Circuit Court for Montgomery County
Case No. 442550V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0666

September Term, 2018

THORNTON MELLON, LLC

v.

MONTGOMERY COUNTY, MARYLAND

Leahy,
Gould,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: February 19, 2020

At issue in this appeal is the applicability of Md. Code (1986, 2012 Repl. Vol., 2019 Supp.), § 14-848 of the Tax Property Article ("TP") to a tax sale that has been declared void by the collector of the tax. More particularly, the issue is whether the tax sale was void at its inception.

Appellant Thornton Mellon LLC ("Thornton Mellon") purchased a tax lien on real property from Montgomery County in June of 2017, and filed a complaint in the Circuit Court for Montgomery County to foreclose the title holder's right of redemption in January of 2018.[1] In March of 2018, the County notified Thornton Mellon that it had "voided" the tax sale, and rejected Thornton Mellon's request that it file "a formal motion to void in court." Thornton Mellon then filed its own motion to have the court declare the tax sale void. The County, arguing that the tax sale was "void from its inception," moved to dismiss Thornton Mellon's complaint to foreclose with prejudice. The circuit court entered judgment in favor of the County, and Thornton Mellon filed this timely appeal.

On appeal, Thornton Mellon raises two questions,[2] which we have consolidated into one and slightly rephrased:

[1] After six months from the date of sale, the holder of the certificate may file "to foreclose all rights of redemption of the property," and upon payment of certain costs acquire a deed to the property. TP § 14-833.

[2] Appellant asked:

1. Whether the trial court erred in denying Appellant's Motion and refusing to grant Appellant interest and expenses as provided by TP § 14-848?
2. Whether a property sold at tax sale is "void from its inception" when the State Department of Taxation and Assessments simply fails to properly send notice to the current record holder?

> Did the trial court err in denying Thornton Mellon's Motion to Declare the Tax Lien Void and dismissing its complaint to foreclose the title holder's right of redemption?

Answering that question in the affirmative, we reverse the judgment of the circuit court and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

On June 12, 2017, Thornton Mellon, responding to the 2017 Notice,[3] purchased the tax lien subject to redemption on real property known as 5101 River Road, Bethesda MD 20816 ("the Property") and was issued a Certificate of Tax Sale. When MAA & E Realty, LLC ("MAA & E"), the record title owner, did not exercise its right to redeem the Property within six months of the sale, Thornton Mellon filed a complaint on January 22, 2018 to

[3] The 2017 "Notice of Tax Sale of Real Estate in Montgomery County, Maryland" ("2017 Notice"), for the tax sale at issue in this case, stated, in pertinent part:

> There may be properties sold for which taxes were paid prior to the sale date or other circumstances which render the sale invalid or void. The County reserves the right to invalidate or void a sale at any time. In the event the County determines that a tax sale is invalid or void the County will, as the exclusive remedy available to the purchaser, reimburse the purchaser the tax sale purchase price paid, without interest, and any applicable high bid premium paid, without interest. Events that may invalidate a tax sale include, but are not limited to, bankruptcy filings, transfer errors on the assessor's records that cause the failure of notice to the proper property owner or sale of incorrect property, payment of taxes prior to the tax sale, issuance of a revised tax bill by the County, value changes by the assessor, erroneous service charges, service fees, special improvement levies, WSSC charges, or refuse charges. The tax sale bidder/purchaser assumes all risks of any irregularity of the sale and has no other remedy against the County. The County is not liable for and will not pay the bidder/purchaser any interest, costs, expenses or attorney fees associated with the invalid or void sale.

foreclose MAA & E's right of redemption. On March 1, 2018, the County's Tax Collection Manager informed Thornton Mellon's counsel that the tax sale on the Property had been "voided." An email exchange between counsel and the Collection Manager followed:

> [THORNTON MELLON'S COUNSEL]: On what grounds? I've already filed a motion to foreclose and incurred costs.
>
> [COLLECTION MANAGER]: It was a missed deed.
>
> [THORNTON MELLON'S COUNSEL]: Sorry, I will need more than that. Can you please email me a copy? Also, since it is in foreclosure I'd kindly ask that your counsel make a formal motion to void in court so that I can respond.
>
> [COLLECTION MANAGER]: The deed reference numbers are liber 31921 folio 672. Unfortunately our Counsel will not be making a formal motion.
>
> [THORNTON MELLON'S COUNSEL]: Ok, I will make a motion to have the court overrule the void then. Sorry, but given the case is filed other counties ordinarily ask the judge to sign off on it. Or, they pay the fees given they took so long to void it. If you won't be paying fees here, I will ask the judge to order it.

