OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

MISSOURI BOND COMPANY, LLC,	)	No. ED109475
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	17SL-CC02576
	)	
MARK R. DEVORE, et al.,	)	Honorable John F. Newsham
	)	
Respondents.	)	Filed: February 15, 2022

Missouri Bond Company, LLC ("Missouri Bond" or "the Tax Sale Purchaser") appeals the trial court's December 31, 2020 judgment granting motions to dismiss filed by St. Louis County (individually "the County") and its Collector of Revenue Mark R. Devore (individually "the Collector") (collectively "the County Defendants"), Western Surety Company ("Western Surety"), and Old Republic Title Company of St. Louis, Inc., Equity Trust Company Custodian FBO Richard Foronjy-IRA, and Juaneka Gore (collectively "the 1861 Atmore Property Owners") on Count VI of Missouri Bond's second amended petition. The trial court's judgment granted the County Defendants' motion to dismiss, in part, with prejudice and, in part, without prejudice; granted Western Surety's motion to dismiss with prejudice; and granted the 1861 Atmore Property Owners' motion to dismiss without prejudice.

Missouri Bond raises five points of error on appeal. In Missouri Bond's first, second, and third points on appeal, it alleges the trial court erred in granting the County Defendants' motion to dismiss because, *inter alia*, the County Defendants failed to collect and reimburse Missouri Bond for the cost of postage, the title search, and attorney's fees as reasonable and customary costs of the tax sale of the 1861 Atmore Property ("the 1861 Atmore Property" or "the Property") in violation of section 140.340 RSMo 2016 (effective from August 28, 2015 to the present)[1] and section 140.405 RSMo 2016 (effective from August 28, 2015 to the present).[2] In point four, Missouri Bond alleges Western Surety is liable as the Collector's surety because the County Defendants failed to collect and reimburse Missouri Bond's reasonable and customary costs of sale. In point five, Missouri Bond argues the 1861 Atmore Property Owners are similarly liable as the redeeming property owner because the County Defendants failed to collect and reimburse Missouri Bond's reasonable and customary costs of sale.

REVERSED AND REMANDED IN PART WITH INSTRUCTIONS, AFFIRMED AS MODIFIED IN PART, AND AFFIRMED IN PART.

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[1] All further references to section 140.340 are to the version of the statute that has been effective from August 28, 2015 to the present.

[2] All further references to section 140.405 are to the version of the statute that has been effective from August 28, 2015 to the present.

Division Two holds:

(1) We hold the trial court erred in granting the County Defendants' motion to dismiss Count VI because costs for postage, a title search, and attorney's fees are potentially reimbursable as reasonable and customary costs of a tax sale under sections 140.340 and 140.405. Accordingly, this portion of the trial court's judgment is reversed, and the case is remanded for further proceedings consistent with this opinion and the following specific instructions on remand. First, the Tax Sale Purchaser is required to submit invoices clearly identifying each category of cost associated with the tax sale at issue in this case and is required to establish each cost as reasonable and customary. Second, the Collector is required to assess the reasonableness and customary nature of each category of cost under the circumstances, including attorney's fees. Third and finally, the trial court shall consider both parties' actions; determine the reasonable and customary costs of postage, the title search, and any other potentially reimbursable services associated with the tax sale, including attorney's fees; and order the Collector to pay Tax Sale Purchaser the appropriate amount of reimbursement.

(2) We hold the Tax Sale Purchaser's claims against Western Surety and the 1861 Atmore Property Owners are premature until such time the trial court orders the appropriate amount of reimbursement and the Collector fails to pay it. Therefore, (a) the portion of the trial court's judgment granting Western Surety's motion to dismiss Count VI is erroneous to the extent it reflects a dismissal *with* prejudice and is affirmed as modified to reflect a dismissal *without* prejudice; and (b) the portion of the trial court's judgment granting the 1861 Atmore Property Owners' motion to dismiss Count VI without prejudice is not erroneous and is affirmed.

Opinion by: Robert M. Clayton III, P.J.
Gary M. Gaertner, Jr., J., and Thomas C. Clark II, J., concur.

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THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.