

IN THE SUPREME COURT OF MISSOURI

Appeal Number SC92390

SNEIL LLC,

Appellant-Plaintiff,

v.

TYBE LEARNING CENTER INC., et al.,

Respondents-Defendants.

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

APPELLANT'S SUBSTITUTE CONSOLIDATED REPLY BRIEF

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ARGUMENT

I.

THE TRIAL COURT ERRED IN DENYING APPELLANT RELIEF UNDER COUNT I OF APPELLANT'S PETITION ON THE GROUND THAT APPELLANT'S NOTICE LETTERS WERE MAILED ON AUGUST 27, 2007 AFTER A PURPORTED ONE-YEAR REDEMPTION PERIOD PURPORTEDLY EXPIRED ON AUGUST 26, 2007, AND WERE PURPORTEDLY DEFECTIVE AND PURPORTEDLY FAILED TO COMPLY WITH SECTION 140.405, RSMO, BECAUSE: (A) RELEVANT CASE LAW, INCLUDING, WITHOUT LIMITATION, CONSTITUTIONALLY BINDING PRECEDENT DECIDED BY THIS COURT HAS HELD THAT THE TIME PERIOD SPECIFIED IN WHAT IS NOW CODIFIED IN SUBSECTION 1 OF SECTION 140.340, RSMO, GRANTS DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES A TIME PERIOD WHEN THEY HAVE AN ABSOLUTE RIGHT OF REDEMPTION (WHICH IS CURRENTLY ONE YEAR FROM THE TAX SALE), AND THAT THE DELINQUENT TAXPAYER AND OTHER INTERESTED PARTIES CONTINUE TO HAVE THE RIGHT TO REDEEM THEIR INTEREST FROM THE TAX SALE AFTER THAT ABSOLUTE PERIOD UNTIL THE TAX SALE PURCHASER IS EITHER AUTHORIZED TO ACQUIRE A COLLECTOR'S DEED TO THE PROPERTY OR THE TAX SALE CERTIFICATE EXPIRES AT THE TIME SPECIFIED IN WHAT IS NOW CODIFIED IN SECTION

140.410, RSMO (WHICH IS CURRENTLY TWO YEARS FROM THE TAX SALE), AND (B) ANY PURPORTED DEFECTS IN NOTICING WERE NOT A GROUND TO INVALIDATE THE COLLECTOR'S DEED UNDER SECTION 140.520, RSMO.

At pages 8 to 11 of Respondent Regions Bank's Substitute Brief (hereinafter sometimes referred to as the "Regions Brief"), Respondent Regions Bank argues that the duration of the "right to redeem" under the Jones-Munger Act is measured by the time period specified in subsection 1 of § 140.340, RSMo (which is currently one year from the date of the tax sale), but that the "ability to redeem" continues to exist until the tax sale purchaser is authorized to acquire the Collector's Deed under *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942) and cases following *Hobson*. Respondent Regions Bank argues that this distinction has importance, because § 140.405, RSMo, requires notice of the "right to redeem" but not notice of the "ability to redeem". Pages 10-11 of the Regions Brief. Respondent Regions Bank cites language in *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012), Slip Op. at 9-10, stating:

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 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.

Historically, the title of a certificate holder in real estate sold at tax sale under the Jones-Munger Act could go through three distinct stages as described below in *State ex rel. Baumann v. Marburger*, 348 Mo. 164, 182 S. W.2d 163, 165-166 (Mo. 1944) (*quoted in part in M & P Enterprises Inc. v. Transamerica Financial Services*, 944 S.W.2d 154, 157 (Mo. banc 1997)), but the right of redemption continues largely unchanged until it expires:

Under our Jones-Munger Act, the holder of a certificate of purchase, throughout the two years immediately succeeding the tax sale, is vested with an inchoate or inceptive interest in the land subject to the absolute right of redemption in the record owner in whom the title remains vested. After the two year period of absolute right of redemption, and for a further two

year period, the certificate holder has an equitable title in the property with the right to call in the legal title by producing the certificate of purchase, paying certain taxes and fees, and demanding a deed. *Bullock v. Peoples Bank of Holcomb*, 351 Mo. 587, 173 S.W. 2d 753; *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W. 2d 1020; *State ex rel. City of St. Louis v. Baumann*, 348 Mo. 164, 153 S.W. 2d 31. **The record owner continues the owner of the legal title and has the right of redemption which he, or any other persons having an interest in the land, may exercise by application therefor and by making certain required payments at a time within four years immediately succeeding the tax sale and prior to the exercise, after the lapse of the two years immediately succeeding the sale, of the right of the certificate holder to have the legal title transferred to him.** Section 9956a, Laws of Missouri 1933, p. 437; *Hobson v. Elmer, supra*. The legal title does not vest in the holder of the certificate of purchase by virtue of the tax sale until the sale is consummated, that is, until (there being no redemption) the holder shall have exercised his right to have the legal title transferred to him.

