

Circuit Court for Baltimore City
Case No. 24C14003028

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2292

September Term, 2016

CLARENCE R. BRIGGS, JR., *et al.*

v.

MERIDY CAPITAL INVESTMENT GROUP,
LLC, *et al.*

Kehoe,
Shaw Geter,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: August 3, 2018

*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.

This appeal arises from tax foreclosure proceedings initiated with respect to residential real property located at 2237 West Lexington Street (“the Property” or “2237 W. Lexington”), for which appellant Clarence R. Briggs, Jr. (“Briggs”) previously held title. Citrolyn, LLC (“Citrolyn”) purchased the property on May 21, 2012 at a public auction, after Briggs failed to pay taxes due on the Property for 2011, and subsequently filed a foreclosure action in the Circuit Court for Baltimore City.¹ Appellee Meridy Capital Investments, LLC (“Meridy”) -- the assignee of Citrolyn’s interest in the Property -- moved to foreclose the right of redemption and, on September 21, 2016, the circuit court granted the motion. Briggs filed a motion on September 30, 2016, asking the court to rescind its order foreclosing the right of redemption, which the circuit court treated as a motion to vacate the prior judgment and which it denied. Briggs now appeals the circuit court’s denial of his motion and asks that we review the following issue:

[Whether] [t]he [c]ircuit [c]ourt erred when it failed to rescind its judgment foreclosing [Briggs’s] right of redemption of [the Property] from tax sale after . . . [Meridy] committed constructive fraud in obtaining the judgment.

We conclude that the circuit court did not err in denying Briggs’s motion and, therefore, affirm the judgment of the circuit court.

¹ Meridy, as appellee in this appeal, did not submit a brief to this Court or participate in oral argument. The facts described herein are based primarily on Briggs’s description and our review of the record below.

BACKGROUND & PROCEDURAL HISTORY

Prior to September of 2016, Briggs was the title owner of a residential property located at 2237 W. Lexington in Baltimore City. After Briggs failed to pay the property taxes assessed for 2011, the Director of Finance for the City of Baltimore sold the Property to Citrolyn for \$3,700.00, with taxes and other municipal liens due on the property at the time of sale in the amount of \$1,109.00. As the Certificate of Tax Sale indicated, Briggs had the opportunity to redeem the Property prior to November 21, 2012; after that date, the purchasers of the Property were permitted to bring a proceeding to foreclose all rights of redemption, as long as the proceeding occurred within two years of the certificate’s issuance.

On May 19, 2014, Citrolyn filed a Complaint to Foreclose the Right of Redemption (“Complaint”)² on the Property, stating that the Director of Finance sold it at public auction on May 21, 2012 in fee simple. The Complaint confirmed that “two (2) separate pre-suit notices of the tax sale [were] sent to the required Interested Parties by first class mail in an envelope prominently marked on the outside with the phrase ‘NOTICE OF DELINQUENT PROPERTY TAX.’” These notices were apparently sent to Briggs at the address listed for him in the Complaint -- 2237 W. Lexington.

² Citrolyn named four known defendants -- including Briggs, G & E Contractors, Inc., the Mayor & City Council, the City of Baltimore -- and all other person “having or claiming to have any interest in the property or premises situate[d] in the City of Baltimore, known as 2237 W Lexington Street”

Attached to the Complaint were documents that came out of the title search performed on May 15, 2014 that Citrolyn requested from its title examiner. Those documents included: (1) the title examiner’s handwritten findings from the title search including that two creditors had filed liens on the Property -- Pasadena Receivables, Inc. in the amount of \$825.88, filed September 9, 2011, and “Marex Corporation d/b/a Petro” in the amount of \$919.64, filed April 25, 2011; (2) a SDAT Real Property Data Search; (3) an Affidavit As To Total Payment, dated September 13, 2005, showing that Briggs, acting as the attorney-in-fact for Margaret Briggs and transferor of the Property, affirmed that “[t]he amount of total payment for the purpose of the Withholding law [was]: \$0”; and (4) a Deed for the Property, made September 13, 2005.³ Under “Owner Information,” the SDAT record listed the owner’s name as “BRIGGS JR CLARENCE R” and the owner’s “Mailing Address” as “2237 W LEXINGTON ST[,] BALTIMORE MD 21223-1515.” Additionally, the record indicated that the “Use” of the Property was “RESIDENTIAL,” and that the Property was the owner’s “Principal Residence.” The record provided that the Property was last assessed in January of 2012.

On May 27, 2014, after being assigned the Tax Sale Certificate, Meridy was substituted for Citrolyn in the proceedings. According to the docket, a notice of the Complaint was posted on the Property on May 29, 2014. On July 6, 2015, Meridy filed an

³ The Deed included in the title search documents was executed between Margaret Briggs (by Briggs “by virtue of a Durable Power of Attorney dated May 15, 2005”) as grantor, and Briggs, himself, as grantee. The Deed required no monetary compensation and indicated that the Property was gifted from Margaret Briggs to her son, Briggs.

Affidavit of Compliance to foreclose the right of redemption and have the Property transferred to itself. Attached to the Affidavit of Compliance was an Affidavit of Non Service, dated May 26, 2015, which stated that the following “attempts were made to serve Clarence R. Briggs, Jr. with Summons, Complaint to Foreclose Right of Redemption and Exhibits at:”

Attempted at 2237 W Lexington St. Baltimore, MD 21223-1515 On 5/18/2015 at 8:35 AM

Results: No Answer, Left note. No answer from neighbors on either side. No answer to door. Left a door hanger, and noticed mail in box. Neighbors on either side, did not respond as well.

