

Circuit Court for Baltimore City
Case No. 24-C-17-005180

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 179

September Term, 2019

WILLIAM HAYNES

v.

ARX-I, LLC, ET AL.

Berger,
Reed,
Friedman,

JJ.

Opinion by Reed, J.

Filed: April 8, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Lamar Enterprise Solutions, LLC, by and through its owner, William L. Haynes, Jr. (hereafter “Appellant”), brings this case appealing a tax-sale foreclosure proceeding in which Appellant’s fee simple property interest in 1719 Druid Hill Avenue, Baltimore, Maryland 21217 (hereafter “the Property”) was terminated. The property was auctioned off by the City of Baltimore and purchased by ARX-I, LLC (hereafter “ARX-I”).¹

In bringing this appeal, Appellant presents one question for our review, which we have rephrased:²

- I. Did the circuit court err by foreclosing Appellant’s rights to redeem the Property despite his contention that ARX-I did not comply with the notice requirement under Maryland Tax Property Article § 14-839 (“Section 14-839”)?

For the following reasons, we answer in the affirmative and vacate the circuit court’s judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The Property at issue was Appellant’s childhood home, which he received from his parents after their passing. Appellant alleges he was under the mistaken belief that the real

¹ The records obtained from the Circuit Court for Baltimore City refer to plaintiff-appellee as ARX 1. However, according to the Maryland State Department of Assessments and Taxation search, plaintiff-appellee is identified as ARX-I. The minor discrepancy in plaintiff-appellee’s name has no effect on this appeal.

² Appellant presented the following question *verbatim*:

1. Appellee did not comply with the Notice requirements of Section 14-839 of the Tax Property Article of the Annotate [sic] Code of Maryland in obtaining the Decree Foreclosing Rights of Redemption with regard to the Property, which in turn violated Appellant’s substantive and procedural due process rights.

property taxes for the Property were being paid for from a SECU Credit Union Account. In actuality, the real property tax payments were not being paid, which resulted in a delinquent real property tax bill. On May 15, 2017, the Director of Finance for the City of Baltimore sold the Property at a public action to ARX-I for the sum of \$1,240.00. According to the Certificate of Tax Sale, \$1,161.68 was “the total amount of taxes and other municipal liens due on the property at the time of the sale, together with interest and penalties thereon and expenses incurred in making the sale.” Nonetheless, the Property remained subject to Appellant’s rights of redemption. The Certificate of Tax Sale provided that:

On redemption, the holder of this Certificate will be refunded the sums paid on the amount of the purchase price, together with interest at the rate of up to 18% per year from the date of payment to the date of redemption (except as stated in subsection (b) of §14-820 of the Tax-Property Article of the Annotated Code of Maryland) together with all other amounts specified by Chapter 761 of the Acts of 1943 and acts that amend that chapter. The balance due on account of the purchase price and all taxes and other municipal liens, together with interest and penalties on them accruing subsequent to the date of sale, must be paid to the Collector before a deed can be delivered to the purchaser. After November 15, 2017 (or earlier if permitted by Chapter 254 of the Acts of 1963 and acts that amend that chapter) a proceeding can be brought to foreclose all rights of redemption in the property.

On October 24, 2017, ARX-I filed a Complaint to Foreclose the Equity of Redemption for Non-Payment of Taxes in which it submitted that:

The amount necessary to redeem the property is \$1161.68, plus interest at the rate set by the Tax Property Article from the date of the sale to the date of redemption, plus all court cost and expenses of this proceeding, including all cost, expenses and fees allowed by Maryland Code § 14-828 and § 14-843.

ARX-I made several attempts to notify Appellant of the pending suit to no avail. On November 2, 2017, the Circuit Court for Baltimore City issued an Order of Publication providing, “that notice be given by the insertion of a copy of this Order in some newspaper having general circulation in Baltimore City once a week for three consecutive weeks.” Notice was subsequently published in The Daily Record on November 7th, 14th, and 21st of 2017.