(Emphasis added.)

As indicated above and as indicated in *State ex rel. City of St. Louis v. Baumann*, 348 Mo. 641, 153 S.W.2d 31, 34-35 (Mo. Banc 1941), *Hobson*, 182 S.W.2d at 1022, *Bullock v. Peoples Bank of Holcomb*, 351 Mo. 587, 173 S.W.2d 753, 758 (Mo. 1943), *Wetmore v. Berger*, 354 Mo. 166, 188 S.W.2d 949, 953 (Mo. 1945), and possibly other cases, the title of a holder of a certificate of purchase changes over time. During the first stage when there is an absolute right to redeem, the holder of the certificate of title holds only an inchoate or inceptive interest in the property subject to the absolute right of delinquent taxpayers and other interested parties to redeem their interests. After the period of the absolute right of redemption expires, the interest of the holder of a certificate of purchase changes to become an equitable interest, similar to that of a vendee under a contract of purchase, who is entitled to legal title to the property evidenced by a collector's deed upon the performance of the conditions set forth in the statutes, such as the payment of subsequent taxes, § 140.440, RSMo, the tendering of recording fees, §§ 140.410 and 140.460, RSMo, the surrender of the certificate of purchase, § 140.420, RSMo, and the provision of certain notices, § 140.405, RSMo; *Jones v. Flowers*, 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006); and *Scherleth v. Hardy*, 280 S.W.3d 47 (Mo. banc 2009). After the end of the absolute right to redeem, the equitable ownership of the certificate holder entitles the tax sale purchaser to certain statutory rights, such as the right to have the value of improvements made to the property added to the amount needed to redeem, § 140.360, RSMo, and the right to

possession of “non-homestead” property and the right to collect rents, § 140.310, RSMo. *But see Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 468 (Mo. App., E.D. 2009). Finally, upon compliance with all statutory preconditions for obtaining legal title to the property, the tax sale purchaser is entitled to obtain a collector’s deed to the property that grants the tax sale purchaser a presumptive fee simple title to the property, §§ 140.420 and 140.460, RSMo.

The changes that occur after the expiration of the duration of the absolute right of redemption established by subsection 1 of § 140.340, RSMo, do not change the right of delinquent taxpayers and other interested parties to redeem their interests in the property. The expiration of the absolute right of redemption changes the rights of the tax sale purchaser from that of an inceptive or inchoate right to acquire the property, subject to the absolute right of redemption, into that of an equitable owner of the property, who has the right to legal title and the issuance of a collector’s deed vesting the tax sale purchaser with a presumptive fee simple title to the property upon compliance with the statutory requirements for issuance of the collector’s deed, similar in nature to the equitable interest of a vendee under a purchase contract who has the right to legal title to the property upon compliance with the terms and conditions of that contract. Except in the case of the tax sale purchaser, the conditions for obtaining legal title to the property are set forth in the Jones-Munger Act, Chapter 140, RSMo, or other applicable law. The case law indicates that prior to the time when the tax sale purchaser is entitled to obtain a collector’s deed to the property (or alternatively, prior to the demand for, or execution, or execution and delivery or possibly recordation of the

collector's deed), delinquent taxpayers and other interested parties continue to have the right to redeem their interests in the property and destroy the ability of tax sale purchasers to obtain a collector's deed. *Hobson*, 163 S.W.2d at 1023, *Bullock*, 173 S.W.2d at 758, *Marburger*, 182 S. W.2d at 165-166, *Wetmore*, 188 S.W.2d at 953, *Strohm v. Boden*, 359 Mo. 573, 222 S.W.2d 772, 776 (Mo. 1949), *Powell v. City of Creve Coeur*, 452 S.W.2d 258, 261-262 (Mo. App., St. L. 1970), *Boston v. Williamson*, 807 S.W.2d 216, 217-218 (Mo. App., W.D. 1991), *Campbell v. Siegfried*, 823 S.W.2d 156, 158 (Mo. App., E.D. 1992) (concluding the parties entitled to notice under § 140.405, RSMo, to "include anyone who has not received prior notice of the sale, but who has *an interest that could be lost when the collector's deed is issued.*") (emphasis added), *York v. Authorized Investors Group, Inc.*, 931 S.W.2d 882, 888 (Mo. App., E.D. 1996) ("Until the execution of a tax deed, defendant and all other parties in interest, including plaintiffs, have the right to redeem the property by paying the delinquent taxes."), *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 164 (Mo. App., W.D. 2010), *Harpagon Mo, LLC v. Clay County Collector*, 335 S.W.3d 99, 104-105 (Mo. App., W.D. 2011), and *U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)*, 437 B.R. 346 (Bankr., E.D.Mo. 2010). *See also Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court), Slip Op. at 6.