Attempted at 2237 W Lexington St. Baltimore, MD 21223-1515 On 5/20/2015 at 7:41 PM

Results: No Answer, door hanger still there. Neighbors said no one has been there for about 8-9 months now.

Attempted at 2233 W Lexington St. Baltimore, MD 21223-1515 On 5/24/2015 at 5:53 PM

Results: No Answer, Left note/door hang. Lady 3 doors down from 2233 states she wasn't sure who lived at that address.

The Affidavit of Compliance stated that “for any Defendants that Plaintiff could not locate or serve at a current address of record, and only after performing a comprehensive investigative search as detailed for each defendant,” Meridy relied on service by publication. The docket indicates that the circuit court issued an Order of Publication on June 4, 2014, and according to the certificate of publication filed on September 23, 2014, notice of the proceeding was provided by publication in *The Daily Record* for three consecutive weeks. Meridy affirmed that it “mailed notice to the Tenant or Occupant . . . of the subject property on June 4, 2015,” and that “[t]he envelope . . . was prominently

marked on the outside with the phrase ‘Notice of Action to Foreclose’ and included a copy of the Complaint.” In addition, a notice (in accordance with Md. Rule 14-503(c)⁴) “was posted in a conspicuous place on the property by private process server on June 20, 2015.” The Affidavit of Compliance stated that “no Defendant or interested person ha[d] come forward to redeem the property.”

On September 21, 2016, the circuit court entered a Judgment Foreclosing Right of Redemption in favor of Meridy. The order vested Meridy with an absolute and indefeasible title to the Property in fee simple. The court found that,

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

On September 30, 2016, Briggs filed a Motion to Rescind Judgment Foreclosing Right of Redemption, in which he asserted that he “intend[ed] to redeem the aforementioned tax sale certificate,” and was “entitled to file an answer to the Complaint . . . so that he may seek documentation of the expenses to redeem the Property, and if necessary, request a hearing before this Court on this matter.”⁵ Briggs requested that the

⁴ Md. Rule 14-503(c) provides, in part, that “upon the filing of the complaint, the plaintiff shall cause a notice containing the information required by Rule 14-502(c)(3) to be posted in a conspicuous place on the property.”

⁵ We emphasize here that, although we do not address the issue in this appeal, it is not clear whether or not Briggs submitted to the jurisdiction of the circuit court by filing his motion to rescind the previous judgment, without raising the issue of personal jurisdiction. Whether he has waived the right to object to the court’s personal jurisdiction

circuit court issue an order rescinding its September 21, 2016 order foreclosing the right of redemption on the Property and authorize Briggs to file an answer to the Complaint. Briggs did not dispute the amount of taxes owed, indicate that he had paid the delinquent amount, or provide any assurance that he was ready, willing and able to pay the taxes acknowledged to be due on the Property as assessed in the Certificate of Tax Sale.

On November 28, 2016, treating Briggs’s Motion to Rescind as a motion to vacate the court’s judgment foreclosing his right to redeem, the circuit court denied the motion on the grounds that Briggs failed to meet a condition precedent to vacating the judgment. The court found that Briggs failed to assert in the motion that the taxes that were due were paid or that he was “ready, willing and able” to do so. Briggs now appeals the circuit court’s decision denying his motion to rescind the prior judgment

DISCUSSION

I. Standard of Review

The Court of Appeals has said that an appellate court applies the same standard of review to a circuit court’s decision not to reopen a foreclosure of a right of redemption under Md. Code (1986, 2012 Repl. Vol.), Tax-Prop. Art. (TPA) § 14-845(a)⁶ as it does in

over him under Md. Rule 2-322 or by his conduct under *Peay*, 236 Md. App. at 328, will be an issue for the circuit court in the event Briggs is able to satisfy the precondition to challenging the prior judgment.

⁶ TPA § 14-845 is discussed at length below.

reviewing the circuit court’s denial of a motion to revise⁷ a judgment under Md. Rule 2-535(b) and Md. Code (2006, 2013 Repl. Vol.), Cts. & Jud. Pro. Art. (CJP), § 6-408. *See Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 401 (2006). More specifically, the Court in *Canaj* explained:

In the context of tax sales, a judgment foreclosing an owner's right of redemption can be reopened, after thirty days have passed, on the grounds of lack of jurisdiction or fraud. [. . .] Although we have not previously stated the standard of review of a lower court's decision under [TPA § 14-845(a)], it stands to reason that the same standard used in reviewing decisions under [CJP] § 6-408 and Rule 2-535(b) should be applied. The Rule and both statutes deal with the ability of the trial court to review its judgments.

391 Md. at 400 (Footnote omitted). In that instance, therefore, “the only issue before the appellate court is whether the trial court erred as a matter of law or abused its discretion in denying the motion.” *Id.* at 400-01 (quoting *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475, *cert. denied sub nom. Clemy P. v. Montgomery County Dep't of Soc. Servs.*, 520 U.S. 1267 (1997)).

II. The Circuit Court Did Not Err in Denying Appellant’s Motion to Rescind Its Judgment Foreclosing Appellant’s Right of Redemption.

