

Circuit Court for Baltimore City
Case No. 24-C-21-004596

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0179

September Term, 2024

CICADA INVESTMENTS, LLC

v.

EWINCORP ONE, LLC

Berger,
Leahy,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: May 5, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms with Rule 1-104(a)(2)(B). Md. Rule 1-104.

This appeal arises out of the 2021 tax sale of 1614 Edmondson Avenue in Baltimore City. The property, which had been owned by EwinCorp One, LLC (“EwinCorp”), was acquired by Cicada Investments, LLC (“Cicada”) following the sale. In January 2023, the Circuit Court for Baltimore City entered a judgment foreclosing EwinCorp’s right of redemption. EwinCorp filed a timely challenge to the judgment but failed to pay the full amount due on the property until after a hearing was held before a magistrate judge in the Circuit Court for Baltimore City. Cicada argued that such payment was required before or at the time EwinCorp filed its challenge. In issuing her report and recommendations, the magistrate judge found that EwinCorp had paid its outstanding balance in sufficient time to permit the case to be reopened and recommended vacating the judgment. In reviewing Cicada’s exceptions to the magistrate’s report, the Circuit Court for Baltimore City also determined that EwinCorp’s payment had been timely and vacated the judgment foreclosing the right of redemption on equitable grounds.

On appeal, Cicada presents two questions for our review, which we rephrase slightly as follows:¹

- I. Whether the Circuit Court erred in reopening the case and vacating the judgment foreclosing EwinCorp’s right of redemption.

¹ Cicada phrased its original questions presented as follows:

- I. Did the Circuit Court err in reopening the case and vacating the judgment foreclosing rights of redemption?
- II. Did the Circuit Court err in admitting subsequent funds into the Court Registry upon motion without ruling on the motion, or the response to same?

- II. Whether the Circuit Court erred in admitting subsequent funds into the Court Registry upon EwinCorp's motion without ruling on the motion or Cicada's response to the motion.

For the reasons explained herein, we shall reverse.

FACTS AND PROCEDURAL HISTORY

In August 2017, EwinCorp entered a Land Disposition Agreement with the Mayor and City Council of Baltimore for the purchase of the subject property, 1614 Edmondson Avenue. In this agreement, EwinCorp agreed to renovate the property. In February 2018, the deed was executed and later recorded in the Baltimore City land records. The property was taken subject to an existing Vacant Building Notice, which was reissued in EwinCorp's name in September 2018. In early 2019, a fire occurred in one of the neighboring properties. As a result of the trash and debris created by the fire, Baltimore City performed cleaning and boarding services, including for the subject property, and issued bills for these services. EwinCorp failed to pay these bills, resulting in a tax lien.

In May 2021, the property was sold at a tax sale to Caret Bay, LLC for \$2,300. Thereafter, it was assigned to Cicada. In October 2021, Cicada filed a complaint to foreclose the equity of redemption for non-payment of taxes, and the property was posted on December 16, 2021. EwinCorp alleged that because of complications with service of process due to an address change, it did not become aware of the tax sale until December 2022. Cicada contested this chronology, alleging that EwinCorp first requested a payoff for the property on December 20, 2021, just four days after the property was posted. The following day, Cicada emailed the payoff, valid through January 4, 2022, but it remained

unanswered. Cicada provided a second payoff statement to EwinCorp in October 2022, which also went unanswered. Finally, in December 2022, EwinCorp’s agent requested a payoff from Cicada which was sent the following day. Again, EwinCorp did not respond with payment.

On January 26, 2023, the circuit court entered judgment foreclosing EwinCorp’s right of redemption. On February 3, 2023, EwinCorp filed a Petition to Strike Complaint or in the Alternative Strike Judgment and Redeem Property (“motion to strike”) pursuant to Maryland Rule 2-534. In its petition, EwinCorp made several allegations related to service of process, fraud, and the legitimacy of the underlying tax lien, none of which are relevant to this appeal. EwinCorp also filed an affidavit in support of its motion to strike estimating that “since the purchase of 1614 Edmondson Avenue from the Mayor and City Council of Baltimore,” the company had “invested approximately \$240,000” into the property. Cicada contested this amount. Fourteen days later, on February 17, 2023, EwinCorp deposited \$632.92, the amount acknowledged to be due for taxes and interest, into the Court Registry.