Thornton Mellon filed a "Motion to Declare Tax Lien Void & Request for Hearing" in the foreclosure action. In that motion, it asked the circuit court to "declare said tax lien void should this Court find sufficient grounds to do so" and that "[u]pon declaration that the tax lien is void, Defendant Montgomery County is bound by [TP] § 14-848"[4] to repay

[4] TP § 14-848 provides:

> If the judgment of the court declares the sale void and sets it aside, the collector shall repay the holder of the certificate of sale the amount paid to the collector on account of the purchase price of the property sold, with interest at the rate provided in the certificate of tax sale, together with all taxes that accrue after the date of sale, which were paid by the holder of the

appellant the amount of the purchase price of the property sold, "with interest at the rate provided in the certificate of tax sale, together with all taxes that accrue after the date of sale . . . and all expenses properly incurred in accordance with this subtitle." The interest rate provided in the Certificate of Tax Sale was "20% per year from the date of the sale to the date of redemption."[5]

On May 11, 2018, the County moved to dismiss Thornton Mellon's complaint to foreclose with prejudice, asserting that "the [] [P]roperty had been improperly sold at tax sale" and the tax sale was "void from its inception." In its motion to dismiss, the County enclosed email correspondence from the Maryland State Department of Assessment and Taxations ("SDAT"), indicating that MAA & E had owned the Property since 2015 but because, as a result of an error by several state agencies, its name did not "appear in [its] tax system until 3/30/2018." For that reason, it was never sent a tax bill.

After a hearing on May 29, 2018, the circuit court dismissed Thornton Mellon's motion to declare the tax lien void and granted the County's motion to dismiss Thornton Mellon's complaint to foreclose the right of redemption. The court found that the tax sale

> certificate of sale or the predecessor of the holder of the certificate of sale, and all expenses properly incurred in accordance with this subtitle. If the collector paid the claims of any other taxing agency, the collector is entitled to a refund of the claim from the taxing agency with interest. *The collector shall proceed to a new sale of the property under this subtitle* and shall include in the new sale all taxes that were included in the void sale, and all unpaid taxes that accrued after the date of sale declared void.

[5] The 20% interest is also referred to as the "rate of redemption" under TP § 14-820(b)(15), which provides that "[t]he rate of redemption is 6% a year except: in Montgomery County the rate is 6% a year or as fixed by a law of the County Council[.]" The redemption rate set by the County Council is 8% interest and a 12% penalty.

had been declared void by the County, and that Thornton Mellon was only entitled to its purchase price and high-bid premium, but not interest or costs. The circuit court reasoned that TP § 14-848 did not apply because the tax sale of the Property was "void from its inception" and that the 2017 Notice, which gave the County the right to invalidate tax sales, was contractually binding.

STANDARD OF REVIEW

We review the circuit court's grant of the motion to dismiss Thornton Mellon's complaint to foreclose *de novo*. *See, e.g.*, *Cochran v. Griffith Energy Services, Inc.*, 426 Md. 134, 139 (2012) (citing *Napata v. Univ. of Md. Med. Sys. Corp.*, 471 Md. 724, 732 (2011) (reviewing a trial court's ruling on a motion to dismiss, we determine whether the trial court is "legally correct")).

DISCUSSION

I.

Contentions

Thornton Mellon contends that the tax sale in this case was not "void from its inception" because taxes on the Property, "were properly assessed, and were not being paid prior to the tax sale." Any issue related to the sale "were caused by billing issues" and "to the extent that the tax sale was erroneous due to the billing issues, it was certainly correctable."

The County contends that Thornton Mellon is not entitled to the benefits of TP § 14-848 because the tax sale was void at its inception. In its view, the sale of the Property

was "void ab initio" because the owner was "never properly billed or provided with proper notice of the tax sale." It argues, without citing to any authority, that these are not procedural or correctable errors.