Briggs articulated two arguments in his Motion to Rescind Judgment before the circuit court. First, Briggs contended that, “[c]ontrary to the title of the complaint which shows Mr. Briggs’ address as 2237 W. Lexington Street, his actual address is 2233 W.

⁷ Briggs’s motion used the term “rescind” rather than to “revise.” The court treated the motion as a “motion to vacate,” which falls within the court’s revisory powers under § 2-535.

Lexington Street.” Briggs argued that his “actual address” was “readily available from sources detailed in the title examination that was attached to the complaint.” He asserted that there were two civil proceedings against him that were reported in the title examination, both of which named him as a defendant. In both of those cases, his address “was reported as 2233 W. Lexington Street, Baltimore, MD 21223,” rather than 2237 W. Lexington Street -- the address of the Property.⁸

Briggs’s first contention on appeal, therefore, is that because Meridy’s title examiner located two cases involving liens on the Property that included his current address, Meridy should have served Briggs at his correct address. Meridy could have done so, he asserts, by conducting a search of the Maryland Judiciary Case Search website for those cases and checking the address listed for Briggs. Briggs argues on appeal, therefore, that Meridy’s failure to find his current address and personally serve him there amounts to constructive fraud sufficient to require the court to rescind the court’s order foreclosing the right of redemption and reopen the proceedings under TPA § 14-845(a).

Second, Briggs argued that, pursuant to § 14-839(a)(6), governing how long the court must wait before entering an order foreclosing the right of redemption, that the court was prohibited from entering the order because Meridy never “serve[d] Mr. Briggs with a

⁸ Of note is the fact that the address where Briggs claims to have resided at the time of attempted service was only two houses down from the posted Property, with only one intervening house between. As we previously explained, a notice of the Complaint was posted on May 29, 2014, and again on June 20, 2015, in a conspicuous place on the Property. Briggs filed his motion to rescind the prior judgment on September 30, 2016 -- more than a year after the most recent posting.

summons, a copy of the complaint, the posting notice or a copy of the order of publication.” Briggs argues the same on appeal, asserting essentially that Section 14-839(a)(6) deprives the circuit court of the authority to enter the foreclosure order until the purchaser achieves personal service on the defendant.

Section 14-845 governs reopening judgments in tax sale proceedings and provides the following:

A court in the State may not reopen a judgment rendered in a tax sale foreclosure proceeding **except on the ground of lack of jurisdiction or fraud in the conduct of the proceedings to foreclose**; however, no reopening of any judgment on the ground of constructive fraud in the conduct of the proceedings to foreclose shall be entertained by any court unless an application to reopen a judgment rendered is filed within 1 year from the date of the judgment.

TPA § 14-845(a) (Emphasis added). In addition, during the thirty days following the court’s entry of its final judgment, the circuit court retains general revisory power. *See* CJP § 6–408; *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 415 (2006) (“Under this Article, once the Circuit Court enters a judgment foreclosing the right of redemption in a tax sale foreclosure proceeding, that judgment can only be reopened—more than thirty days after it is entered—in accordance with § 14–845”). For one year after the date of the court’s final judgment, the court may reopen the proceedings only on the grounds of “fraud (including constructive fraud) or lack of jurisdiction.” *Smith v. Lawler*, 93 Md. App. 540, 551 (1992). After the period of one year from final judgment has expired, the circuit court may not entertain a motion to reopen a judgment on the ground of constructive fraud,

but it may reopen the proceedings on the grounds of actual fraud or lack of jurisdiction. TPA § 14-845(a).

The foundation of Briggs’s argument on appeal is that Meridy failed to comply with the notice requirements of TPA § 14-839(a), which governs the purchaser’s duty to obtain the property owner’s “last known address” and include it in the title of the complaint. Briggs contends that Meridy’s failure to satisfy those statutory requirements constituted constructive fraud sufficient to require the court to vacate its prior judgment pursuant to its revisory power under TPA § 14-845(a).

A. Briggs Failed to Meet A Precondition to Challenging the Foreclosure of the Right of Redemption.

The circuit court, in denying Briggs’s motion to rescind the order foreclosing the right of redemption, provided the following reasoning in its order:

[T]he [motion] is[] DENIED on the grounds that the Defendant has not met the condition precedent to vacating a judgment. **Defendant does not state that the redemption amount has been paid, or indicate that the Defendant is ready, willing, and able to pay the redemption amount.** “[I]n 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.” *Canaj, Inc. v. Baker & Div. Phase III*, 391 Md. 374, 396 (2006). The Court of Appeals affirmed this condition precedent a year later when it held that “a property owner must tender all of the deficient real property taxes before he [or she] can challenge the validity of a tax sale.” *Quillens v. Moore*, 399 Md. 97, 125 (2007).

(Emphasis added).

Briggs’s only basis for his contention that the court’s reliance on *Canaj* and *Quillens* in denying the motion was erroneous is that, in those cases, the property owners were “serve[d] with a summons, filed answers, and had opportunities to protect their interest in the property prior to the entry of the judgments foreclosing their right of redemption.” In contrast, Briggs contends, he “was denied all of those rights by Meridy’s failure to serve him with a summons”⁹ We hold, however, that the circuit court did not err in denying Briggs’s motion on the grounds that he failed to meet a condition precedent to challenging the validity of a tax sale proceeding.