Using the business name “Lamar Enterprise Solutions, LLC,” ARX-I searched the Maryland Business Express website and discovered William L. Haynes, Jr. to be the registered agent at an address of 221 South Mount Street, Baltimore, Maryland 21223 (“Mount Street”). ARX-I also conducted a real property search, which revealed two addresses for Lamar Enterprise Solutions LLC: (1) the address of the Property and (2) Appellant’s mailing address, 1451 Park Road, Northwest #509, Washington, D.C. 20010-0000 (“Park Road”).

Several summons were reissued between January 5, 2018 and September 12, 2018 to Appellant at Mount Street, as well as, the City of Baltimore and the Mayor and City Counsel of Baltimore City (hereafter the “other Defendants”) at 100 North Holiday Street, Baltimore, Maryland 21202 (“Holiday Street”). ARX-I attempted to serve Appellant five separate times at the Mount Street and the Property address. Each service attempt was returned with the inscription “Return to Sender.” After several failed attempts to serve Appellant, at the Mount Street address, the City of Baltimore and City Council and, ARX-I sought and received approval to substitute service on the Director of Finance of Baltimore City. ARX-I successfully served the other Defendants between February 18, 2018 and

August 8, 2019. Unbeknownst to ARX-I at the time, Appellant was residing in San Francisco, California. ARX-I submitted an Affidavit of Compliance detailing his attempts to serve Appellant and the other Defendants. Based on ARX-I's submissions, the court found:

that all Defendants were personally served or were notified in accordance with Rule 12-503 and §14-839(a) of the Tax-Property Article of the Maryland Code Annotated and also were notified by an Order of Publication issued out of this Honorable [c]ourt, that the time limit set in the summons has expired, and that no redemption has been made by the party in interest.

On March 14, 2019, the circuit court entered its judgment foreclosing the rights of redemption related to the Property, ordering, in part, that “[ARX-I] is vested with an absolute and indefeasible fee simple title.” Appellant became aware of the foreclosure via Maryland Judiciary Case Search on March 29, 2019 and timely appealed.

STANDARD OF REVIEW

Under Maryland Rule 2-535, trial courts “may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.” Similarly, Maryland Tax-Property Article §14-845(a) (“Section 14-845”) enables the court to reopen judgments “on the grounds of lack of jurisdiction or fraud in the conduct of the proceedings to foreclose.” However, an application to reopen on the latter ground must be “filed within 1 year of from the date of the judgment.” In exercising our scope of appellate review, we ask only “whether the trial court erred as a matter of law or abused its discretion in denying the motion.” *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374 (2006) (internal citation and marks omitted).

PARTIES' CONTENTIONS

Appellant contends that the circuit court erred as a matter of law when it determined that ARX-I complied with the notice requirements of Section 14-839. He contends that “[ARX-I] failed to conduct a proper title examination to determine Appellant’s last known address” and “did not take reasonable steps necessary to ascertain Appellant[’]s last known address.” Appellant asserts that ARX-I was put on notice that it was serving summons on a “bad address,” and ask that this Court vacate the Judgment Foreclosing Right of Redemption and remand the case back to the circuit court pursuant to our holding in *Nichol v. Howard*, 112 Md. App. 163 (1996) (“If the tax sale purchaser or his attorney is aware that the address to which notice was sent was, or might be, “bad” and if the purchaser’s search, i.e., title examination of the records expressly required to be examined by statute, discloses an entity that might reasonably know the owner’s correct address, the purchaser is deemed to know also of that address, and failure to send notice to that address will constitute grounds for setting the tax sale aside.”).

ARX-I contends that “Appellant [] failed to satisfy the condition precedent required to challenge a tax judgment or foreclosure and should not be allowed to contest the lower court[’s] holding.” ARX-I cites *Stewart v. Meyers*, 54 Md. 454, 468 (1880) to support its contention that, “individuals are not allowed to challenge tax sales or judgements of foreclosure unless they pay the Tax Collector or tax certificate holder the past-due taxes, interest, penalties and other expenses related to the tax sale.” ARX-I argues that it followed the proper procedure for serving a limited liability company in Maryland, thus, Appellant

was sufficiently notified of the foreclosure proceeding. *See* Md. Rule 2-124(h) (“service is made upon a limited liability company by serving its resident agent.”).

