due process was not violated is a reversible error.

Respectfully submitted,

ANGELA SEE-WAI YEE
Mo. Bar. No. 53978
YEE LAW FIRM, P.C.
7750 Clayton Road, Suite 108
St. Louis, MO 63117
(314) 503-3517 – phone
(314) 644-2516 - fax
angelayeelaw@hotmail.com

Counsel for Appellant

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Appellant's Brief includes the information required by Rule 55.03 and complies with the limitations contained in Rule 84.06(b). Relying on the word count and line count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 7632 and that the total number lines of monospaced type in the brief is 731, exclusive of the cover, signature block, and certificates of service and compliance.

The undersigned further certifies that the disks filed with the Appellant's Brief and served on respondent were scanned for viruses and found virus-free.

Respectfully submitted,

_____

ANGELA SEE-WAI YEE
Mo. Bar. No. 53978
YEE LAW FIRM, P.C.
7750 Clayton Road, Suite 108
St. Louis, MO 63117
(314) 503-3517 – phone
(314) 644-2516- fax
angelayeelaw@hotmail.com

Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Appellant's Brief together with the separately-bound Appendix to Appellant's Brief and a CD containing Appellant's Brief were mailed to each of the following by depositing same with the United States Postal Service in St. Louis County, Missouri, with first-class postage pre-paid on the 24th day of August, 2010:

Richard Blanke, Attorney for Respondent, 906 Olive Street, Suite 300 St. Louis, MO 63101 and Gordon Schweitzer, Jr., Attorney for Sheriff of St. Louis City, 10 North Tucker, St. Louis, Missouri 63101 and Anthony Sestric, Attorney for Collector of Revenue, City of St. Louis, 3967 Holly Hills Blvd, St. Louis, Missouri 63116 and Tyrone Taborn, Attorney for Collector, Co-Counsel, 625 North Euclid, Suite 320G, St. Louis, MO 63108 and the Missouri Attorney General Michael Shayne Kisling at P.O. Box 854, Jefferson City, MO 65105.

Respectfully submitted,

_____

ANGELA SEE-WAI YEE
Mo. Bar. No. 53978
YEE LAW FIRM, P.C.
7750 Clayton Road, Suite 108
St. Louis, MO 63117
(314) 503-3517 – phone
(314) 644-2516- fax
angelayeelaw@hotmail.com

Counsel for Appellant