In *Canaj*, the delinquent taxpayer “moved to vacate all of the judgments and void the tax sales as to the other properties based on fraud, mistake or irregularity.”¹⁰ 391 Md. at 378. The circuit court, in that case, found that there was no “fraud, mistake, or irregularity” under Rule 2-535, and more importantly, no “lack of jurisdiction or constructive fraud as defined in Section 14-845 of the Tax-Property Article of the Maryland Code.” *Id.* at 380. Because of those rulings, the circuit court did not address the “threshold issue” of whether payment of the taxes acknowledged to be due was a condition precedent

⁹ On the other hand, in *Jannenga* -- the one case Briggs cites in which the Court of Appeals held that the purchaser’s failure to notify the property owner constituted constructive fraud -- the property owners had previously paid the taxes prior to their challenge of the court’s order foreclosing the right of redemption. 243 Md. at 3.

¹⁰ See Md. Rule 2-535, which provides that “[o]n motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.” We emphasize, however, that TPA § 14-845 limits the reopening of tax foreclosure proceedings to the grounds of lack or jurisdiction or fraud.

to challenging the court’s order foreclosing the right of redemption. *Id.* at 382. The Court of Appeals, however, addressed the issue:

By addressing the issue we merely state what the law is, and what the trial court should have found the law to be had it resolved the issue of the “condition precedent.” Moreover, it appears that there are literally thousands (5,000 or more) of abandoned or vacant properties creating such severe problems for the City of Baltimore that it is attempting to resolve some of them by the tax sale process. [. . .]

What occurred here may be an unusual attempt to avoid altogether the responsibility of owners to pay property taxes and an attempt to avoid compliance with the requirements imposed upon taxpayers relating to the right to redeem in tax sale cases. In order to redeem, the delinquent taxpayer has to tender all of the taxes, interest and costs of sale to the Collector or to the holder of the certificate. Md. Code (1985, 2001 Repl. Vol.), § 14-828 of the Tax-Property Article.

384-85 (Footnote omitted). Further, the Court explained:

Although appellant acknowledged that it was responsible for the taxes owed, it never, at the hearing or at any other time, directly proffered that it was ready, willing and able to pay the amounts, or to pay undisputed amounts, and, more importantly, it has not paid any of the delinquent taxes and charges due.

Id. at 386-87.

The Court in *Canaj* went on to hold that the City’s failure to cite the properties as abandoned on the tax sale certificates did not constitute a jurisdictional defect or a constructive fraud in the proceedings. *See id.* at 426. Despite holding that the condition precedent of payment of delinquent taxes had not been met, the Court, “nonetheless, address[ed] the issues actually decided by the trial court because they raise[d] very important issues . . . that will continue to arise in tax sale proceedings, especially in

Baltimore City . . .” *Id.* at 382. Although it is true that the property owner in *Canaj* was properly served with notice, the basis of the property owner’s motion to vacate the foreclosure of the right of redemption was that the circuit court “lacked any jurisdiction to foreclose the owner's right of redemption.” *Id.* at 415-16.

Discussing the holding in *Steuart v. Meyer*, 54 Md. 454 (1880), where the Court of Appeals acknowledged that “a delinquent owner normally would have had a right to seek to set aside the sale,” the Court of Appeals explained that “[s]uch a right . . . [is] predicated upon the payment of all taxes due.” 391 Md. at 388. Even where “equity asserts complete jurisdiction to remove the cloud from the title of the property involved,” therefore:

[A delinquent taxpayer] 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; and upon the full payment of such sums, the [property owners] should then have the relief prayed by them.

Id. at 389 (quoting *Steuart*, 54 Md. at 467-68). Critically, “[t]his requirement . . . is substantially in accordance with what would have been required if the sale . . . had been excepted to, and had been set aside, and a resale made by the collector.” *Id.* (quoting *Reth v. Levinson*, 135 Md. 395, 399 (1919)). Finally, the Court in *Canaj* explained:

We have never overruled the holding of our cases that where it is admitted (or proven) that there are delinquent taxes due, in order to challenge the holding or ratification of the tax sale or to seek to vacate a judgment of the foreclosure of the equity of redemption, the taxpayer must first pay to the Collector or the certificate holder the total sum of the taxes, interest, penalties

and expenses of the sale that are due. While not recently addressed, it remains the law in this State.

Id. at 391.

The Court of Appeals affirmed the holding in *Canaj* in *Quillens*. There, the owner of the properties at issue filed an answer to the tax sale purchaser's and Baltimore City's complaints seeking foreclosure of the right to redeem. *Quillens*, 399 Md. at 107. In his answer, "[Quillens] alleg[ed] that the Circuit Court did not have jurisdiction because the tax certificates issued pursuant to the tax sales purported to sell the properties for taxes secured by previously issued void tax certificates." *Id.* Further, the Court of Appeals explained:

Quillens contends that our recent decision in *Canaj, Inc. v. Baker and Division Phase III*, 391 Md. at 374, 893 A.2d at 1067, is not applicable because, as he argues, *Canaj* only applies when a party is seeking affirmative post-foreclosure relief invoking the court's general equity jurisdiction; whereas Quillens argues that he was challenging the jurisdiction of the Circuit Court by asserting that the tax certificates issued were invalid.