The distinction between the absolute right to redeem and the "ability to redeem" espoused in *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App.,

E.D. February 28, 2012), Slip Op. at 9-10, and advocated by Respondent Regions' Bank is a distinction without a difference.

At pages 11 to 13 of the Regions Brief, Respondent Regions Bank argues that the language "authorized to acquire the deed" in § 140.405, RSMo, is not a reference to *Hobson*. Respondent argues the requirement to give notice of the right to redeem at least 90 days prior to the time when the tax sale purchaser is authorized to acquire the collector's deed purportedly means the provision of notice at least 90 days prior to the expiration of the absolute right to redeem established in subsection 1 of § 140.340, RSMo, because the "right to redeem" expires one year after the tax sale, even though the "ability to redeem" continues until such time as the tax sale purchaser is authorized to obtain the collector's deed. For the reasons stated above, the distinction between the "right to redeem" and the "ability to redeem" is one without a difference and has little to do with when one is "authorized to acquire the deed."

At pages 13 to 17 of Regions Brief, Respondent Regions Bank argues that no reported cases have excused any failure of strict compliance with § 140.405, RSMo, by relying on § 140.520, RSMo. Counsel for Appellant has not found any reported modern cases citing or relying upon § 140.520, RSMo, in requiring only substantial, not strict compliance with § 140.405, RSMo. Counsel for Appellant acknowledges that there is modern authority requiring the strict construction of the Jones-Munger Act, Chapter 140, RSMo, such as *Stadium West Properties v. Johnson*, 133 S.W.3d 128, 134-135 (Mo. App., W.D. 2004).

None of that changes the fact that § 140.520, RSMo, is a duly enacted statute constituting part of the Jones-Munger Act, Chapter 140, RSMo, that states in 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; nor shall **any failure of any officer or officers to perform the duties assigned him or them, on the day or within the time specified,** work any invalidation of any such proceedings, or of such deed, **Acts of officers de facto shall be as valid as if they were officers de jure,**

Tax sale purchasers have been implicitly found to be *de facto* officers of the state in *Scherleth v. Hardy*, 280 S.W.3d 47 (Mo. banc 2009). The fact that all of the modern cases have ignored § 140.520, RSMo, does not mean that statute is not a part of the law of Missouri. The application of § 140.520, RSMo, in this case should lead to a different result than that found by the trial court. If § 140.520, RSMo, means anything, it should mean: (1) that the Jones-Munger Act, Chapter 140, RSMo, should not be strictly construed, (2) that mere irregularities, or technical objections, that do not prejudice the rights of delinquent taxpayers should not be the basis for setting aside a collector's deed, and (3) that the failure of tax sale purchasers to perform their duties in a timely fashion should not work an automatic invalidation of a collector's deed if there is otherwise substantial compliance with § 140.405, RSMo, or other applicable Missouri statutory provisions.

At pages 1 to 4 of Respondent TYBE Learning Center, Inc.’s Substitute Respondent’s Brief (hereinafter sometimes referred to as the “TYBE Brief”), Respondent TYBE Learning Center, Inc. argues that Appellant never acquired a statutory right to a collector’s deed because Appellant purportedly did not comply with § 140.405, RSMo. To the extent counsel for Appellant understands this argument, Respondent TYBE Learning Center, Inc. appears to argue that § 140.405, RSMo, purportedly creates qualifications for or conditions to the right to obtain a collector’s deed, and that the purported failure to comply with § 140.405, RSMo, means that there is no right to a collector’s deed, citing *Wentz v. Price Candy Co.*, 175 S.W.2d 852, 854 (Mo. 1943) (a case construing Workmen’s Compensation statutes).