Analysis

As we explained in *Heartwood 88, Inc. v. Montgomery County*, 156 Md. App. 333 (2004) ("*Heartwood I*"):

> It is well settled that the interpretation of a statute is a judicial function, and requires us to determine and effectuate the legislature's intent. We are guided in this endeavor by the statutory text.
>
> We give the words of a statute their ordinary and usual meaning. If the statute is not ambiguous, we generally will not look beyond its language to determine legislative intent. When a term or provision is ambiguous, however, we consider the language "in light of the . . . objectives and purpose of the enactment." *Tucker v. Fireman's Fund Ins. Co*., 308 Md. 69, 75 (1986). In this regard, "we may . . . consider the particular problem or problems the legislature was addressing, and the objectives it sought to attain." *Sinai Hosp. of Baltimore, Inc. v. Dep't of Employment & Training*, 309 Md. 28, 40 (1987). And, if we cannot glean the legislature's intent from "the statutory language alone, we may . . . look for evidence of intent from legislative history or other sources." *Allstate Ins. Co. v. Kim*, 376 Md. 276, 290 (2003)[.] For example, we may consult the dictionary when the legislature fails to define a statutory term.
>
> Further, we are obligated to construe the statute as a whole, so that all provisions are considered together and, to the extent possible, reconciled and harmonized. Where "appropriate," we interpret a provision "in the context of the entire statutory scheme of which it is a part." *Gordon Family P'Ship*, 348 Md. at 138. When, as here, a provision "is part of a general statutory scheme or system, the sections must be read together to ascertain the true intention of the Legislature." *Mazor v. State Dep't. of Correction*, 279 Md. 355, 361 (1977). Moreover, "[i]f reasonably possible," we read a statute "so that no word, phrase, clause or sentence is rendered surplusage or meaningless," *id.* at 360, or "superfluous or redundant." *Blondell v. Baltimore City Police Dep't.*, 341 Md. 680, 691 (1996)[.]

> In our effort to effectuate the legislature's intent, we may consider "the consequences resulting from one meaning rather than another, and adopt that construction which avoids an illogical or unreasonable result, or one which is inconsistent with common sense." *Chesapeake Charter, Inc. v. Anne Arundel County Bd. of Educ.*, 358 Md. 129, 135 (2000). But, courts may "not invade the function of the legislature by reading missing language into a statute" to correct "an omission in the language of the statute even though it appeared to be the obvious result of inadvertence." *Graves v. State*, 364 Md. 329, 351 (2001).

156 Md. App. 358–60 (cleaned up).

TP § 14-848 provides:

> If the judgment of the court declares the sale void and sets it aside, the collector shall repay the holder of the certificate of sale the amount paid to the collector on account of the purchase price of the property sold, with interest at the rate provided in the certificate of tax sale, together with all taxes that accrue after the date of sale, which were paid by the holder of the certificate of sale or the predecessor of the holder of the certificate of sale, and all expenses properly incurred in accordance with this subtitle. If the collector paid the claims of any other taxing agency, the collector is entitled to a refund of the claim from the taxing agency with interest. *The collector shall proceed to a new sale of the property under this subtitle* and shall include in the new sale all taxes that were included in the void sale, and all unpaid taxes that accrued after the date of sale declared void.

Ordinarily, a tax sale purchaser would benefit from the provisions of TP § 14-848 when a court declares a tax sale void and "sets it aside." That said, in *Heartwood I*[6] and

[6] In *Heartwood I*, the County sold, among others, 331 properties at a tax sale, for which it later realized that the taxes for the properties had been properly paid. It refunded the certificate holder in the amount of the purchase price of each property, plus 8% interest under the terms of the notice of tax sale. The certificate holder argued that it was entitled to the full redemption rate of 20% under TP § 14-820(b) and moved for a declaratory judgment under TP § 14-848 to collect the additional interest. We determined that TP §14-848 did not apply because the tax had been paid when the tax sale occurred and the certificate holder "had no viable cause of action to foreclose the rights of redemption." *Id.* at 365. For that reason, the County could declare the tax sale void on its own and bind the certificate holder to the terms of the tax sale. *Id.* at 366.

Howard County v. Heartwood 88, LLC, 178 Md. App. 491 (2008) ("*Heartwood II*"),[7] we held that TP § 14-848 does not apply when a tax sale is "void from its inception."

In advancing its argument that the sale of the Property was void from its inception, the County directs us to a provision of TP § 14-812, which states:

> At least 30 days before any property is first advertised for sale under this subtitle, the collector shall have mailed to the person who last appears as owner of the property on the collector's tax roll, at the last address shown on the tax roll, a statement giving the name of the person, and the amounts of taxes due. On the statement there shall also appear the following notice:
>
> * * *
>
> "According to the collector's tax roll you are the owner of the property appearing on this notice. Some of the taxes listed are in arrears. Notice is given you that unless all taxes in arrears are paid on or before 30 days from the above date, the collector will proceed to sell the above property to satisfy your entire indebtedness. Interest and penalties must be added to the total at the time of payment."