Id. at 123-24. Thereafter, the Court in *Quillens* held the following:

The *Canaj* holding applies, by its own terms, to the present case. Quillens is trying to skirt this by saying that he is challenging the jurisdiction of the Circuit Court; in effect, by challenging the jurisdiction of the Circuit Court, however, Quillens is seeking post-foreclosure affirmative relief because he is seeking to have the tax sale and the order foreclosing his right of redemption in the City properties set aside. In light of our opinion in *Canaj*, a property owner must tender all of the deficient real property taxes before he can challenge the validity of a tax sale, which Quillens has failed to do.

Id. at 125.

The reason for this precondition is simple: to challenge the validity of an order foreclosing the right of redemption, the challenger must do what he or she would have been required to do in order to exercise the right to redeem. The Court of Appeals, discussing *Stewart*, 54 Md. 454 (1880), reiterated that the “equity requirement of the payment of taxes as a pre-requisite of seeking equity relief” is based “on the fact that had, the delinquent taxpayer sought recourse under the tax sale provisions . . . in effect, the payment of taxes would have been a prerequisite to maintaining the suit.” *Canaj*, 391 Md. at 390-91. The “general rule” is 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.” *Canaj*, 391 Md. at 391 (quoting *Stewart v. Wheatley*, 182 Md. 455, 460 (1943)). TPA § 14-828 provides, in pertinent part, the following:

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

- (1) the total lien amount paid at the tax sale for the property together with interest;
- (2) any taxes, interest, and penalties paid by any holder of the certificate of sale;
- (3) except for owner-occupied residential property in Baltimore City, any taxes, interest, and penalties accruing after the date of the tax sale;

* * *

(c) On receipt of the proper amount, the collector shall notify the holder of the certificate of sale that the property has been redeemed and that on surrender of the certificate of sale all redemption money excluding taxes received by the collector will be paid to the holder.

* * *

Upon request, the collector shall execute and deliver to the person redeeming the property a certificate of redemption which may be recorded among the land records of the county in which the land is located, and when recorded shall have the same effect as a release of a mortgage.

TPA § 14-828(a), (c).

The purpose of a property owner's challenge to the circuit court's order foreclosing the right of redemption is to invalidate the tax sale purchaser's title to the property and to exercise the right of redemption. In other words, even where there is no defect in the tax sale or foreclosure proceedings, and the property owner (who does not dispute that taxes are owed on the property) intends to redeem the property, he or she may exercise that right only if he or she pays, or at least states that he or she is willing and able to pay, the taxes acknowledged to be due on the property. Where there is no dispute that the taxes at issue are owed, the policy of requiring delinquent taxes to be paid before a property owner may challenge the validity of an order foreclosing the right of redemption does not prejudice the property owner any more than if he or she had entered the case prior to final judgment with the intention of exercising the right to redeem. The Court in *Canaj* explained:

Appellant has not contested the fact that taxes are owed, or in this appeal, the amounts. There is no issue as to his obligation to pay the taxes. 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 396.

Here, where Briggs challenged only the court’s order foreclosing the right of redemption, and did not dispute that he failed to pay the taxes at issue, the policy ensures that the circuit court’s order, and Meridy’s marketable title, is not invalidated only to permit Briggs to remain delinquent in paying the taxes until his right of redemption is foreclosed once again. Although Briggs stated in his motion that he intended to redeem the property -- upon having his motion granted, filing an answer, receiving “documentation of the expenses to redeem the [P]roperty” and, if necessary, a hearing -- Briggs did not dispute that he failed to pay the taxes due in 2011 and did not pay any of the money acknowledged to be due before filing the motion. He did not dispute the amount recorded in the tax rolls of the Director of Finance, or the amount paid by Citrolyn for the Tax Sale Certificate. Yet, Briggs did not indicate that he was ready and willing to pay any of the amount owed as determined by TPA § 14-828. Pursuant to the Court of Appeals’ holdings in *Canaj* and *Quillens*, therefore, we hold that the circuit court did not err in denying Briggs’s motion to rescind the court’s order foreclosing the right of redemption.

B. The Circuit Court Was Not Required to Determine Whether The Circumstances Constituted “Constructive Fraud” Under TPA § 14-845.

TPA § 14-839(a) governs notice to interested parties in tax sale proceedings and 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” The last known address must be “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.

TPA § 14-839(a)(1). Critically, however, subsection (a)(2) states that “[p]aragraph (1) of this subsection does not require the plaintiff or the attorney for the plaintiff to make any investigations or to search any other records or sources of information other than those stated.” TPA § 14-839(a)(2).

Briggs filed his motion to rescind the court’s order foreclosing his right to redeem the property within thirty days of the court’s final judgment. Rather than claim that the circuit court should have used its thirty-day general revisory power, however, Briggs argues that the circuit court should have reopened the proceedings pursuant to TPA § 14-845, which gives the circuit court authority to reopen the proceedings for lack of jurisdiction or fraud. He contends that Meridy’s failure to obtain his current address at 2233 W. Lexington and personally serve him there constituted constructive fraud.

We note, preliminarily, that Briggs does not assert as grounds for the court’s authority to reopen the proceedings under § 14-845 that a jurisdictional defect rendered the circuit court’s prior judgment void. *See Voltolina v. Prop. Homes, LLC*, 198 Md. App. 590, 604-05 (2011) (quoting *Jannenga v. Johnson*, 243 Md. 1, 4 (1966)) (contrasting the failure to file a required affidavit or obtain an order for substitute service in an *in rem*

proceeding¹¹ with “a jurisdictional defect such as would void a decree setting aside an owner's rights of redemption”). Instead, he argues that the court was required to vacate the order foreclosing the right of redemption on the grounds that Meridy’s failure to effect personal service on him amounted to constructive fraud -- a ground permitting the circuit court to reopen a tax foreclosure proceeding that is limited to a period of one year following the court’s final judgment. *See* TPA § 14-845(a).