Section 140.405, RSMo, provides, in part: “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.) One cannot lose what one never had.¹ If § 140.405, RSMo, creates qualifications for or conditions to the right to acquire a collector’s deed, then why does that statute specify that the consequence of failure to comply is loss of all interest in the real estate rather than stating that any collector’s deed issued in non-compliance with § 140.405, RSMo, is void *ab initio*? Section 140.420, RSMo, provides that collector’s deeds issued under the provisions of the Jones-Munger Law, Chapter 140, RSMo, “shall vest in the grantee an absolute estate in fee simple, ...”. Section 140.460, RSMo, provides that

¹ The right to issuance of a collector’s deed, as determined by the county collector, is different than a later adjudication of non-compliance with § 140.405, RSMo.

collector's deeds "shall be ... prima facie evidence of a good and valid title in fee simple in the grantee of said deed." *But see Eason*, 293 S.W.3d at 468 (finding that a delinquent tax payer was still the owner of record after the issuance and recordation of a collector's deed to a tax sale purchaser despite the wording of §§ 140.420 and 140.460, RSMo).

At pages 4 and 5 of the TYBE Brief, Respondent TYBE Learning Center, Inc. quotes the notice posted on the subject property as purported evidence that Appellant did not give notice of the right to redeem in compliance with § 140.405, RSMo. Kevin Rehg testified that he posted the Notice of Tax Sale and Possible Rights of Redemption for 3645 Marietta Drive, Florissant, Missouri 63033 on the 3645 Marietta Drive property on September 2, 2007. Tr. at 13-19. Plaintiff's Parcel I Trial Exhibit No. 9 was a copy of said Notice that was introduced into evidence. Tr. at 13-19. TYBE presented no evidence on this issue. Any stranger to the title of the property walking by the subject property presumably could view the posted Notice of Tax Sale and Possible Rights of Redemption. That Notice is addressed to: "ALL PERSONS NOW IN POSSESSION OF OR OCCUPYING REAL PROPERTY COMMONLY KNOWN AS 3645 MARIETTA DRIVE, FLORISSANT, MISSOURI 63033." Plaintiff's Parcel I Trial Exhibit No. 9. Presumably, not all persons in possession of or occupying the subject property had a right of redemption in that property, as not all persons in possession of or occupying the subject property would necessarily have any interest, recorded or otherwise, in the subject property. To state definitively that anyone in possession of or occupying or viewing a notice of tax sale redemption rights posted on the

property sold at tax sale has a right of redemption would be incorrect. Further, to state definitively that Respondent TYBE Learning Center, Inc. had a right of redemption on September 2, 2007 could have been incorrect if Respondent TYBE Learning Center Inc. had divested itself of title to the property after July 26, 2007 (the effective date of the title examination) but prior to September 2, 2007 (the date of posting).² Appellant, as a tax sale purchaser, had limited knowledge of who was occupying the subject property as of September 2, 2007, or whether any possible impending sale of the subject property had closed after July 26, 2007 (the effective date of the title examination) and prior to September 2, 2007 (the date of posting). Stating that any person now in possession of or occupying the subject property had possible rights of redemption in the notice posted on the property that was subject to view by any stranger to the title walking by the posted notice is not a statement

² In *Glasgow Enterprises, Inc. v. Bowers*, 196 S.W.3d 625 (Mo. App., E.D. 2006), the Court recognized a 90-day “gap” in noticing by not requiring re-noticing of rights of redemption for those first acquiring an interest in the property sold at tax sale if such interest is acquired within 90 days of the date when the tax sale purchaser is authorized to acquire the Collector’s Deed. Cf. *Glasgow Enterprises, Inc. v. Rossel*, 209 S.W.3d 498 (Mo. App., E.D. 2006) (invalidating a collector’s deed when no notice was provided to a person acquiring an interest more than 90 days of the date when the tax sale purchaser was authorized to acquire the collector’s deed). Effective August 28, 2010, under § 140.405.1, RSMo, there is now a 120-day “gap” in statutorily required noticing.

for which the collector's deed should be invalidated under § 140.520, RSMo, and the posted notice in this case does not violate or have anything to do with compliance with the version of § 140.405, RSMo, that existed prior to August 28, 2010.

II.