[7] In *Heartwood II*, Howard County sold a lien on a property at a 2001 tax sale. The certificate holder filed an action to foreclose the right of redemption, but the action stalled for several years because the certificate holder had not obtained service over the property owner. Three years later, SDAT realized that the property should not have been assessed any property taxes because it was part of the general common elements of a condominium regime. SDAT notified Howard County of its error and reduced the property tax assessment to zero, and the County voided the sale and refunded Heartwood the amount of the purchase price of the certificate. Heartwood argued that only the trial court had the power to declare the tax sale void under TP § 14-848 and that it was entitled to the redemption rate provided for in the certificate of sale. We determined that the plain language of TP § 14-848 contemplates the tax collector's ability to proceed to a new sale of the property when a prior sale is declared void. *Id.* at 501.

According to the County and due to "the State's error in preparing the tax rolls," the County "sent the property bills and legal notices to the wrong address, and . . . the property owner was never provided with the required final bill and legal notice under [TP] § 14-812."

Thornton Mellon responds to that argument by directing us to another provision of TP § 14-812:

> *Failure of the collector to mail* the statement and notice to the last address of the person last assessed for the property, as it appears on the collector's tax roll, to mail, if applicable, a list including the name and address of an individual receiving the statement who has been listed as an owner of the property on the collector's tax roll for at least the last 25 years and notice to the area agency, or to include any taxes in the statement and notice, *does not invalidate or otherwise affect any tax*, except a tax that is required to be but has not been certified as provided in § 14-810[8] of this subtitle, *or any sale made under this subtitle to enforce payment of taxes, nor prevent nor stay any proceedings under this subtitle, nor affect the title of any purchaser*.

TP § 14-812 (effective from October 1, 2011 to September 30, 2018) (emphasis added).[9]

As explained earlier, when statutory language is unambiguous, our "search for legislative intent ends and we apply the language as written and in a commonsense manner." *Maryland State Police v. Mclean*, 197 Md. App. 430, 440 (2011) (citing *Downes v. Downes*, 388 Md. 561, 571 (2005)). In short, the County's failure to notify MAA & E of the tax sale under TP § 14-812 would not invalidate the tax or the sale to enforce its payment.

[8] An issue related to TP § 14-810 has not been raised in this case.

[9] An amended version of the statute, effective October 1, 2018 to December 2019, numbered the cited provision as TP § 14-812(d), and the current version, effective January 1, 2020, adopted the same language. There is no substantive change among the version cited above, the Oct. 2018 to Dec. 2019 version, and the current version.

The General Assembly has made it clear that the owners of property are obligated to pay the taxes on that property. "Except as otherwise provided in this article, all property located in this State is subject to assessment and property tax and is taxable to the owner of the property." TP § 6-101(a)(1) (effective from February 1, 1986 to present); *see* TP § 10-401 (effective from February 1, 1986 to present) ("Except as otherwise provided in this subtitle, the owner of property on the date of finality is liable for property tax that is imposed on that property for the following taxable year."). When the property taxes are not paid, subject to exceptions not applicable in this case, "the collector shall proceed to sell and shall sell under this subtitle, . . . all property in the county in which the collector is elected or appointed on which the tax is in arrears." TP § 14-808(a)(1) (effective from February 1, 1986 to present) (emphasis added).

As noted above, we held in *Heartwood I* that TP § 14-848 did not apply to a sale of properties for which the taxes had been timely paid because such a sale would be "void from its inception." *See* 156 Md. App. 333, 364–65. And, in *Heartwood II*, we held that TP § 14-848 did not apply when taxes were mistakenly assessed against a property. *See* 178 Md. App. at 501–03. We explained:

> For a new tax sale of the same property to be conducted by the tax collector, there must be properly assessed unpaid taxes on the property. *If taxes improperly were assessed against the property, so none are owed, or if taxes properly were assessed and were paid, so none are owed, the property is not subject to sale for taxes.* By its plain language, therefore, TP section 14–848 cannot cover a tax sale that is void from its inception due to an error in assessing any tax to begin with or due to there not being any tax arrearage for which to sell the property. It only can cover a tax sale that was procedurally invalid or erroneous but correctable.

Id. at 501–02 (emphasis added). In other words, the sales in *Heartwood I* and *Heartwood II* were void from their inception because no tax was owed when the tax sales were instituted.