Briggs rests his entire argument on the Court of Appeals’ holding in *Jannenga*, *supra*, 243 Md. 1. There, “[t]he county treasurer, *not knowing that the taxes had been paid*, sold the property to the appellant . . . at a tax sale” *Jannenga*, 243 Md. at 3 (Emphasis added). The Court of Appeals held that, under the circumstances of that case, the property purchaser’s failure to comply with the requirements of former Maryland Rule 105 (pertaining to notice to nonresidents by publication) amounted to constructive fraud. *Id.* at

5. The Court explained the following:

The law declares this failure to comply with the requirements of Maryland Rule 105 to be fraudulent because of its tendency to deceive those who might otherwise not be notified of proceedings to foreclose their property rights except by the essentially pro forma means of publication.

Id. (Citations omitted).

The Court in *Jannenga* distinguished the circumstances before it with a prior case in which the Court held that the judgment was valid, despite the purchaser’s failure to serve

¹¹ See *PNC Bank, N.A. v. Braddock Props.*, 215 Md. App. 315, 328 (2013) in which we explained that “redemption foreclosure actions are *in rem*.”

the property owners at their current address. *See id.* at 6 (discussing *Sanchez v. James*, 209 Md. 266 (1956)). As the Court in *Jannenga* explained, the property owners in *Sanchez* were residents of Maryland, but had previously resided in Washington, D.C. at the address that appeared on the land records for the Maryland property. The purchaser’s attorney gave the outdated D.C. address to the sheriff to execute personal service on the property owners. *Id.* at 6. Meanwhile, however, their current address in Maryland was listed on the assessment records in the county treasurer’s office. *Id.* Thereafter, “[s]ubpoenas directed to the owners were twice issued, the sheriff returned them both non est, and . . . the tax sale purchaser proceeded against the owners as nonresidents” by giving notice by publication pursuant to the then-applicable statute governing notice by publication for nonresidents. *Id.* at 6. In contrast to the facts of *Jannenga*, the Court in *Sanchez* found that the oversight by the tax sale purchaser’s attorney in failing to discover the property owner’s current address in the tax records constituted neither actual fraud nor jurisdictional defect, “and the decree in the tax sale foreclosure suit was valid.” *Id.*

Although the Rules requiring notice have changed since *Sanchez*, the critical facts distinguishing *Sanchez* from *Jannenga* remain relevant. “In *Sanchez*, the tax sale purchaser complied with all of the requirements of law then applicable, and made a good faith effort to give the sheriff the correct address of the property owners.” *Id.* at 7. The tax sale purchaser in *Jannenga*, however, “show[ed] *no effort at all* to give the required notice to the property owner” and failed to file a necessary affidavit as was required by former Maryland Rule 105. *Id.* (Emphasis added). The Court in *Jannenga* held, therefore,

A failure to provide such notice or to make a good faith effort to do so may not amount to actual fraud in that one may not have been compelled by malicious motives to deceive the defendant, but it does, in any event, amount to constructive fraud **since Jannenga . . . failed to perform a legal duty.**

Jannenga, 243 Md. 1, 4–5 (1966) (Emphasis added).

In the case before us, the record indicates that Meridy obtained the last known address that it listed in the Complaint from the SDAT record -- a “record[] examined as part of the title examination.” *See* TPA § 14-839(a)(1)(i). The same address was listed for Briggs on the Certificate of Tax Sale, which was “made by [the] Director of Finance of Baltimore.” *See* § 14-839(a)(1)(ii) (listing “the tax rolls of the collector who made the sale” as a source of the property owner’s address to be included in the title of the complaint). Pursuant to TPA § 14-839(a)(2), Meridy was not required to “make any investigations or to search any other records or sources of information other than” the “records examined as part of the title examination,” “the tax rolls of the collector who made the sale,” or “any other address that [was] known to [Meridy] or the attorney filing the complaint.” TPA § 14-839(a)(1)-(2).

We note that Briggs could have challenged the order on the grounds of jurisdictional defect, rather than “constructive fraud,” based on his allegation that Meridy failed to comply with the notice requirements of TPA § 14-839(a). *See Slattery v. Friedman*, 99 Md. App. 106, 118, *cert. denied*, 335 Md. 81 (1994) (holding that, if the court found that the purchaser at a tax sale would have found the property owner’s current address except for manifest indifference, the property owners would be “entitled to have the judgment of

foreclosure reopened on the grounds that the circuit court lacked personal jurisdiction”). Even assuming Briggs had expressly raised the grounds of lack of jurisdiction due to Meridy’s failure to properly serve him, the result would be the same in this case. For an argument based on lack of personal jurisdiction to have any impact on our decision on review, however, Briggs needed to have satisfied the requirements of the condition precedent described above. Thus, even if Briggs had argued that, because of the defect in notice, the circuit court lacked personal jurisdiction over him to enter a judgment foreclosing his right of redemption, the court could have dismissed his motion based on his failure to pay the taxes owed. In spite of his failure to raise the issue in his motion before the circuit court, however, we provide some clarity on the issue should Briggs refile his motion upon satisfying the precondition.