THE TRIAL COURT ERRED IN DENYING APPELLANT RELIEF UNDER COUNT I OF APPELLANT'S PETITION ON THE GROUND THAT APPELLANT'S NOTICE LETTERS DID NOT INFORM RESPONDENTS HOW LONG THEY HAD TO EXERCISE THEIR RIGHT TO REDEEM OR BE FOREVER BARRED FROM DOING SO, AND PURPORTEDLY FAILED TO COMPLY WITH SECTION 140.405, RSMO, BECAUSE: (A) SECTION 140.405, RSMO, WAS DRAFTED TO INTEGRATE WITH RELEVANT CASE LAW ESTABLISHING THE *HOBSON* REDEMPTION PERIOD; (B) THERE IS NO UNIVERSALLY APPLICABLE REDEMPTION PERIOD ALLOWING TAX SALE PURCHASERS TO PROVIDE ADVANCE NOTICE OF THE EXPIRATION OF THE REDEMPTION RIGHTS OF DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES, AS VARIOUS STATUTES PROVIDE FOR SPECIAL RIGHTS OF REDEMPTION THAT VARY FROM THE *HOBSON* REDEMPTION PERIOD DEPENDING UPON FACTS AND CIRCUMSTANCES THAT THE TAX SALE PURCHASER CANNOT KNOW OR WOULD KNOW ONLY WITH GREAT DIFFICULTY AT THE TIME THE SECTION 140.405 NOTICE IS SENT; (C) TAX SALE PURCHASERS CANNOT GIVE ADVANCE NOTICE OF THE TIME WHEN THEY MAY BE AUTHORIZED TO ACQUIRE A COLLECTOR'S DEED, AS THE DATE, IF ANY, WHEN ALL LAWFUL REQUIREMENTS HAVE BEEN SATISFIED AUTHORIZING THE TAX

SALE PURCHASER TO ACQUIRE A COLLECTOR'S DEED CANNOT BE KNOWN IN ADVANCE; (D) NEITHER SECTION 140.405, RSMO, NOR CONSTITUTIONAL PRINCIPLES OF DUE PROCESS REQUIRE A TAX SALE PURCHASER TO PROVIDE ADVANCE NOTICE OF THE TIME LIMITS APPLICABLE FOR REDEMPTION, THE SPECIFIC PROCEDURES THAT MUST BE FOLLOWED, OR ANY OTHER DETAILS ATTACHING TO THE RIGHT OF REDEMPTION FROM THE TAX SALE; (E) ANY PURPORTED DEFECTS IN NOTICING WERE NOT A GROUND TO INVALIDATE THE COLLECTOR'S DEED UNDER SECTION 140.520, RSMO; AND (F) THE NOTICE LETTERS MAILED AUGUST 27, 2007, INFORMED THE DELINQUENT TAXPAYER AND OTHER INTERESTED PARTIES OF THEIR RIGHT TO REDEEM, WHICH IS ALL THAT IS REQUIRED BY SECTION 140.405, RSMO.

At pages 17 to 24 of Regions Brief, Respondent Regions Bank argues that the Notice Letters sent in this case are deficient, because: (1) the Notice Letters purportedly never state that Respondents have a right to redeem; and (2) the Notice Letters purportedly do not state any time period for redemption.

The Notice Letters mailed August 27, 2007 are structured as follows: (1) The subject line of the Notice Letters reads as follows: "RE: Notice of Right of Redemption Regarding 3645 Marietta Drive, Florissant, Missouri 63033." (2) The first paragraph of the Notice Letters state that Appellant has retained Gebhardt Real Estate and Legal Services LLC with

respect to the Tax Sale Certificate of Purchase on the subject property, commonly known as 3645 Marietta Drive, Florissant, Missouri 63033. (3) The second paragraph of the Notice Letters state that under § 140.405, RSMo, a title examination was performed, and said Notice Letters enclose and incorporate by reference both the notice statute, § 140.405, RSMo, and the limited title examination dated as of July 26, 2007. (4) The third paragraph of the Notice Letters informs the recipient that on August 28, 2006, the St. Louis County Collector of Revenue sold a Tax Sale Certificate of Purchase on the subject property to Appellant for \$41,700.00, and encloses and incorporates by reference a copy of the Tax Sale Certificate of Purchase. (5) The fourth paragraph of the Notice Letters gives notice pursuant to § 140.405, RSMo, of the intention of Appellant to obtain a collector's deed to the subject property. (6) The fifth paragraph of the Notice Letters states: "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." (7) The last paragraph of the Notice Letters states: "If you have any questions regarding this matter, please contact the undersigned." Plaintiff's Parcel I Trial Exhibit No. 2, Tr. at 106; Plaintiff's Parcel I Trial Exhibit No. 3, Tr. at 38; and Plaintiff's Parcel I Trial Exhibit No. 8, Tr. at 117.

In addition, the enclosed and incorporated limited title search contains a section stating, "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."

Plaintiff's Parcel I Trial Exhibit No. 2, Tr. at 106; Plaintiff's Parcel I Trial Exhibit No. 3, Tr. at 38; and Plaintiff's Parcel I Trial Exhibit No. 8, Tr. at 117.