On June 16, 2023, a hearing was held before a magistrate judge in the Circuit Court for Baltimore City. During the hearing, Cicada argued that the court could not entertain EwinCorp’s challenge because it had not made the requisite payments to settle its outstanding tax bill -- including interest and legal fees -- a condition precedent for making such a challenge. EwinCorp countered that it had paid taxes and interest on February 16

and that it would “happily pay another \$3,000” to cover the outstanding legal fees. The following exchange took place before the magistrate judge:

[EWINCORP]: So we will get that in. If [Cicada] can give me a number, I will make certain that’s paid in.

[CICADA]: I would just object to it being paid in just because it’s impossible to comply with *Canaj* subsequent to all the motions being filed. So it’s just an impossibility. So we would object to any additional monies being paid in.

[COURT]: The legal fees should have been paid into the registry either prior to or simultaneously with the challenge that was filed . . . on February 3.

[EWINCORP]: And we paid into the registry on February 16.

[COURT]: Yes. And so this court has in the past expanded that the definition of prior to or simultaneous with to include up until the time that the court either rules on or hears the motion or the request but –

[EWINCORP]: We could pay in today, your honor.

[COURT]: Well, the court has already or is –

[EWINCORP]: Well, it’s hearing. You’re hearing right now.

[COURT]: -- currently hearing it right now and –

[EWINCORP]: It’s not over for another 13 hours.

[COURT]: -- the funds are not tendered -- well the hearing is going to conclude here soon. But the funds have not been rendered into the registry at this time, at the time of the hearing.

On June 20, 2023, EwinCorp filed a “Motion for Order Setting Amount Necessary to Pay into Court Registry” and proffered that it owed Cicada an estimated \$3,000 in legal fees and expenses. On June 21, 2023, five days following the conclusion of the hearing,

EwinCorp deposited \$3,000 into the Court Registry. On June 22, 2023, Cicada filed a response to EwinCorp’s motion arguing that the case should not have been reopened because the condition precedent was never met and neither the prior funds nor any subsequent funds should have been admitted into the Court Registry. The magistrate judge did not respond to either motion.

On July 20, 2023, the magistrate judge filed her report and recommendations. The magistrate judge found that all EwinCorp’s substantive claims against Cicada and the Mayor and City of Baltimore were without merit. Nevertheless, pursuant to the court’s broad discretion under Maryland Rule 2-534 to revise an unenrolled judgment foreclosing a defendant’s right to redeem property sold at a tax sale for nonpayment of taxes, the court found that “the timing of the deposit of the taxes and charges is within the discretion of the [c]ourt.” Therefore, the magistrate judge found that EwinCorp “satisfied the condition precedent by depositing the total sum of taxes, interest, and legal fees acknowledged to be due prior to the issuance of an order ruling on EwinCorp’s petition,” and it was “appropriate to consider the revision of judgment entered herein.” The magistrate considered “both the substantial efforts and financial investment EwinCorp [had] devoted to the property,” and concluded that “[a]llowing the judgment to stand would result in a windfall to Cicada.” Therefore, the magistrate judge concluded that “the judgment should be vacated to allow [EwinCorp] to redeem the property.” The final report was filed on August 29, 2023.

On September 7, 2023, Cicada filed its Exceptions to Magistrate’s Report and Recommendations. On March 11, 2024, a hearing was held before the Circuit Court for

Baltimore City. The circuit court entertained argument from both parties regarding the condition precedent. As to the requirement that outstanding taxes and fees must be paid prior to or simultaneously with a motion challenging foreclosure of a right of redemption, the circuit court found that the “timing is not critical” to the court’s objective of obtaining payment before relief from the tax sale. The court continued, stating that,

although I cannot find good cause here for why [EwinCorp] took so long to post a relatively small amount, I think there is an equitable aspect to this in the relatively small amount that was the trigger for the tax sale. It wasn’t actually taxes due, but it was fees due, costs rather for the fire response. A relatively small amount with a relatively valuable property is a disparity that can be considered in equity here.

