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IN THE SUPREME COURT OF MISSOURI

Appeal Number SC92390

SNEIL LLC,

Plaintiff/Appellant,

v.

TYBE LEARNING CENTER, INC., ET AL.,

Defendants/Respondents.

Appeal from the Circuit Court of St. Louis County, Missouri
The Honorable Ellen Hannigan Ribaudo, Associate Circuit Judge

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SUBSTITUTE BRIEF OF DEFENDANT/RESPONDENT REGIONS BANK, SUCCESSOR THROUGH MERGER TO UNION PLANTERS BANK, N.A.

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ARGUMENT

Standard of Review

When reviewing a case tried by a judge without a jury, "the decree or judgment of the trial court will be sustained by the appellate court unless there is no substantial evidence to supports it, unless it is against the weight of the evidence, or unless it erroneously applies the law." ***Murphy v. Carron***, 536 S.W.2d 30, 32 (Mo. 1976).

1. **Response to Sneil LLC's first Point Relied On: The trial court correctly found that the right to redeem in this case was one year from the date of the tax sale, pursuant to §140.340 RSMo. Because Sneil LLC's Notice to Tybe Learning Center, Inc. and Regions Bank was not sent at least 90 days before expiration of this one-year right to redeem as required by §140.405 RSMo, the trial court correctly found that Sneil LLC lost any interest in the subject property pursuant to §140.405 RSMo.**

This case involves real property located in St. Louis County, Missouri, commonly known as 3645 Marietta Drive, Florissant, Missouri 63033 ("Property") (LF 626). Sneil LLC appeals from the trial court's Findings of Fact & Conclusions of Law, Order and Judgment, entered April

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11, 2011 ("Judgment") (LF 625-633), following an evidentiary hearing conducted on February 14, 2011. In the Judgment, the trial court found in favor of Tybe Learning Center, Inc. and Regions Bank, successor through merger to Union Planters Bank, N.A. ("Regions Bank"), on Count I of Sneil LLC's Petition. Count I of Sneil LLC's Petition sought confirmation of a Collector's Deed following a real estate tax sale of the Property.

On August 28, 2006, Sneil LLC was the successful bidder for the Property at the sale for delinquent real estate taxes conducted by the St. Louis County Collector of Revenue. On the date of the tax sale, the Property was owned by Tybe Learning Center, Inc. and Regions Bank held a recorded deed of trust on the Property. This was a first offering pursuant to the Jones-Munger Act, Chapter 140 RSMo (LF 626-627).

On August 27, 2007, Sneil LLC sent a notice to Tybe Learning Center, Inc. and Regions Bank via certified mail, return receipt requested, a true and correct copy of which was included within Plaintiff's Trial Exhibit No. 8 ("Sneil LLC's Notice"), which was received by Tybe Learning Center, Inc. and by Regions Bank on August 28, 2007 (LF 627). Regions Bank does not dispute the content of Sneil LLC's Notice as set forth in the brief filed herein by Sneil LLC.

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On December 6, 2007, the St. Louis County Collector conveyed its deed to the Property to Sneil LLC, which was recorded on December 18, 2007, in St. Louis County, Missouri ("Collector's Deed") (LF 630). Sneil LLC filed its Petition herein on February 27, 2008, and an evidentiary hearing was held on February 14, 2011.

In Sneil LLC's first point on appeal, Sneil LLC contends that the trial court erred in denying Sneil LLC relief under Count I of its Petition, because (1) the trial court erroneously held that the applicable redemption period was one year from the date of the tax sale, and (2) the fact that Sneil LLC's Notice was not sent at least 90 days prior to the end of the one-year redemption period was a "mere irregularity" that does not provide a basis for invalidation of the Collector's Deed under §140.520 RSMo.

1. **Right to Redeem.** In this case, the trial court properly applied the Missouri statute for first-offering tax sales, finding that Tybe Learning Center, Inc. and Regions Bank had a right to redeem the property for one year from the date of the tax sale pursuant to §140.340.1 RSMo. That section is entitled "Redemption, when – manner," and provides in pertinent part as follows:

> 1. The owner or occupant of any land or lot sold for taxes or any other persons having an interest therein, may

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> redeem the same at any time during the one year next ensuing, in the following manner . . .