The enclosed and incorporated Tax Sale Certificate of Purchase states in part: "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 thereto be entitled to a Deed of Conveyance for any real estate herein described, which shall not have been redeemed." Plaintiff's Parcel I Trial Exhibit No. 2, Tr. at 106; Plaintiff's Parcel I Trial Exhibit No. 3, Tr. at 38; and Plaintiff's Parcel I Trial Exhibit No. 8, Tr. at 117.

Respondent Regions Bank argues that the foregoing never states that Respondents have a right to redeem. Page 21 of Regions Brief. If the foregoing does not adequately inform the addressees of the Notice Letters of their right of redemption, what would?

Respondent Regions Bank also argues that the Notice Letters do not contain any time period for redemption. Pages 21 to 23 of the Regions Brief. Respondent Regions Bank asks this Court to ignore the fact that under Appellant's view of the duration of the right to redeem, Appellant could not legally and correctly state the exact date the right to redeem expired in the Notice Letters. Page 23 of Regions Brief.

The exact time period for the right of redemption is variously stated in the case law:

Hobson states in part:

There is one manner and, in our opinion, only one manner in which these seemingly conflicting provisions may be

harmonized. We construe them to mean that the owner of the lands has an absolute power of redemption which cannot be defeated by the purchaser during and up to the end of the two-year period. Thereafter the purchaser has a right to obtain a collector's deed at any time within the next two years by complying with the various statutory provisions, to-wit: by producing to the collector his certificate of purchase, paying the subsequently accrued taxes and legal fees and demanding his deed. If, after the end of the two-year period and before the purchaser has complied with these conditions precedent to obtaining his deed, the owner or transferee applies for a redemption and makes the required payments he thereby destroys the power of the purchaser to obtain a deed.

Hobson, 163 S.W.2d at 1023. Thus, under *Hobson*, the right of redemption expires when the tax sale purchaser has complied with all of the conditions precedent to obtaining his deed.

See also Powell, 452 S.W.2d at 261.

Bullock provides in part:

But the interest thus acquired by the bank at that sale was not a title, for the sale was under the Jones-Munger Law, Sec. 11130. Under Sec. 11133, upon such sale the purchaser receives only a

"certificate of purchase," as against which the landowner has an absolute right to redeem during the succeeding two years, Sec. 11145; and a similar right during the next two years up to the time the purchaser shall have demanded his deed within that period. Secs. 11147 and 11149; *Hobson v. Elmer*, 349 Mo. 1131, 1136, 163 S.W. (2d) 1020, 1023(2). During the first two years of the statutory four years the certificate holder does not have even an equitable title, but only "an inchoate or inceptive right." *State ex rel. City of St. Louis v. Baumann*, 348 Mo. 164, 168(3), 153 S.W. (2d) 31, 34(4).

Bullock, 173 S.W.2d at 758. Thus, under *Bullock* the right of redemption ends when the "purchaser shall have demanded his deed" in a timely manner.

Marburger provides in part:

Under our Jones-Munger Act, the holder of a certificate of purchase, throughout the two years immediately succeeding the tax sale, is vested with an inchoate or inceptive interest in the land subject to the absolute right of redemption in the record owner in whom the title remains vested. After the two year period of absolute right of redemption, and for a further two year period, the certificate holder has an equitable title in the

property with the right to call in the legal title by producing the certificate of purchase, paying certain taxes and fees, and demanding a deed. *Bullock v. Peoples Bank of Holcomb*, 351 Mo. 587, 173 S.W. 2d 753; *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W. 2d 1020; *State ex rel. City of St. Louis v. Baumann*, 348 Mo. 164, 153 S.W. 2d 31. The record owner continues the owner of the legal title and has the right of redemption which he, or any other persons having an interest in the land, may exercise by application therefor and by making certain required payments at a time within four years immediately succeeding the tax sale and prior to the exercise, after the lapse of the two years immediately succeeding the sale, of the right of the certificate holder to have the legal title transferred to him. Section 9956a, Laws of Missouri 1933, p. 437; *Hobson v. Elmer*, supra. The legal title does not vest in the holder of the certificate of purchase by virtue of the tax sale until the sale is consummated, that is, until (there being no redemption) the holder shall have exercised his right to have the legal title transferred to him.

Marburger, 182 S.W.2d at 165-166. Thus, under *Marburger*, the right of redemption ends when the tax sale purchaser demands his deed after complying with certain statutory requirements.

Wetmore states, in part:

[A]ny one having the right to redeem may do so at any time after the expiration of the two year period, but prior to the execution and delivery of the collector's deed. So, up to and until the collector's deed was executed and delivered on August 7, 1942, defendant had the right to redeem, ...