The court considered EwinCorp’s assertions, made via affidavit and unsworn testimony, that it had “bought the property for \$3,000, invested \$250,000 and had a contract for \$340,000 that it lost.” Because “Ewin created the market that created this value . . . it would be highly inequitable for Cicada to receive all the value of Ewin’s hard work and investments.” Accordingly, the circuit court found “that the magistrate’s decision that the condition was satisfied within a permissible time is supportable, and I will deny the exception[s], and affirm the magistrate’s report and recommendation, and enter that as the order in the case.”

DISCUSSION

Standard of Review

Maryland Rule 2-534 provides that,

[i]n an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the

judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

“Pursuant to this Rule, the circuit court has broad discretion whether to grant motions to alter or amend filed within ten days of the entry of judgment, and its discretion is to be applied liberally so that a technicality does not triumph over justice.” *Schlotzhauer v. Morton*, 224 Md. App. 72, 84 (2015) (cleaned up). We, therefore, review a court’s decision to grant a motion to alter or amend judgment pursuant to Maryland Rule 2-534 for an abuse of discretion. *See In re Adoption/Guardianship of Joshua M.*, 166 Md. App. 341, 351 (2005).

“An abuse of discretion occurs when ‘the discretion was manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons, or when no reasonable person would take the view adopted by the [trial] court.’” *Comptroller of Maryland v. Myers*, 251 Md. App. 213, 242 (2021) (citations omitted). Nonetheless, “a court’s discretion is always tempered by the requirement that the court correctly apply the law applicable to the case.” *Arrington v. State*, 411 Md. 524, 552 (2009). When evaluating whether a circuit court’s decision was legally correct, “we give no deference to the trial court findings and review the decision under a de novo standard of review.” *Lamson v. Montgomery Cnty.*, 460 Md. 349, 360 (2018).

I. The circuit court erred in reopening the case and vacating the judgment foreclosing the right of redemption because the condition precedent was not satisfied.

On appeal, Cicada argues that the circuit court erred in reopening the case and vacating the judgment because the condition precedent -- payment of all outstanding taxes, interest, and fees prior to or simultaneously with EwinCorp filing its challenge -- was not met. EwinCorp counters that because it rendered payment of this sum before the circuit court issued its final order, the circuit court did not abuse its discretion by finding that EwinCorp had complied with the condition precedent. We disagree and hold that this finding constitutes an abuse of discretion.

Maryland Tax-Property Article § 14-828 provides in relevant part:

(a)(1) If the property is redeemed, the person redeeming shall pay the collector:

(i) the total lien amount paid at the tax sale for the property together with interest;

(ii) any taxes, interest, and penalties paid by any holder of the certificate of sale; [and]

(iii) except as provided under paragraph (2) of this subsection, any delinquent taxes, interest, and penalties accruing after the date of the tax sale;

In *Canaj, Inc. v. Baker Division Phase III, LLC*, 391 Md. 374 (2006), the Supreme Court of Maryland set forth the applicable law regarding when delinquent payments of taxes and fees must be made when a movant seeks to strike a judgment foreclosing the right of redemption. That is, that “in order to challenge the foreclosure of the equity of redemption in a tax sale, the taxes and other relevant charges acknowledged to be due, *either prior to*

*the challenge or simultaneously with it, must, as a condition precedent, be paid.”*² *Canaj*, 391 Md. at 396 (emphasis added).

