RENDERED: FEBRUARY 15, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001166-MR

WILLIAM P. GRISE,
Individually and as Executor of the
Estate of MARY L. GRISE — APPELLANTS

v.

APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 10-CI-00184

FINLEY COMMERCIAL
ENTERPRISES, A KENTUCKY
PARTNERSHIP; MARY LEWIS
FINLEY GUTWEIN;
HENRY W. FINLEY, JR.;
CHARLES JOSEPH FINLEY;
COMMONWEALTH OF
KENTUCKY, SCOTT COUNTY, BY
AND ON RELATION OF JONATHAN
MILLER, SECRETARY OF THE
FINANCE CABINET; AND CITY
OF GEORGETOWN — APPELLEES

OPINION
AFFIRMING IN PART, REVERSING IN PART,
AND REMANDING

** ** ** ** **

BEFORE: DIXON, KRAMER, AND LAMBERT, JUDGES.

KRAMER, JUDGE: The above-captioned appellants (collectively, "the Grises") appeal the Scott Circuit Court's decision to dismiss a collection and foreclosure action they asserted against appellees Finley Commercial Enterprises, Mary Lewis Finley Gutwein, Henry W. Finley, Jr., and Charles Joseph Finley. Upon review, we affirm in part, reverse in part, and remand.

FACTUAL AND PROCEDURAL HISTORY

The subject of this appeal is an amount of real property taxes due in 2001 that were never paid and were subsequently reduced to a certificate of delinquency which the Grises later purchased in 2003 for $6,491.44. In relevant part, the certificate (hereinafter "Bill # 7543") stated that this amount originated from "ACCOUNT NUMBER 167890-1," and was owed based upon an assessed value of $790,000 for real property described as follows:

> SCOTLAND DR. 137
> 149 MOTEL UNITS & REST. 137 SCOTLAND
> 71-40

Bill # 7543 further described the "taxpayer" as:

> LAKEWOOD HOSPITALITY LLC
> C/O MOSES SYED
> 137 SCOTLAND DRIVE
> GEORGETOWN KY 40324

Bill # 7543 also certified that the unpaid real property taxes were "standing in the name of Lakewood Hospitality/ c/o Moses Syed."

On February 24, 2010, the Grises filed suit in Scott Circuit Court to enforce Bill # 7543. As an aside, KRS[1] 134.546(2) permits third-party purchasers of tax bills, such as the Grises, to do the following in an enforcement action:

> (a) Institute an action against the delinquent taxpayer to collect the amount of the certificate of delinquency and any other certificates of delinquency subsequently issued to the same third-party purchaser against the same delinquent, and shall have all the remedies available for the enforcement of a debt;
>
> (b) Institute an action to enforce the lien provided in KRS 134.420, represented by the certificate of delinquency and those certificates subsequently held by the same third-party purchaser against the same delinquent or property; or
>
> (c) Institute one (1) action including both types of actions mentioned in paragraphs (a) and (b) of this subsection, and the joinder of actions shall not be defeated if the delinquent taxpayer has disposed of any property covered by the lien, but the purchaser of the property shall be made a defendant if the judgment is to affect his or her interest in the property, and as between them the delinquent taxpayer shall be responsible.

In their suit, the Grises ostensibly chose option "(c)." That is, they sought to enforce the lien associated with their certificate of delinquency and hold the "delinquent taxpayer" personally liable for the outstanding tax debt. However, the "delinquent taxpayer" they named was *not*, as Bill # 7543 indicated, "Lakewood Hospitality LLC c/o Moses Syed" (hereinafter "Lakewood"). Instead,

[1] Kentucky Revised Statute.

the Grises insisted the truly responsible individuals – the individuals Bill # 7543 should have named – were Finley Commercial Enterprises, Mary Lewis Finley Gutwein, Henry W. Finley, Jr., and Charles Joseph Finley (collectively, "the Finleys"). As to why, the Grises asserted in their complaint that "[t]he taxpayer liable for ad valorem property tax is the owner." They further explained that after purchasing Bill # 7543, and then conducting a title search, they had discovered the deed associated with "137 Scotland Drive, Georgetown Kentucky 40324" named the Finleys as the fee owners of the property.