Wetmore, 188 S.W.2d at 953. Thus, under *Wetmore*, the right of redemption expires when the collector's deed is executed and delivered. *See also Strohm*, 222 S.W.2d at 776.

Stranger still, § 140.410, RSMo, provides, in part: "It shall be the responsibility of the collector to record the deed before delivering such deed to the purchaser of the property." Accordingly, collector's deeds are recorded prior to delivery.

Based upon the language of § 140.405, RSMo, the right of redemption has sometimes been said to expire when the tax sale purchaser is authorized to acquire the collector's deed. *Boston*, 807 S.W.2d at 217-218.

Campbell concludes the parties entitled to notice under § 140.405, RSMo, to "include anyone who has not received prior notice of the sale, but who has *an interest that could be lost when the collector's deed is issued.*" *Campbell*, 823 S.W.2d at 158 (emphasis added).

York states in part: “Until the execution of a tax deed, defendant and all other parties in interest, including plaintiffs, have the right to redeem the property by paying the delinquent taxes.” *York*, 931 S.W.2d at 888.

The foregoing shows that the duration of the right of redemption is not consistently stated in the case law. Sometimes the case law states that the right of redemption expires: (1) when the tax sale purchaser has met all of the conditions precedent to issuance of the collector’s deed, *Hobson*, 165 S.W.2d at 1023 and *Powell*, 452 S.W.2d at 261, or (2) when the collector’s deed is issued, *Campbell*, 823 S.W.2d at 158 (concluding the parties entitled to notice under § 140.405, RSMo, to “include anyone ... who has an interest that could be lost when the collector’s deed is issued.”), or (3) when the collector’s deed is demanded after the tax sale purchaser has satisfied all conditions precedent to the issuance of the collector’s deed, *Marburger*, 182 S.W.2d at 165-166, or (4) when the collector’s deed is executed and delivered, *Wetmore*, 188 S.W.2d at 953, or (5) when the collector’s deed is executed, *York*, 931 S.W.2d at 888, or (6) when the tax sale purchaser is authorized to acquire the collector’s deed, § 140.405, RSMo, and *Boston*, 807 S.W.2d at 217-218.

Further, the normal presumption of delivery that arises upon recordation of a deed, *Chambers v. Chambers*, 227 Mo. 262, 127 S.W. 86, 92 (1910), is not applicable, because collector’s deeds are recorded prior to delivery under § 140.410, RSMo. The variation in the formulation of the right of redemption stated in the case law yields variation in the duration of the right of redemption when that case law is applied. For example, in this case, the trial

court found that on December 6, 2007, Appellant was issued a Collector's Deed, which was recorded on December 18, 2007 in Book 17747 Page 397 of the St. Louis County Records. LF at 630. There is no direct evidence in this case of the date when Appellant performed all of the conditions precedent to the issuance of the Collector's Deed or when Appellant demanded such deed, although presumably these events occurred on or prior to December 6, 2007, when the Collector's Deed was issued, nor is there direct evidence of when the Collector's Deed was actually delivered to Appellant, although under § 140.410, RSMo, that date would presumably be after the December 18, 2007 recording date.

Appellant should not be faulted for failing to state in the Notice Letters the exact date when the right of redemption of Respondents expired or any time period for redemption rights for the reasons stated above and for all of the other reasons stated in Appellant's Substitute Brief, which are incorporated herein by reference.

At pages 6 to 9 of the TYBE Brief, Respondent TYBE Learning Center, Inc. argues that § 140.405, RSMo, mandates that Appellant notify Respondents of the time component of the "right to redeem" the property, citing *Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court) and *Ndegwa v. KSSO, LLC*, Appeal No. ED96315 (Mo. App., E.D. October 11, 2011) (now pending in this Court). Both of those cases are now pending in this Court under Mo. Const. art. V, § 10, "the same as on original appeal." The prior opinions of the Missouri Court of Appeals in *Bosch* and *Ndegwa* no longer have any precedential value. The arguments of Respondent TYBE

Learning Center, Inc. based upon the opinions of the Missouri Court of Appeals in *Bosch* and *Ndegwa* are without merit.

III.

THE TRIAL COURT ERRED IN DENYING APPELLANT RELIEF UNDER COUNT I OF APPELLANT’S PETITION WITHOUT MAKING MATERIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUESTED BY APPELLANT, BECAUSE SUCH FINDINGS AND CONCLUSIONS ARE REQUIRED BY RULE 73.01 AND SUCH LACK OF FINDINGS OF FACT AND CONCLUSIONS OF LAW MATERIALLY AFFECTS THE MERITS OF THE ACTION AND/OR INTERFERES WITH APPELLATE REVIEW.