In doing so, the trial court followed cases decided in the Appellate Court for the Eastern District of Missouri, which has held that §140.340.1 RSMo establishes that in a first-offering (or second-offering) tax sale, the property owner, occupant, or any other persons having an interest in the property has a one-year right to redeem that begins on the date of the tax sale. ***Keylien Corporation v. Johnson***, 284 S.W.3d 606 (Mo.App.E.D. 2009); ***Cedarbridge, LLC v. Eason,*** 293 S.W.3d 462 (Mo.App.E.D. 2009); ***Ndegwa v. KSSO, LLC***, -- S.W.3d --, 2011 WL 4790633 (Mo.App.E.D. 2011).

Sneil LLC relies on this Court's decision in ***Hobson v. Elmer***, 163 S.W.2d 1020 (Mo. 1942), to argue that that despite the statutory language found in §140.340.1 RSMo, a property owner or other interested person has a right of redemption until the date that a tax sale deed is issued. Sneil LLC refers to this as the "*Hobso*n Redemption Period" repeatedly in its brief. However, Sneil LLC extends the language and holding of ***Hobson v. Elmer.*** Research does not disclose any reported Missouri case that utilizes the phrase "*Hobso*n Redemption Period".

In ***Hobson v. Elmer***, the tax sale purchaser attempted multiple times following the expiration of the statutory redemption period to obtain a collector's deed to the subject property, but the collector refused to cooperate, and instead permitted the property owner to redeem the property following the statutory redemption period. The Missouri Supreme Court first addressed "the question or whether or not the owner of property which has been sold for taxes may redeem the same at a time more than two years subsequent to the sale date." The Court analyzed several sections of the Jones-Munger Act, and stated that the owner has an "absolute power of redemption which cannot be defeated by the purchaser" during the period found in the predecessor section of §140.340.1 RSMo. Thereafter, until the purchaser has complied with all conditions necessary to obtain a deed, if the owner "applies for redemption and makes the required payments he thereby destroys the power of the purchaser to obtain a deed." ***Hobson v. Elmer***, 163 S.W.2d 1020, 1023 (Mo. 1942).

Under the facts of the case, however, this conclusion is simply *dicta*. The primary, deciding issue of the case focused on the collector's actions, and held that the purchaser "was prevented from receiving his deed by the acts of the collector and that he had done everything in his power to comply with the statutory requirements before the attempted redemption was

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made," and that therefore, a tax deed should issue to the purchaser upon payment of the necessary amount. ***Hobson v. Elmer***, 163 S.W.2d 1020, 1024 (Mo. 1942). Therefore, given this holding, it was unnecessary for the Missouri Supreme Court to opine on the issue of the redemption period, and the ability of the owner to redeem the property, making that discussion *dicta* that need not be followed. ***In re B.H.***, 348 S.W.3d 770 (Mo. 2011).

Additionally, the Missouri Supreme Court in ***Hobson v. Elmer*** did not state that that the owner has a "right" to redeem the property until the tax deed is issued; rather, the above-cited language is phrased in terms of an owner's ability to prevent the tax purchaser from obtaining a deed. Therefore, it is possible for this Court to hold that even under ***Hobson v. Elmer,*** the **right to redeem** property from a first or second offering tax sale is 1 year pursuant to §140.340.1 RSMo, but that an ability to redeem still exists until the tax deed is issued.

The appellate court in this case seems to recognize this possible approach, that the right to redeem is a one-year period, but the ability to redeem could extend for longer than that period, by stating as follows:

> Sneil is wrong in its assertion that the trial court incorrectly found that the redemption period was one year, and its reliance on § 140.410 is misplaced. § 140.410 places a time limit on the

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> purchaser to acquire a Collector's deed within two years of the date of the tax sale, and places the burden on the purchaser to acquire the deed in a timely manner, or have the certificate of purchase cancelled. It does not address the rights of the landowner or other interested party in the real property at issue to redeem that property, but rather the ability of a purchaser at a tax sale to attempt to acquire a collector's deed. Further, the ability of the landowner to redeem after the one-year period from the date of the tax sale due to the failure of the purchaser to acquire a collector's deed is not the same as the absolute right to redeem that exists under § 140.340 during the year following the tax sale.