The Finleys thereafter filed an answer. In it, they admitted they were in fact the owners of "the property known as 137 Scotland Dr., Georgetown, Kentucky." But, they denied personal liability for the outstanding 2001 property taxes because the taxes had not been assessed against them. Rather, the taxes were assessed against Lakewood, an entity that had been their former tenant, which had declared bankruptcy in 2003.

The Finleys also denied they were personally liable or that the Grises had any right of foreclosure in this matter. They believed "the property known as 137 Scotland Dr., Georgetown, Kentucky" was not the "real property" specified in Bill # 7543. In relevant part, they explained:

> The Certificate of Delinquency which is the subject of this action was assessed against the leasehold interest of Lakewood Hospitality, LLC as the owner of 149 motel units and restaurant situated at 137 Scotland Drive in

> Georgetown, Scott County, Kentucky. The Certificate of Delinquency is not against the real estate (land) at 137 Scotland Drive which is owned by these Defendants. A separate tax bill was issued by the Scott County Property Valuation Administrator against the real estate (land) owned by these Defendants. Accordingly, these Defendants are not liable for the ad valorem property taxes assessed against the leasehold interest of Lakewood, to-wit, 149 motel units and restaurant located (at the time of the assessment) at 137 Scotland Drive.
>
> . . .
>
> These Defendants affirmatively state that the property which is the subject of the Certificate of Delinquency mentioned in this action consisted of 149 motel units and a restaurant building, all of which were improvements separately taxed by the Scott County Property Valuation Administrator in the name of Lakewood Hospitality, LLC and which improvements were the subject of a demolition order issued by the City of Georgetown, Kentucky. Accordingly, the tax assessment against said improvements was removed from the tax rolls and exonerated at the time of demolishment.

In short, the Finleys were aware at all relevant times that real property taxes attributable to 137 Scotland Drive were being assessed in the name of Lakewood. But, they contended "the property known as 137 Scotland Dr., Georgetown, Kentucky," consisted of not one, but two separate items of real property: (1) the land itself; and (2) the improvements thereon. Based upon that, the Finleys contended the Grises lacked any right of recovery against them or their property, and for two separate reasons. First, *their* real property was, in their view, only the *land*; and Bill # 7543 solely applied to *Lakewood's* real property (*i.e.*, the

improvements, which Lakewood "owned" pursuant to the terms of a lease). Second, when the improvements were ultimately condemned and bulldozed in 2004, the Finleys believed the "real property" consisting solely of the improvements – along with the Grises' lien for unpaid 2001 real property taxes associated solely with those improvements – *disappeared*.

As discovery progressed, the Finleys then produced various documents which they believed supported their position. Among these documents were:

(1) An August 31, 1972 lease agreement between the Finleys' predecessors-in-title and "O. & S. Motel Corporation," relating to part of the acreage set forth in the Finleys' deed – undisputedly the land where the hotel and restaurant described in Bill # 7543 were formerly located. Among other provisions, it specified that the improvements constructed on the leased premises by the lessee were to "remain the personal property" of the lessee. It also specified the lessee was obligated to "pay all ad valorem taxes, and special assessments levied against the leased premises and improvements thereon" during the ninety-nine-year term of the lease;

(2) An assignment of the August 31, 1972 lease agreement, specifying that the Finleys had assumed the rights and duties of the lessor, and that Lakewood had assumed the rights and duties of the lessee;

(3) Unauthenticated printouts of what the Finleys represented were records from the Scott Count Property Valuation Administrator (PVA), which suggested that the "account number" listed on Bill # 7543 (*i.e.*, "167890-1") was for "149 MOTEL UNITS & REST. 137 SCOTLAND DR U/C[2] IMPROVEMENTS ONLY," and that a *separate* account number (*i.e.*, "93490-07") had been assigned for "6 AC PARIS RD LAND UNDER VILLAGER LODGE U/C LEASED TO LAKEWOOD HOSPITALITY DBA VILLAGER;" and

(4) A bill for $1,421.70 in real property taxes due in 2001 (hereinafter "Bill # 4278"), which stated this amount originated from "ACCOUNT NUMBER 93490-07," and was owed based upon an assessed value of $210,000 for real property described as follows:

> SCOTLAND DR 137
> 6 AC PARIS RD LAND UNDER V
> 71-40

Moreover, Bill # 4278 was addressed to "FINLEY COMMERCIAL ENTERPRISES LESSOR C/O LAKEWOOD HOSPITALITY LLC LESSEE."