In *Canaj*, the plaintiff, Canaj, Inc. (“Canaj”), owned fourteen properties in Baltimore City, for which it had failed to pay property taxes for seven years, resulting in a tax sale. *Id.* at 379. Forty-one days after the last foreclosure judgment was entered, Canaj filed a motion pursuant to Maryland Rule 2-535 seeking to vacate the judgment based on allegations of fraud, mistake, or irregularity. *Id.* at 380. By the time of the hearing, Canaj had “acknowledged it was responsible for taxes owed,” but had “not paid any of the delinquent taxes and charges due.” *Id.* at 386-87. The circuit court denied the motion on the merits. *Id.*

On appeal, pursuant to Maryland Rule 8-131, the Court elected to address the “condition precedent to challenging a tax sale where it is conceded that taxes are sufficiently delinquent to authorize” the sale. Notably, the issue had been presented but not decided in the circuit court. *Id.* at 382. The Court reasoned that it was an issue that

² The circuit court reasoned and EwinCorp contends on appeal that the condition precedent established in *Canaj* is merely dicta and not binding precedent. We disagree. Black’s Law Dictionary defines “obiter dictum” (commonly shortened to dictum) as “[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive.)” Obiter dictum, Black’s Law Dictionary (12th ed. 2024). A matter is not dictum if “the question was directly involved in the issues of law . . . and the mind of the Court was directly drawn to, and distinctly expressed upon the subject.” *Plank v. Cherneski*, 469 Md. 548, 595 (2020) (citations omitted). As will become clear throughout this opinion, the condition precedent in *Canaj* was deliberately reasoned and an essential component of the Court’s holding that the appellant’s challenge to the foreclosure should have been dismissed and is, therefore, binding precedent that we apply here.

would “continue to arise in tax sale proceedings, especially in Baltimore City where tax sales are used to address the City’s very real problem with abandoned and vacant properties.” *Id.* at 382.

The Court explained at length that a condition precedent to challenging a tax sale is consistent with Maryland law dating back to *Stuart v. Meyer*, 54 Md. 454 (1880), in which the Court held that,

as a condition upon which this equitable jurisdiction should be exercised, for the relief of the plaintiffs, they should be required to pay, or bring into court to be paid, to the party entitled to receive it, the full amount of the taxes in arrear at the time of the sale by the collector together with the interest accrued thereon to the time of payment, and also all taxes that have subsequently accrued due on the property with interest.

Stuart, 54 Md. at 468 (emphasis added).

Over the next sixty years, the Supreme Court of Maryland consistently repeated the law that a court’s jurisdiction over a tax sale challenge is incumbent upon payment of all outstanding taxes and fees. *See Reth v. Levinson*, 135 Md. 395, 399 (1919) (“Payment of taxes is a proper requirement of one seeking the aid of a court of equity, who claims to be the owner of the property. He should at least be required to pay all taxes due and interest *before a court of equity should exercise its equitable jurisdiction.*”) (emphasis added); *Preske v. Carroll*, 178 Md. 543, 550-51 (1940) (“In proceedings to vacate tax sales, the complainants are generally required to pay all taxes in arrears at the time of the sale, as well as all taxes subsequently due, *as a condition precedent to the exercise of chancery jurisdiction.*”) (emphasis added); *Stewart v. Wheatley*, 182 Md. 455, 460 (1943) (“So we

can definitely state as a corollary that whenever land has been sold at a tax sale, the owner may redeem it only by tendering the full amount of the purchase money and such additional sums to cover interest, penalties, costs and reimbursement for improvements as the statute requires.”).

In reviewing this case law along with persuasive cases from out of state, the *Canaj* Court explained that if “we were to overrule our cases holding that payment is first required, the city would be left where it was before the tax sale. The public would be burdened perpetually with the problems created by the thousands of abandoned properties, which the delinquent owners would be unlikely to ever pay taxes on or ever to rehabilitate.” *Canaj*, 391 Md. at 398. The Court continued, explaining that if “a delinquent taxpayer can find a way to overturn a tax sale without paying the delinquent taxes, the delinquent taxpayer will never redeem. It is for this reason that the general rule is that in order to challenge a tax sale, the payment of taxes in arrears is a condition precedent.” *Id.* at 385 n.6. Finally, the Court noted that,

[t]he case law that seems to support the right of a taxpayer to proffer a sum (instead of paying it) only relates (if it applies at all) to claims that the purchase price at the tax sale was inadequate. It does not change the requirement that in order to challenge the holding of a tax sale, the taxes must be paid as a condition precedent.