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Based on the language of §140.340.1 RSMo ("Redemption, when – manner"), the trial court correctly applied the law and held that Tybe Learning Center, Inc. and Regions Bank had a **right to redeem** the Property for one year from the date of the tax sale. This is important because the

statutory notice required to be given by the tax purchaser, discussed below, utilizes the phrase "right to redeem."

2. **Deficiency in Timing of Notice.** Before a land tax purchaser may lawfully acquire the deed to a parcel of land, the purchaser must strictly adhere to the statutory provisions of §140.405 RSMo, which stated in pertinent part at the time relevant to this case:

> Any person purchasing property at a delinquent land tax auction shall not acquire the deed to the real estate…until the person meets with the following requirement… At least ninety days prior to the date when a purchaser is authorized to acquire the deed, the purchaser shall notify any person who holds a publicly recorded…mortgage…upon that real estate of the latter person's **right to redeem** such person's publicly recorded security or claim. Notice shall be sent by certified mail to any such person…Failure of the purchaser to comply with this provision shall result in such purchaser's loss of all interest in the real estate. (Emphasis added.)

The statute provides that the notice must be sent 90 days before the tax purchaser is "authorized to acquire the deed." §140.405 RSMo was

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added to the Jones-Munger Act in 1984. Sneil, LLC argues that the phrase "authorized to acquire the deed" "should be presumed" by this Court to be a reference to the ***Hobson v. Elmer*** case., because "*Hobson* held that the right of redemption expires when a tax sale purchaser is authorized to acquire the collector's deed." (Corrected Appellant's Substitute Brief, Page 44.) However, this Court need not make this presumption. This phrase, or even the word "authorized", does not appear in the ***Hobson v. Elmer*** case (which was decided 42 years earlier). Additionally, and as set forth above, the Court in ***Hobson v. Elmer*** did not go so far as to characterize the ability to redeem after the statutory period as a "right", and the entire discussion was dicta.

To give the statutory notice requirement any meaning, the notice of the "right to redeem" must be given before the "right to redeem" expires. The decisions of the Appellate Court for the Eastern District of Missouri are therefore well-reasoned in their holdings that §140.405 RSMo requires the notice to be sent at least 90 days before the 1-year right to redeem expires. ***Cedarbridge, LLC v. Eason,*** 293 S.W.3d 462 (Mo.App.E.D. 2009), and ***Ndegwa v. KSSO, LLC***, -- S.W.3d --, 2011 WL 4790633 (Mo.App.E.D. 2011).

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The facts of this case are clear that Sneil, LLC's Notice was sent on August 27, 2007, which was less than 90 days before the expiration of the one-year right to redeem (which was August 28, 2007), and that therefore, the notice was defective under §140.405 RSMo.

§140.405 RSMo is clear that "***failure***" of the tax purchaser to comply with its requirements "***shall*** result in such purchaser's loss of all interest in the real estate" (emphasis added). ***See, Cedarbridge, LLC v. Eason,*** 293 S.W.3d 462, 466 (Mo.App.E.D. 2009) ("A delinquent tax sale purchaser's failure to comply with *any* of the above notice requirements will result in its losing all interest in the real estate as a matter of law."); ***Hames v. Bellistri***, 300 S.W.3d 235, 239 (Mo.App.E.D. 2009) ("The failure to correctly state the redemption period results in the purchaser losing all rights to the property"); ***Ndegwa v. KSSO, LLC***, -- S.W.3d --, 2011 WL 4790633 (Mo.App.E.D. 2011). Sneil LLC argues in its brief that the defects in its notice are "mere irregularities" that are not a basis to invalidate the Collector's Deed, citing §140.460 RSMo and §140.520 RSMo.

§140.460 RSMo provides that a collector's deed "shall be prima facie evidence . . of the regularity of the sale of the premises described in the deed, and of the regularity of all prior proceedings, . . and prima facie evidence of a good and valid title in fee simple in the grantee of said deed.."