Ultimately, the parties filed cross-motions for summary judgment based upon their respective arguments set forth above. Upon consideration, the circuit court entered summary judgment in the Finleys' favor. Consistently with

[2] "U/C" appears to be shorthand for "user comments."

the Finleys' arguments, the circuit court held that the Finleys could not be held personally liable because Bill # 7543 provided that the liable party was Lakewood and that any lien associated with Bill # 7543 had only attached to real property that the Finleys had never owned and had in any event disappeared. This appeal followed.

STANDARD OF REVIEW

When reviewing a summary judgment, we must consider whether the circuit court correctly determined that there were no genuine issues of material fact and that the moving party was entitled to judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779 (Ky. App. 1996). Because summary judgment involves only questions of law and not the resolution of disputed material facts, an appellate court does not defer to the circuit court's decision. *Goldsmith v. Allied Bldg. Components, Inc.*, 833 S.W.2d 378 (Ky. 1992). Likewise, we review the circuit court's interpretations of law *de novo*. *Cumberland Valley Contrs., Inc. v. Bell Cty. Coal Corp.*, 238 S.W.3d 644, 647 (Ky. 2007).

ANALYSIS

On appeal, the Grises argue the circuit court erred by determining the Finleys were not personally liable for Bill # 7543. The Grises also argue the circuit court erred by determining the Finleys' property is not subject to a tax lien associated with Bill # 7543. We will address each of their arguments in turn.

1. THE GRISES' ACTION "AGAINST THE DELINQUENT TAXPAYER," PURSUANT TO KRS 134.546(2)(a).

With respect to the first of the Grises' contentions, we disagree. Their argument regarding the Finleys' personal liability is based upon a version of KRS 132.220(1)(b)3 that was enacted in 2012, roughly a decade after the 2001 property taxes at issue in this matter were assessed and the Grises purchased Bill # 7543. It provides:

> The holder of legal title, the holder of equitable title, and the claimant or bailee in possession of the property on the assessment date as provided by law shall be liable for the taxes thereon, and the property *may* be assessed in any of their names. But, as between them, the holder of the equitable title shall pay the taxes thereon, whether or not the property is in his or her possession at the time of payment.

(Emphasis added.)

The Grises' argument is that the Finleys should have qualified as "the holder of equitable title" of 137 Scotland Drive when the property was assessed in 2001; therefore, the Finleys were automatically and personally liable for payment of the taxes and shared joint and several liability for doing so with any "holder of legal title" or "claimant or bailee in possession" also associated with the property.

The language set forth in what is now KRS 132.220(1)(b)3 (or substantially similar language) has appeared in other statutory provisions over the

years and applies to this case.[3] However, in and of itself, it does not deal with personal liability. Rather, it concerns the taxing authority's power to choose who will be charged with property taxes, and it outlines any subrogation rights the person charged with the taxes might have against other individuals who also could have been chosen. This was how roughly identical language was interpreted in *Commonwealth ex rel. Martin v. Stone*, 279 Ky. 243, 130 S.W.2d 750 (1939). There, Kentucky's highest Court reviewed Section 4023 of the Kentucky Statutes, which similarly provided in relevant part:

> The holder of the legal title, and the holder of the equitable title, and the claimant or bailee in possession of the property on the first day of July of the year the assessment is made, shall be liable for taxes thereon; but, as between themselves it shall be the duty of the holder of the equitable title to list the property and pay the taxes thereon, whether the property be in possession or not at the time of the payment.

Interpreting this language, the Court explained:

> It is our view that the statute (section 4023) has reference to liability for the taxes as between the class of persons mentioned therein, namely, the holder of the legal title, the equitable title and claimant or bailee in possession of the property when the assessment is made, and as

[3] For example, this language substantially appeared in KRS 134.060(1). Prior to the repeal of that statute in 2010, it provided:

> The holder of the legal title, the holder of the equitable title, and the claimant or bailee in possession of the property on the assessment date provided by law shall be liable for taxes thereon; but, as between themselves, the holder of the equitable title shall list the property and pay the taxes thereon, whether the property is in possession or not at the time of the payment.