We explained recently, in *Peay v. Barnett*, the passage of time may not necessarily block a defendant’s opportunity to challenge a default judgment based on lack of personal jurisdiction. There, we said:

[T]he U.S. Supreme Court has said that “[a] defendant is always free to ignore judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding.” *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinée*, 456 U.S. 694, 706, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982). And the Court of Appeals of Maryland, relying on the proposition that there can be no valid proceeding against a defendant in the absence of proper service, has allowed a challenge four years after entry of a default judgment and six years after actual knowledge of the litigation by the defaulting party. See *Little v. Miller*, 220 Md. 309, 153 A.2d 271 (1959).

236 Md. App. 306, 312 (2018). In this case, the court’s authority to reopen the previous judgment foreclosing the right of redemption was governed by TPA § 14-845, which provides a one-year time limit for challenges to the judgment based on constructive fraud. It does not so limit challenges based on jurisdictional defects, however. *See* TPA § 14-845(a).

Although Briggs could have raised the absence of personal service as a jurisdictional defect before the circuit court, his failure to pay or proffer the amount of taxes owed on the property created a defect that implicated the circuit court’s subject matter jurisdiction over the validity of the previous judgment. In *Quillens*, the Court of Appeals emphasized that the property owner was “seeking post-foreclosure affirmative relief because he is seeking to have the tax sale and the order foreclosing his right of redemption in the City properties set aside.” 399 Md. at 125. The Court explained, therefore, that, “[i]n light of [the holdings] in *Canaj*, a property owner must tender all of the deficient real property taxes **before he can challenge the validity of a tax sale . . .**” *Id.* (Emphasis added).

Briggs was in the same situation as *Quillens*, and he was required to tender the delinquent property taxes as a prerequisite for the circuit court’s authority even to address the validity of the court’s previous judgment foreclosing his right of redemption. Similar to *Canaj*, “[Briggs] never, at the hearing or at any other time, directly proffered that [he] was ready, willing and able to pay the amounts, or to pay undisputed amounts, and, more importantly, [he] has not paid any of the delinquent taxes and charges due.” *See Canaj, supra*, 391 Md. at 386-87. This rule is in the nature of a subject matter jurisdictional

requirement -- i.e., the court’s jurisdiction over “the cause of action and the relief sought.” See *Thacker v. Hale*, 146 Md. App. 203, 225 (2002). The circuit court did not have the authority to address the subject matter of the validity of the foreclosure judgment until Briggs satisfied the preconditions for the circuit court to hear the motion to revise.

It is true that, pursuant to Maryland Rule 8-131(a), “[t]he issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court.” As explained above, however, we need not address whether the circuit court had personal jurisdiction sufficient to enter a judgment foreclosing the right of redemption in this case. The circuit court logically first addressed the issue of its own authority to hear Briggs’s challenge to the previous circuit court judgment before deciding not to reach Briggs’s argument that the proceedings should be reopened. Even if Briggs had raised the issue of personal jurisdiction, the court properly decided the case based on Briggs’s failure to satisfy a condition precedent to the court’s ability to hear his challenge to the prior judgment.¹²

¹² Regarding our own order of analysis, we first address the issue of its subject matter jurisdiction, which provides a more expeditious answer in this case than engaging in a complex analysis of whether the validity of a prior judgment was supported by personal jurisdiction. See *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 587-88 (1999) (emphasizing that “in most instances subject-matter jurisdiction will involve no arduous inquiry,” and if so, federal courts should “dispose of that issue first”); see also *Priester v. Baltimore Cty.*, 232 Md. App. 178, 192, *cert. denied sub nom.*, 454 Md. 670 (2017) (quoting *Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 431 (2007) (in turn, quoting *Ruhrgas*, 526 U.S. at 584).

However, if Briggs, subsequent to the disposition of this proceeding, can satisfy the condition precedent to challenging the validity of the judgment foreclosing his right of redemption, he may belatedly seek to file a motion to vacate based on jurisdictional defect. Like the defaulting party in *Peay*, Briggs may argue that the defect in service rendered the previous judgment void based on a lack of personal jurisdiction. *See Peay*, 236 Md. App. at 324-25 (“Once the circuit court determines that the issuing court exceeded either its in personam jurisdiction or its subject matter jurisdiction, the court must find the prior judgment invalid.”)

The court’s decision regarding the sufficiency of Meridy’s attempts to serve Briggs would be based on its determination of whether Meridy was “on notice of a ‘bad address,’” and whether the correct address could have been reasonably ascertained by “further efforts based upon information contained in any record that is, or should be, examined during a title examination conducted under appropriate title examination standards” *See Nichol v. Howard*, 112 Md. App. 163, 171 (1996); *see also St. George Antiochian Orthodox Christian Church v. Aggarwal*, 326 Md. 90, 96 (1992) (quoting *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 315 (1950)).