DISCUSSION

A judgment foreclosing the right to redemption can be reopened if: (1) the issuing court lacked personal jurisdiction over the parties or (2) the proceedings to foreclosure were fraudulent. *See* Md. Code Ann., § 14-845(a); *see also* *Slattery v. Friedman*, 99 Md. App. 106, 118, (1994). An application to reopen “any judgment on the ground of constructive fraud in the conduct of the proceedings to foreclose” must be “filed within 1 year from the date of the judgment.” Md. Code Ann., § 14-845(a).

An application to reopen for lack of jurisdiction can be based on a party’s failure to provide adequate notice of the foreclosure proceeding. *See Slattery*, 99 Md. App. at 118. With regard to notice, Section 14-839 (a)(1) provides that:

The plaintiff shall show in the title of the complaint the last address known to the plaintiff or to the attorney filing the complaint of each defendant, as obtained from:

- (i) any records examined as part of the title examination;
- (ii) the tax rolls of the collector who made the sale, as to the property described in the complaint; and
- (iii) any other address that is known to the plaintiff or the attorney filing the complaint.

Md. Code Ann., § 14-839(a)(1). If a purchaser of property at tax sale fails to find the delinquent taxpayer’s current address for purposes of providing notice of right to redemption and his/her failure was the result of manifest indifference, the delinquent tax

payer is entitled to have the judgment of foreclosure reopened on grounds that the circuit court lacked jurisdiction over the parties when the judgment was entered. *See Slattery*, 99 Md. App. at 118. Moreover, we have recognized in *Nichol v. Howard*, 112 Md. App. 163 (1996):

If the tax sale purchaser or his attorney is aware that the address to which notice was sent was, or might be, “bad” and if the purchaser’s search, i.e., title examination of the records expressly required to be examined by statute, discloses an entity that might reasonably know the owner’s correct address, the purchaser is deemed to know also of that address, and failure to send notice to that address will constitute grounds for setting the tax sale aside.

Id. at 169–70.

In the present case, ARX-I knew that the Mount Street and Property address was, or might be, a bad address for purposes of providing Appellant with notice. ARX-I searched the Maryland Business Express website, which listed William L. Haynes, Jr. as Lamar Enterprise Solutions, LLC’s registered agent at the Mount Street address. ARX-I attempted to serve Appellant five separate times at the Mount Street and Property address, however, each service attempt was returned with the inscription “Return to Sender.” *See Nichol*, 112 Md. App. at 173 (“a mailed notice returned undelivered with a notation ‘Return to Sender’ is, although not conclusive, indicative of a potential problem with the address contained thereon.”). Although ARX-I complied with the notice requirement for serving a limited liability company, it did not sufficiently adhere to the notice requirement for tax property sales under Section 14-839.

ARX-I was required to serve Appellant’s “last known address” or “any other address that [was] known to [ARX-I] or [its] attorney,” as set forth in Section 14-839

(a)(1)(iii). Having conducted a real property search, ARX-I knew the Park Road address to be the Property owner's mailing address. Despite having actual knowledge of the Park Road address, ARX-I did not issue any summons to that address. Moreover, ARX-I had reason to know that the Park Road address was the correct address because it included the real property search document in the record with the address circled, suggesting importance.

Applying the rationale in *Slattery*, since ARX-I failed to find and serve Appellant's correct address and because its failure was a result of manifest indifference, Appellant is entitled to have the judgment of foreclosure reopened on grounds that the circuit court lacked jurisdiction over the parties when the judgment was entered. *See Slattery*, 99 Md. App. at 118. Moreover, given the fact that ARX-I knew it served a bad address and the fact that its real property search disclosed the Park Road address, ARX-I is deemed to have had knowledge of the Park Road address, thus, its failure to send notice to that address will constitute grounds for setting aside the judgment foreclosing Appellant's right of redemption. *See Nichol*, 112 Md. App. at 169–70. For this reason, the judgment foreclosing Appellant's right to redemption is reopened.

CONCLUSION

Accordingly, the Circuit Court for Baltimore City erred as a matter of law when it granted ARX-I's Judgment to Foreclose Right of Redemption against Appellant. Thus, we vacate the circuit court's judgment, and the case is remanded for further proceedings consistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY VACATED, AND
THE CASE IS REMANDED FOR
FURTHER PROCEEDINGS. COSTS TO BE
PAID BY APPELLEE.**