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Regions Bank does not dispute that the Collector's Deed was prima facie evidence of the validity of the tax sale, the proceedings before the tax sale, and/or valid fee simple title in Sneil LLC. However, Tybe Learning Center, Inc. and Regions Bank overcame such prima facie evidence of regularity by establishing in the trial court that Sneil LLC's notice was not sent to Tybe Learning Center, Inc. and Regions Bank in the time required, and did not contain the notice of the right of redemption required, by §140.405 RSMo. ***Stadium West Properties, L.L.C. v. Johnson***, 133 S.W.3d 128 (Mo.App.W.D. 2004).

Sneil LLC cites the cases of ***Mitchell v. Atherton***, 563 S.W.2d 13 (Mo. Banc 1978) and ***Stadium West Properties, L.L.C. v. Johnson***, 133 S.W.3d 128 (Mo.App.W.D. 2004) for the proposition that collector's deeds are prima facie evidence of "notice in compliance with the law". These cases not only both held that the subject collector's deeds were invalid due to the collector's mistakes, but they also dealt with the collector's notice of sale, not the notice which is required to be given by the tax purchaser pursuant to §140.405 RSMo (which specifically provides for the consequence of not complying with the section), and therefore do nothing to support the arguments of Sneil LLC in this matter.

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§140.520 RSMo is cited by Sneil LLC in support of its proposition that the defects in Sneil LLC's Notice were "mere irregularities" that should not invalidate the title conveyed by the tax deed. Such section provides, in relevant part, "No . . mere irregularity of any kind in any of the proceedings, shall invalidate any such proceeding, or the title conveyed by the tax deed . . " The cases cited by Sneil LLC, ***State ex rel. Howard v. Timbrook's Estate***, 240 Mo. 226, 144 S.W. 843 (1912), ***Phelps v. Brumback***, 107 Mo. App. 16, 80 S.W. 778 (K.C. 1903), and ***Taft v. McCullock*** ,135 Mo. 588, 37 S.W. 499 (1896) are distinguishable on their facts, as they concerned actions or omissions regarding the assessment of real property and levy of real estate taxes, and additionally were decided before the enactment of §140.405 RSMo which specifically states, "Failure of the purchaser to comply with this provision shall result in such purchaser's ***loss of all interest in the real estate***." (emphasis added.) No Missouri court has citied this section as support for excusing a tax purchaser's failure to comply with the requirements of §140.405 RSMo. The Western District Appellate Court in ***Stadium West Properties, L.L.C. v. Johnson***, 133 S.W.3d 128 (Mo.App.W.D. 2004) noted that the Missouri Supreme Court has repeatedly required that "county collectors and tax sale purchasers follow the strict letter of Missouri law governing such sales",

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citing ***State ex rel. McGhee v. Baumann***, 349 Mo. 232, 160 S.W.2d 697, 699 (1942); ***Wates v. Carnes***, 521 S.W.2d 389, 390 (Mo. 1975); ***Lohr v. Cobur Corp.***, 654 S.W.2d 883, 887 (Mo. Banc 1983); and ***Schlafly v. Baumann***, 341 Mo. 755, 108 S.W.2d 363 (1937). Therefore, Sneil LLC's failure to comply with the requirements of §140.405 RSMo should not be held by this Court to be an excusable "mere irregularity."

Sneil LLC finally argues that because the St. Louis County Collector would have permitted redemption until December 6, 2007 under its procedures then in effect, Tybe Learning Center, Inc. and Regions Bank were not prejudiced by the fact that Sneil LLC's Notice was not mailed at least 90 days prior to August 28, 2007. Sneil LLC cites no case in support of the proposition that lack of prejudice excuses its compliance with §140.405 RSMo. The court in ***Stadium West Properties, L.L.C. v. Johnson***, 133 S.W.3d 128 (Mo.App.W.D. 2004) held that a property owner is not required to prove that it had notice or detrimentally relied upon the defect in the tax deed proceedings in order to receive relief in a case (there, the collector's mistake in the published property description). Therefore, whether or not Tybe Learning Center, Inc. and/or Regions Bank relied upon the content or timing of the notice, or were prejudiced thereby, is not relevant to the issues involved in this case.