Here, it appears that Meridy located Briggs’s correct address, or potentially a correct address, and made an attempt to serve him there. It is not clear whether Meridy knew that Briggs resided at that address or if the final attempt to serve Briggs there was merely its attempt to cover all additional leads. If Meridy failed to serve Briggs at his correct address, “because of [its] manifest indifference to doing so,” however, Meridy would be presumed

to have had knowledge of the correct address. *See Slattery v. Friedman*, 99 Md. App. 106, 118 (1994) (holding that if the failure to serve the property owners at the correct address was the result of the purchaser’s manifest indifference, the property owner would be “entitled to have the judgment . . . reopened on the grounds that the circuit court lacked personal jurisdiction over them when the judgment was entered”). Based on the record and the posture of the case before us, however, we need not, and cannot properly, determine whether Meridy should have made further efforts to serve Briggs at the correct address. “This can be determined only by the trial court once the proper evidence is before it.” *Id.* at 119.¹³

Regardless of the grounds asserted for vacating (or rescinding) the court’s foreclosure order, Briggs was required, as a condition precedent to challenging the validity

¹³ In addition to rebutting Briggs’s argument that Meridy failed to make reasonable efforts to ascertain his correct address and serve him there, Meridy may also argue that Briggs waived his right to challenge the circuit court’s personal jurisdiction over him. We recognized, in *Peay*, two ways that a defendant may waive the right to object on personal jurisdiction grounds -- by filing a preliminary motion under Rule 2-322 and not raising the defense or otherwise making an appearance in the case, and by conduct, particularly of an estoppel nature . As we explained in *Peay*:

When a defendant raises improper service of process as grounds to revise a default judgment as a “mistake” under Rule 2–535(b), the circuit court must determine, if applicable, whether the judgment is nonetheless valid by virtue of the defendant's waiver of lack of personal jurisdiction.

236 Md. App. at 327. The same principles of waiver would apply in this case. As the Court in *Canaj* explained, “it stands to reason that the same standard used in reviewing decisions under [CJP] § 6-408 and Rule 2-535(b) should be applied. The Rule and both statutes deal with the ability of the trial court to review its judgments.” 391 Md. at 400.

of the order, to proffer payment of the delinquent taxes and other costs *acknowledged to be due*. See *Quillens, supra*, 399 Md. at 125. Briggs did not dispute that he failed to pay the taxes at issue, and he did not state that he had paid the taxes in arrears or directly proffer that he was “ready, willing and able to pay undisputed amounts” in order to exercise the right to redeem the property. See *Canaj*, 391 Md. at 386-87. The circuit court, therefore, did not err in denying the motion to rescind its prior order foreclosing his right of redemption.

C. The Absence of Compliance with a Statutory Requirement of Personal Service Did Not Remove the Court’s Authority Under TPA § 14-839(a) to Issue an Order Foreclosing the Right of Redemption.

As another basis for his argument that the circuit court’s order foreclosing the right of redemption was invalid, Briggs contends that the circuit court did not have the statutory authority to enter the order pursuant to TPA § 14-839(a)(6), which says the following:

A final judgment may not be entered before the last of:

- (i) *where actual service is made on the defendant*, the passage of the time specified in the summons issued by the court;
- (ii) the actual time specified in the order of publication; or
- (iii) 33 days after the date of mailing the copy of the order of publication under paragraph (4) of this subsection.

(Emphasis added). Briggs argues, therefore, that “[b]y failing to serve Briggs with summons of the tax foreclosure proceeding when [h]is residence was known or should have been known prevents the circuit court from being able to enter a final judgment foreclosing Briggs’[s] right of redemption.” Thus, according to Briggs, subsection (a)(6) implies, necessarily, that if the defendant is never personally served, then the circuit court never

obtains authority to enter its final judgment. Put differently, Briggs argues that, pursuant to TPA § 14-839(a)(6), the circuit court’s power to enter the order foreclosing the right of redemption remained in limbo until Meridy executed personal service on Briggs.

As we have already explained, Briggs failed to meet a condition precedent to challenging the court’s order foreclosing the right of redemption. The court was not required to entertain either of Briggs’s arguments that the prior order was invalid in the absence of his proffer of payment for the amounts acknowledged to be due. Moreover, Briggs’s interpretation and asserted application of TPA § 14-839(a)(6)(i) is misguided. The effect of § 14-839(a)(6)(i), which governs how long the court must wait before it may enter a final judgment, is contingent on the circumstances of each case. Where (i) through (iii) all apply, the date that permits the defendant the longest time period to come forward dictates the length of time the circuit court must wait before entering final judgment. Subsection (a)(6)(i) does not imply, however, that “actual service” must be “made on the defendant” in every case. The phrase “where actual service is made on the defendant” is one contingency for whether the length of time included in the summons constitutes “the last of” these three circumstances. *See* TPA § 14-839(a)(6)(i). Following Briggs’s interpretation would render the phrase “*where* actual service is made on the defendant” meaningless. TPA § 14-839(a)(6)(i) (Emphasis added); *see Reier v. State Dep’t of Assess. & Tax.*, 397 Md. 2, 28 (2007) (quoting *Blake v. State*, 395 Md. 213, 224 (2006)) (“Our canons of statutory interpretation . . . forbid us to ‘construe a statute . . . so that [a] word,

clause, sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory.””).

The circuit court properly required Briggs to pay or proffer payment of the delinquent taxes and other amounts acknowledged to be due prior to challenging the validity of the previous order foreclosing his right of redemption. Even if Meridy’s failure to locate Briggs’s current address and serve him there had constituted constructive fraud, Briggs failed to meet a condition precedent to challenging the order foreclosing the right of redemption on those grounds. Accordingly, the circuit court did not err in denying Briggs’s motion to rescind its order foreclosing his right of redemption. We, therefore, affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANTS.**