At pages 25 and 26 of the Regions Brief and at pages 9 to 11 of the TYBE Brief, Respondents argue that Appellant has waived any right to appellate review of the failure of the trial court to issue requested findings of fact and conclusions of law under Rule 73.01, because Rule 78.07(c) states: “In all cases, allegations of error **relating to the form or 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.)

Appellant’s allegations of error do not relate to the form or language of the judgment. Appellant takes issue with the legal justification of the trial court’s judgment, including whether the trial court was bound by binding precedent of this Court³ or by inconsistent

³ *Hobson*, 163 S.W.2d at 1023, *Bullock*, 173 S.W.2d at 758, *Marburger*, 182 S. W.2d at 165-166, *Wetmore*, 188 S.W.2d at 953, and *Strohm*, 222 S.W.2d at 776.

opinions of the Missouri Court of Appeals, Eastern District.⁴ This is not the type of error contemplated by Rule 78.07(c)'s requirement that allegations of error must be raised in a motion to amend the judgment in order to be preserved for appellate review. Rule 73.01(d) states that “[e]xcept 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” (Emphasis added.) The exception in Rule 73.01(d) swallows the general rule stated in subsection (d) of Rule 73.01 if a request for findings of fact and conclusions of law filed under Rule 73.01 always relates to the form or language of the judgment. Because Appellant’s allegations of error are not the type of error contemplated by Rule 78.07(c) that relate to the form or language of the judgment, Appellant should not be required to file a post-judgment motion to preserve appellate review of this point.

Further, the failure to make required findings of fact has materially interfered with this Court’s ability to review, among other things, Appellant’s claims that the purported defects in noticing claimed by Respondents were mere irregularities, or technical objections, of the type that are not a basis for invalidating a collector’s deed under § 140.520, RSMo. By way of illustration and not of limitation, Appellant asked for a finding of fact as to whether Carmen Austell requested redemption figures from the St. Louis County Collector. See Request 43 of

⁴ *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), and *Hames v. Bellistri*, 300 S.W.3d 235 (Mo. App., E.D. 2009).

the Second Request, LF at 438. Substantial evidence that this occurred was presented to the trial court. Page 26 of the St. Louis County Collector's File (Plaintiff's Parcel I Trial Exhibit No. 3, Tr. at 38); Testimony of Rich Robison, Tr. at 49-51, 81-82, 84-86. The trial court failed to make any findings of fact as to whether Carmen Austell requested redemption figures from the St. Louis County Collector. If Appellant has stated any claims under § 140.520, RSMo, then this Court's review of Appellant's claims is materially interfered with by the failure of the trial court to enter the requested findings of fact concerning such claims.

The trial court did not comply with Rule 73.01(c).

CONCLUSION

For the foregoing reasons, Appellant concludes that the trial court erred in denying Appellant relief under Count I of Appellant's Petition. This Court should reverse the trial court's Judgment, and this Court should remand this matter for entry of a judgment consistent with such instructions as this Court may deem appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that electronic mail, together with an attachment containing an electronic version of the Corrected Appellant's Substitute Consolidated Reply Brief in pdf form was sent to the following persons on the 3rd day of May, 2012: to Rufus J. Tate, Jr. at tatelawfirm@gmail.com, to Deborah Jean Volmert at debbievolmert@sbcglobal.net, and to Stanley J. Schnaare at schnaarelaw@sbcglobal.net.



COMPLIANCE CERTIFICATION

In compliance with Rule 84.06(c), the undersigned does hereby certify that:

1. To the best of the undersigned’s knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that the claims, defenses, requests, demands, objections, contentions, or arguments stated herein are not presented or maintained for any improper purpose; that said claims, defenses, requests, demands, objections, contentions, or arguments stated herein are warranted by existing law or a non-frivolous argument for the extension, modification or reversal of existing law or the establishment of new law; that the allegations and other factual contentions stated 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 that the denials of factual contentions made herein are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

2. To the best of the undersigned’s knowledge, information and belief, this brief complies with the limitations contained in Rule 84.06(b).

3. To the best of the undersigned’s knowledge, information and belief, this Brief contains 7,734 words, more or less, according to the Word word-processing program used to draft this Brief.

4. The number of lines in this brief is provided, as this Brief was not prepared with mono-spaced type, but was prepared using the Word word-processing program with full justification of line spacing.