For all of the above reasons, the Court in this case should affirm the trial court and hold, consistently with the holdings in ***Keylien Corporation v. Johnson***, 284 S.W.3d 606 (Mo.App.E.D. 2009), ***Cedarbridge, LLC v. Eason,*** 293 S.W.3d 462 (Mo.App.E.D. 2009), ***Hames v. Bellistri***, 300 S.W.3d 235, 239 (Mo.App.E.D. 2009), and ***Ndegwa v. KSSO, LLC***, -- S.W.3d --, 2011 WL 4790633 (Mo.App.E.D. 2011), that the right of redemption in this case expired on August 28, 2007, which was one year following the tax sale on August 28, 2006, that Sneil LLC's Notice was not sent at least 90 days before the expiration of the one-year redemption period, and that such error in timing of Sneil LLC's Notice results in its loss of all interest in the real estate pursuant to §140.405 RSMo, making the Collector's Deed invalid.

2. **Response to Sneil, LLC's second Point Relied On: The trial court correctly found that Sneil, LLC's Notice failed to comply with the requirement in §140.405 RSMo that the property owner and other interested parties be notified of the "right to redeem." Therefore, the trial court correctly found that Sneil LLC lost any interest in the subject property pursuant to §140.405 RSMo.**

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Regarding the content of the notice that Sneil LLC was required to provide to Tybe Learning Center, Inc. and Regions Bank, §140.405 RSMo states in pertinent part:

> Any person purchasing property at a delinquent land tax auction shall not acquire the deed to the real estate…until the person meets with the following requirement… At least ninety days prior to the date when a purchaser is authorized to acquire the deed, the purchaser shall notify any person who holds a publicly recorded…mortgage…upon that real estate ***of the latter person's right to redeem such person's publicly recorded security or claim***. Notice shall be sent by certified mail to any such person…Failure of the purchaser to comply with this provision shall result in such purchaser's loss of all interest in the real estate (emphasis added).

The appellate court for the Eastern District of Missouri holds that "for a notice in a first . . offering tax sale to accurately inform the recipient of the right to redeem, the notice must indicate that the recipient has one year from the date of the tax sale to redeem." ***Keylien Corporation v. Johnson***, 284 S.W.3d 606 (Mo.App.E.D. 2009). The "notice of the right to redeem must include the correct time in which to redeem the property."

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Hames v. Bellistri, 300 S.W.3d 235 at 239 (Mo.App.E.D. 2009). The notice must "advise the property owner of her right to redeem the property or be forever barred from doing so." ***Valli v. Glasgow Enterprises, Inc.,*** 204 S.W.3d 273 at 277 (Mo.App.E.D. 2006). See also, ***Ndegwa v. KSSO, LLC***, -- S.W.3d --, 2011 WL 4790633 (Mo.App.E.D. 2011).

The appellate court for the Southern District of Missouri likewise held in ***Drake Development & Construction, LLC v. Jacob Holdings, Inc.,*** 306 S.W.3d 171 (Mo.App.S.D. 2010) that the notice required by §140.405 RSMo that a redemption notice must contain a "time frame in which they must act to redeem their property or be forever barred from doing so." 306 S.W.3d at 174. The court went on to find, "The notice in this case did not inform Appellant how long it had to exercise its right to redeem or be forever barred from doing so. It provided neither a specific redemption period expiration date nor a number of days indicating the length of time Appellant had to redeem its property." 306 S.W.3d at 174. The court therefore found that the tax purchaser did not comply with the provisions of §140.405 RSMo and therefore lost all interest in the property.