> between vendor and purchaser; but does not undertake to hold any of the holders of such titles mentioned personally responsible to the taxing authorities to the extent of subjecting them to a personal judgment as though the tax were a debt.

Id. at 752. The Court further explained Section 4023 was:

> [I]ntended to fix the liability for the tax as between the persons prima facie liable therefor and from any of whom the state may have exacted its payment and fixes the ultimate liability as between the persons liable and give a right of action against such one in favor of the other who pays.

Id.

With that said, to the extent that the Grises wished to hold any party personally liable for the 2001 property taxes represented in Bill # 7543, KRS 134.546(2)(a) required them to file their action "against the delinquent taxpayer[.]" When the real property taxes represented in Bill # 7543 were assessed and the Grises purchased Bill # 7543, the word "taxpayer" was defined to mean "any person made liable by law to file a return or pay a tax."[4] In that vein, and for

[4] This was the definition of "taxpayer" applicable to both KRS Chapters 132 (applicable to property tax assessments) and 134 (applicable to certificates of delinquency) when the 2001 property taxes were assessed, when the certificate of delinquency was issued, and when the Grises purchased their certificate of delinquency. At the time, this definition was set forth in KRS 132.010(2) and KRS 134.010(5). Since April 23, 2012, the current definition of "taxpayer" relative to KRS Chapter 134 has been set forth in KRS 134.010(14), which provides: "'Taxpayer' means the owner of property on the assessment date, or any person otherwise made liable by law for ad valorem taxes attributable to that assessment date." When the Grises filed their suit on February 24, 2010, KRS 134.010(12) defined "taxpayer" to mean "the owner of property on the assessment date[.]"

purposes of property tax assessments, KRS 132.220 has at all relevant times provided *how* any person may be *made* personally liable by law to pay property taxes: "All persons *in whose name property is properly assessed* shall remain bound for the tax, notwithstanding they may have sold or parted with it."[5] (Emphasis added.)

To be sure, KRS 132.220 provides that the "owner" of the property *should* be the one in whose name property is assessed. But, someone other than the "owner" *can* be assessed. KRS 132.220(4) has at all relevant times provided:

> Real property shall be assessed in the name of the owner, if ascertainable by the property valuation administrator, otherwise in the name of the occupant, if ascertainable, and otherwise to "unknown owner." The undivided real estate of any deceased person may be assessed to the heirs or devisees of the person without designating them by name.

If a taxpayer who is someone other than the "owner" of the property is assessed, that taxpayer is nevertheless made liable to pay the tax until the assessment is not in their name. Illustrating this point is KRS 133.130, titled "Claims that property erroneously assessed against person other than owner – Submission of evidence – Protest to Department." In relevant part, it provides:

> (1) Any person claiming to be erroneously charged with any tax upon property not owned by the person may,

[5] When the 2001 property taxes represented in Bill # 7543 were assessed, and when the Grises later purchased Bill # 7543, this language appeared in KRS 132.220(1). Currently, it appears in KRS 132.220(1)(b)4.

> after the person has received notice of the same by demand made upon the person to pay the tax, offer evidence in support of the complaint to the property valuation administrator of the county in which the assessment was made. If the property valuation administrator finds that the person was not the owner of the property assessed, the property valuation administrator or the department may correct the same by *releasing him from the payment of the tax*, and shall *assess the property immediately against the rightful owner*.
>
> (2) A protest may be made to the department under the provisions of KRS 131.110 from any action of the property valuation administrator or the department made under this section or under KRS 133.110.

(Emphasis added.)

In sum: Unless a successful protest is made, the individual personally liable for the payment of the tax is the individual named in the assessment.