Id. Having expressly stated this rule, the Court in *Canaj* went on to hold that “the challenges to the foreclosure should have been dismissed on the failure of appellant to satisfy a condition precedent, i.e., to pay the taxes and charges.” *Id.*

A year after *Canaj*, the Court in *Quillens v. Moore*, 399 Md. 97, 125 (2007), applied this precedent, explaining that “a property owner must tender all the deficient real property taxes before he can challenge the validity of a tax sale.” There, it was not relevant that the delinquent taxpayer was challenging the circuit court’s jurisdiction rather than the actual judgment. Any “post-foreclosure affirmative relief,” including jurisdictional challenges that may result in having an order foreclosing the right of redemption set aside, according to the Court, comes with the prerequisite that payment be made *before* a challenge is viable. *Quillens*, 399 Md. at 125.

Here, EwinCorp filed for post-foreclosure affirmative relief through its motion to strike, placing its action well within the ambit of *Canaj*. EwinCorp argues that unlike *Canaj* and *Quillens*, it rendered payment of all outstanding taxes, interest, and fees before the court’s final order. This fact, however, does not save EwinCorp’s challenge. During the hearing before the magistrate judge, the judge accepted Cicada’s contention that EwinCorp first learned of the tax sale in December 2021. Even if we were to accept EwinCorp’s contention that it only learned of the sale in December 2022, this still leaves a year and a half during which EwinCorp continually failed to pay the taxes and fees owed to redeem the property. By the time EwinCorp filed its motion to strike in February 2023, it had been provided with at least one, but potentially three, payoff statements from Cicada indicating the amount due to redeem the property. Despite having this information, EwinCorp failed to render payment prior to or simultaneously with its February 3, 2023 motion to strike.

By the time of the magistrate hearing on June 16, 2023, EwinCorp had paid only a portion of the total funds due. When presented with this fact at the hearing, EwinCorp quickly proffered that it was willing to pay an additional \$3,000 “today,” saying “well, [the court is] hearing. You’re hearing right now. It’s not over for another 13 hours.” Still, EwinCorp did not actually render the additional payment until five days after the hearing. Indeed, this is not the way this process works. The degree of leeway requested by EwinCorp -- and permitted by the circuit court -- is entirely inconsistent with the Court’s intent in *Canaj* to prevent perverse incentives for delinquent owners to never pay or rehabilitate abandoned properties. The Court in *Canaj* made it clear that the timing of payments is essential to the efficient adjudication of tax sale challenges and that proffers of payment -- such as that made by EwinCorp during the magistrate hearing -- are not sufficient. Without such a requirement, payment cannot be ensured before relief is ultimately granted. Without a guarantee of payment by way of a condition precedent, courts cannot undertake to effectively review a tax sale challenge that is incumbent upon such a payment.

The existence of this condition precedent does not preclude the courts from otherwise exercising broad discretion pursuant to Maryland Rule 2-534. Here, had EwinCorp fulfilled the condition precedent by paying its outstanding taxes, interest, and fees prior to or simultaneously with its motion, the circuit court’s decision to vacate the foreclosure solely for the equitable reasons it stated would have been entirely proper. The

condition precedent, however, required EwinCorp to render payment of outstanding taxes, interest, and fees before the court could exercise this discretion over its claim.³

CONCLUSION

For the foregoing reasons, we hold that the Circuit Court for Baltimore City abused its discretion in finding that EwinCorp fulfilled the condition precedent and erred in reopening the case and vacating the judgment foreclosing EwinCorp's right of redemption. We, therefore, vacate the order of the circuit court and remand the case with instructions to strike the order vacating the judgment foreclosing the right of redemption and reinstitute that judgment.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY IS VACATED.
CASE REMANDED TO THE CIRCUIT
COURT TO STRIKE ITS ORDER
VACATING THE JUDGMENT
FORECLOSING THE RIGHT OF
REDEMPTION. COSTS TO BE PAID BY
APPELLEE.**

³ Because we hold that the circuit court erred in reopening the case, we do not reach the issue of whether the court erred in admitting subsequent funds into the Court Registry.