The references to redemption in Sneil LLC's Notice were as follows:

- The RE: line on Page 2 stated: "RE: Notice of Right of Redemption Regarding 3645 Marietta Drive, Florissant, Missouri 63303."
- Pages 2-3 stated: "If you wish to redeem your interest in the above-referenced property, you should contact the Collection Division of the St. Louis County Department of Revenue at 41 South Central Avenue (Street Level), Clayton, Missouri 63105, Telephone (314) 615-4207, Fax (314) 615-5428" (LF 627-628).
- The enclosed "limited title search" which was addressed to Sneil LLC from Gebhardt Real Estate and Legal Services, L.L.C., stated on Page 2: "RIGHTS OF REDEMPTION: Under Section 140.405 of the Revised Statutes of Missouri, the parties identified herein may have rights of redemption in the subject property."
- The enclosed tax sale certificate of purchase stated, "At any time after the expiration of one year from the date of this sale, the above-named purchaser, his heirs or assigns, will upon application and compliance with the provisions of law pertaining thereto be entitled to a Deed of

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Conveyance for any real estate herein described, which shall not have been redeemed . . " and that the "purchaser . . must notify . . all persons . . of their right to redeem the real estate. . ".

Sneil LLC's Notice is deficient under §140.405 RSMo in two (2) respects:

A. **The Notice never states that Tybe Learning Center, Inc. or Regions Bank actually have a right to redeem**. The reference line does not state this, the body of the letter simply states who to contact "if you wish to redeem", the enclosed "limited title search" (which wasn't itself a communication from Sneil LLC to Tybe Learning Center, Inc. or Regions Bank) references that certain parties "may" have a right to redeem, and the enclosed tax sale certificate of purchase (which again wasn't itself a communication from Sneil LLC to Tybe Learning Center, Inc. or Regions Bank) does not state that Tybe Learning Center, Inc. or Regions Bank have a right to redeem the property. This alone can serve as the Court's justification for affirming the decision of the trial court.

B. **The Notice does not contain any time period for redemption.** No time periods are referenced at all in Sneil LLC's letter. The

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enclosed tax sale certificate of purchase states that the purchaser will be entitled to a deed one year after the tax sale upon compliance with the law. However, the Notice was not sent in this one-year period, and according to Sneil LLC's position, one year is not the redemption period anyway.

The Eastern District cases, and the Southern District case, hold that that the tax purchaser's notice must state the correct time in which to redeem the property. ***Keylien Corporation v. Johnson***, 284 S.W.3d 606 (Mo.App.E.D. 2009); ***Cedarbridge, LLC v. Eason,*** 293 S.W.3d 462 (Mo.App.E.D. 2009); ***Ndegwa v. KSSO, LLC***, -- S.W.3d --, 2011 WL 4790633 (Mo.App.E.D. 2011); ***Drake Development & Construction, LLC v. Jacob Holdings, Inc.,*** 306 S.W.3d 171 (Mo.App.S.D. 2010).

This rationale makes sense and good law. The statute requires notice of "the . . right to redeem." Use of the word "the" in this phrase, rather than something like "a possibility to redeem" or "that there exists a right to redeem", indicates that the tax purchaser must give some level of detail as to what "the right" entails. The Court in ***Ndegwa v. KSSO, LLC***, -- S.W.3d --, 2011 WL 4790633 (Mo.App.E.D. 2011) held that "reasonable notice requirements of due process, fundamental principles of public policy and certainty in the law, and basic canons of statute construction" dictate that a time component must be included in the tax purchaser's notice. On

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Page 75 of its brief, Sneil LLC concedes that §140.405 RSMo "exists to protect the Due Process rights of those with substantive interest in property."

Sneil LLC argues in its brief (page 66) that, "Because of the complexities of determining delinquent taxpayer's redemption rights and the lack of information available to tax sale purchasers to determine the facts necessary to legally and correctly advise delinquent taxpayers of the duration of their redemption rights, unreasonable, oppressive or absurd results are reached if notice of the 'right to redeem' if interpreted to require notice of the duration or expiration of the right to redeem." This argument should be disregarded by the Court, as it is completely contradictory to Sneil LLC's argument in all of the other sections of the brief that there **is** a set redemption period, which Sneil LLC has dubbed "the *Hobson* Redemption Period," which is any time prior to issuance of the collector's deed.