Here, no one contends that the taxes on the Property were not properly assessed, or that the taxes had been paid when the complaint to foreclose the right of redemption was filed. And the fact that MAA & E did not receive a tax bill for the Property or a Notice under TP § 14-812 prior to the tax sale did not impact its ultimate responsibility for the taxes as the owner of the Property. In sum, we are not persuaded to extend *Heartwood I* and *Heartwood II* beyond an improper assessment or a sale for taxes that had been paid and to hold that the tax sale of the Property was "void from its inception." To be sure, the statute contemplates that there may be other reasons for a court to declare a tax sale void, but in such a case TP § 14-848 applies.

We turn now to the applicability of the Notice of Tax Sale to a tax sale that is not void at its inception. A "local government cannot contravene the Tax Sale Statute by enacting ordinances or rules that substantively or procedurally affect property tax sales in its jurisdiction." *Heartwood II*, 178 Md. App. 491, 503 (citation omitted); *see also Springlake Crop. v. SyMAArron Ltd.*, 81 Md. App. 694, 722 (1990) (agreement in gross violation of public policy established by governmental regulation unenforceable).

"Maryland has a significant interest in encouraging participation in its tax sale program and in decreeing marketable title." *PNC Bank, Nat. Ass'n v. Braddock Props.*, 215 Md. App. 315, 334 n.10 (2013) (quoting *Royal Plaza Cmty. Ass'n v. Bonds*, 389 Md. at

204–05 (2005) (internal citation omitted)). "Maryland's tax sale mechanism is an effective means of collecting property taxes for the state, and is critical to the state's need to provide a source of revenue for a host of governmental services provided to its citizens." *Id.* For that reason, "[t]ax sale purchasers are regarded as performing a public service." *Heartwood I*, 156 Md. App. at 364.

In establishing a statutory procedure to govern tax sales, the General Assembly sought to balance:

> (1) the due process and redemption rights of persons that own or have an interest in property sold at tax sale; and (2) the public policy of providing marketable title to property that is sold at a tax sale through the foreclosure of the right of redemption.

TP § 14-832 (effective from April 24, 2008 to present).

That balance is reflected in TP § 14-827, which provides the property owner with the right to redeem the sold property "at any time until the right of redemption has been finally foreclosed," and in TP § 14-842, which provides:

> The validity of the procedure is conclusively presumed unless a defendant in the proceeding shall, by answer, set up as a defense the invalidity of the taxes or the invalidity of the proceedings to sell or the invalidity of the sale. A defendant alleging any jurisdictional defect or invalidity in the taxes or in the proceeding to sell, or in the sale, must particularly specify in the answer the jurisdictional defect or invalidity and must affirmatively establish the defense.

(effective from May 26, 2004 to June 30, 2017).

The 2017 Notice included the County's power to invalidate tax sales that were "void from its inception," which is consistent with *Heartwood I* and *Heartwood II*. But it also sets out a non-exhaustive list of other "events that may invalidate a tax sale," including

"transfer errors on the assessor's records that cause the failure of notice to the property owner," and reserves to the County "the right to invalidate or void a sale at any time." But to the extent it permits the County to avoid the policy incentives provided to tax sale purchasers under TP § 14-848, it improperly shifts the burden of an irregularity in the sale to the purchaser.

Simply put, the County's enforcement of the 2017 Notice when the sale was not void from its inception is clearly "at odds" with Maryland's public interest in "encouraging participation" in tax-sale proceedings. *See Braddock Props.*, 215 Md. App. at 334; *Fish Market Nominee. Corp. v. G.A.A., Inc.* 1, 5 n.5 (1994) (noting the "uncertainties and complexities" of tax sales, and stating that a high redemption rate "encourages potential tax sale purchasers to invest in the property despite the fact that the property is subject to a right of redemption").

CONCLUSION

In its Motion to Declare Tax Lien Void, Thornton Mellon "ask[ed] that [the] Court declare said tax lien void should [the] Court find sufficient grounds to do so," and, upon making that a declaration, that the County would be bound by TP § 14-848. In its motion to dismiss Thornton Mellon's complaint to foreclose the title holder's right of redemption, the County advanced only its "void from its inception" argument. We hold that the tax sale was not void from its inception and that the circuit court erred in dismissing the complaint to foreclose and that, upon a finding that the sale is void on remand, that the purchaser is entitled to the benefits of TP § 14-848.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY MONTGOMERY COUNTY.