Therefore, whether this Court holds that the "right to redeem" is one year under §140.340.1 (as found by the trial court), or whether the "right to redeem" exists until the collector's deed is issued (as argued by Sneil LLC), Sneil LLC's Notice did not inform Tybe Learning Center, Inc. or Regions Bank of the "right to redeem", as it provided no detail whatsoever. Sneil LLC simply provided a telephone number and fax number for Tybe Learning Center, Inc. and Regions Bank to call for information, and

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enclosed a copy of the tax sale certificate of purchase (among other documents), neither of which provided a specific redemption period expiration date nor a number of days indicating the length of time Tybe Learning Center, Inc. or Regions Bank had to redeem the Property. The Sneil LLC Notice did not comply with the requirements of §140.405 RSMo.

In Sneil LLC's second Point Relied On, Sneil LLC again makes the "mere irregularity" argument, and the "lack of prejudice" argument, to excuse its failure to comply with the requirements of §140.405 RSMo. This Court should reject those arguments, for the same reasons as set forth in Regions Bank's response to Sneil LLC's first Point Relied On.

For all of the above reasons, the Court in this case should affirm the trial court and that Sneil LLC's Notice did not inform Tybe Learning Center, Inc. or Regions Bank of the right to redeem, and that such error in the content of Sneil LLC's Notice results in its loss of all interest in the real estate pursuant to §140.405 RSMo, making the Collector's Deed invalid.

3. **Response to Sneil LLC's third Point Relied On: Sneil LLC did not preserve for review its argument that the trial court failed to make required findings of fact and conclusions of law pursuant to Rule 73.01, because Sneil LLC did not file a motion to amend the judgment**

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to preserve this issue as required by Rule 78.07. Alternatively, the trial court did make all of the findings of fact and conclusions of law that were relevant in this case.

Sneil LLC asserts that the trial court in this case did not address certain of its requests in Sneil LLC's Second Request for Findings of Fact and Conclusions of Law (LF 422-451) which were filed on the date of trial, in violation of Rule 73.01(c), and that therefore, the Judgment should be reversed.

Sneil LLC has not preserved this issue for review. Rule 73.01(d) provides, "Except as provided in Rule 78.07(c), a party may, but need not, file a motion for new trial or a motion to amend the judgment or opinion, or both....." Rule 78.07(c) provides, "In all cases, allegations of error relating to the form of language of the judgment, ***including the failure to make statutorily required findings***, must be raised in a motion to amend the judgment in order to be preserved for appellate review" (emphasis added). Here, Sneil LLC argues that the findings were required by Rule 73.01(c), and not made by the trial court. However, Sneil LLC did not file a motion to amend the judgment, so under Rule 78.07(c), this issue has not been preserved for appellate review. ***Crow v. Crow***, 300 S.W.3d 501 (Mo.App.E.D. 2009) (appellant failed to preserve for review the argument

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that the trial court did not make findings required under a child support rule, when appellant did not file a motion to amend the judgment under Rule 78.07(c)).

Even if Sneil LLC preserved this issue for review, the Court should find that the trial court made all required findings. "The failure of a trial court to make findings of fact which were properly requested does not always require reversal . . We will reverse only when such failure materially interferes with our ability to review; otherwise, if the record is sufficient to support the judgment, we will affirm. . Rule 73.01(c) provides that if the trial court does not make findings on specific factual issues, then we consider them as having been found in accordance with the judgment reached. This applies even to findings which one party requested but the trial court did not make." ***Ratteree v. Will***, 258 S.W.3d 864, 872 (Mo.App.E.D. 2008) (citations omitted).

On the issue of Sneil LLC's Notice, in Paragraph 7 of the Judgment, the trial court made the following findings of fact: "On August 27, 2007, Plaintiff sent a notice to Tybe Learning Center, Inc. and Union Planters Bank, N.A. via certified mail, return receipt requested, ***a true and correct copy of which was included within Plaintiff's Trial Exhibit No. 8*** ("Plaintiff's Notice"). Both Tybe Learning Center, Inc. and Union Planters

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Bank, N.A. (now Regions Bank) received Plaintiff's Notice via certified mail on August 28, 2007..." (emphasis added). Plaintiff's Trial Exhibit No. 8 is contained within Sneil LLC's brief appendix at A74-A87. By stating the date of the notice, the recipients thereof, the method of mailing, and the receipt thereof, and by acknowledging that Plaintiff's Trial Exhibit No. 8 contained a true and correct copy of the notice, the trial court satisfied the following requests by Sneil LLC in its Second Request: Paragraphs 18, 19, 20, 21, 22, 23, 24, 26, 29, 30, and 33. Moreover, this Court should note that these factual issues were not contested by either Tybe Learning Center, Inc. or Regions Bank at the trial held on February 14, 2011.

Other requests regarding notice were contained in Paragraphs 25, 27, 28, 31, 32, and 34 of Sneil LLC's Second Request, concerning receipt and date of receipt of the certified mail letter by other defendants, persons, and entities not involved in this appeal, and the posting of a notice, none of which are relevant to the issues presented in this appeal. Therefore, the trial court arguably not addressing them does not materially interfere with this Court's ability to review the trial court's decision.

Sneil LLC complains that the trial court did not address Paragraphs 35, 36, and 43 of its Second Request. Paragraphs 35 and 36 requested a finding as to whether Tybe Learning Center, Inc. or Regions

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Bank contacted Philip K. Gebhardt after receiving Sneil LLC's Notice. Paragraph 43 requested a finding as to whether Carmen Austell (of Tybe Learning Center, Inc.) requested redemption figures. It was not necessary for the trial court to make any such factual findings, as whether or not Philip K. Gebhardt was contacted or whether Ms. Austell requested redemption figures, is not at all relevant to any of the legal issues involved herein, namely, the applicable redemption period, the timing of the sending of the required notice, and the content of the required notice. The requested factual findings are not relevant under any Missouri statute or precedent.

Sneil LLC also complains that the trial court did not make conclusions of law as requested by Sneil LLC in its Second Request. Rule 73.01(c) provides, in part: "If a party so requests, the court shall…prepare and file a brief opinion containing a statement of the grounds for its decision and the method of deciding any damages awarded." Rule 73.01(c) does not require the trial court to specifically address each of Sneil LLC's requests for conclusions of law, and therefore, the trial court did not err if it did not address Sneil LLC's multiple requests. The Judgment contained the trial court's opinion as well as the grounds for its decision, following the reasoning and language of several recent cases decided in the Appellate

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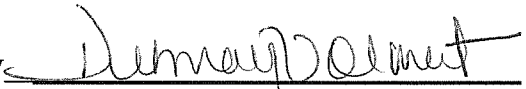
Courts for the Eastern and Southern Districts of Missouri, and therefore complied fully with Rule 73.01(c).

CONCLUSION

For all of the foregoing reasons, this Court should affirm the April 11, 2011, Findings of Fact & Conclusions of Law, Order and Judgment, of the trial court, denying the relief requested by Sneil, LLC, in Count I of the Petition.

Respectfully submitted,

HANNA & VOLMERT, LLC

By 

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Certification

The undersigned certifies as follows:

1. This brief complies with the limitations contained in Missouri Court Rule 84.06(b).

2. The brief contains 6,237 words.

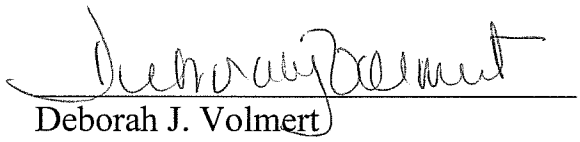
3. To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) The claims, defenses, requests, demands, objections, contentions, or arguments herein are not presented or maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) The claims, defenses, and other legal contentions herein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) The allegations and other factual contentions herein have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) The denials of factual contentions herein are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Substitute Brief of Defendant/Respondent was served/sent via the Missouri Courts Electronic Filing System to the following persons, and an electronic mail message, with a copy of the Substitute Brief of Defendant/Respondent attached in PDF format, was sent this 5th day of April, 2012, to:

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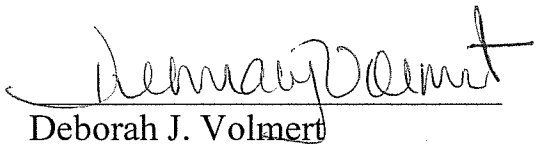

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