Here, Lakewood, not the Finleys, was the entity in whose name the property was assessed. The Scott County Property Valuation Administrator had authority to make the assessment in Lakewood's name because, as the Grises concede, Lakewood (as the lessee of 137 Scotland Dr., Georgetown, Kentucky) at least qualified as an "occupant" of the property in 2001. *See* KRS 132.220(4). With respect to whether Lakewood was *properly* assessed, certificates of delinquency (*e.g.*, Bill # 7543) are prima facie evidence in that regard. *See* KRS

134.122(2)(e).[6] Moreover, Kentucky grants property tax assessments a presumption of validity, placing the burden of establishing that the assessment is incorrect on the taxpayer. *Revenue Cabinet v. Gillig*, 957 S.W.2d 206, 210 (Ky. 1997). Lakewood never protested the assessment. Furthermore, Bill # 7543 has never been declared void. *See generally* KRS 134.551. Accordingly, the presumption is that the assessment in the name of Lakewood was proper.

Indeed, it is unclear how the Grises could argue the assessment in Lakewood's name was *improper*. For purposes of this litigation, they "stand in the shoes" of the very authority that imposed the taxes. *See Flag Drilling Co., Inc. v. Erco, Inc.*, 156 S.W.3d 762, 767 (Ky. App. 2005) (explaining purchasers of delinquency certificates "stand in the shoes of the state, county, city, or taxing district in whose name the lien has been imposed."). Thus, inasmuch as the circuit court found that the Finleys were not personally liable for Bill # 7543, we find no error.

[6] KRS 134.122(2)(e) provides in relevant part that a certificate of delinquency is "prima facie evidence" that:

> 1. The property represented by the certificate of delinquency or personal property certificate of delinquency was subject to the taxes levied thereon, and that the property was assessed as required by law;
> 2. The tax claim was valid and correct in all respects; and
> 3. The taxes were not paid any time before the establishment of the certificate of delinquency[.]

2. THE GRISES' ACTION, PURSUANT TO KRS 134.546(2)(b), "TO ENFORCE THE LIEN PROVIDED IN KRS 134.420" AGAINST THE FINLEYS' PROPERTY.

We reach a different result with respect to the circuit court's determination that the Grises lacked any right of foreclosure associated with Bill # 7543. The lynchpin of the circuit court's determination was that for purposes of property taxation, land is severable from any improvements situated upon it. From that, the circuit court reasoned: (1) any tax lien the Grises could have enforced in connection with Bill # 7543 was connected to real property the Finleys never owned (*i.e.*, the *improvements* situated upon 137 Scotland Drive); and (2) the improvements situated upon 137 Scotland Drive had *disappeared*, along with any tax lien the Grises could have enforced against them, when the hotel and restaurant described on Bill # 7543 were bulldozed.

We begin with the circuit court's conclusion that for purposes of real property taxation, land is severable from any improvements situated upon it. The circuit court cited no legal authority in support of this proposition; and the Finleys, for their part, spend much of their appellate brief pointing out that there are some situations where, for real property taxation purposes, certain interests can be severed and taxed separately, and any lien resulting from the taxation of those interests may or may not encumber the land. The Finleys note that these situations

involve leases from tax-exempt entities to private entities (*see* KRS 132.195),[7] severed mineral interests (*see* KRS 132.820), and certain leases involving real property situated in cities of the first class (*see* KRS 91.310(3), providing "[i]mprovements owned by a tenant may be assessed in his name apart from the

[7] The Finleys also suggest another such instance involves a situation where any fee owner leases out property for ninety-nine years. And, they point out that their lease with Lakewood was for a ninety-nine-year term. However, the authority the Finleys cite in favor of that proposition undermines it. Specifically, the Finleys cite *Fayette County Board of Supervisors v. O'Rear*, 275 S.W.2d 577 (Ky. 1954), which explained in relevant part that Kentucky has only recognized ninety-nine-year leases as separately taxable estates when the lessor is tax exempt:

> An examination of previous decisions of this Court discloses that we have held a leasehold interest to constitute a separate taxable estate only in two classes of cases. *One class involved 99-year leases by cities or charitable or religious organizations,* where the leasehold interest for all practical purposes was the equivalent of a fee, and where the nominal fee interest retained by the lessor was exempt from taxation under the Constitution by reason of the public, charitable or religious character of the owner. *See Purcell v. City of Lexington,* 186 Ky. 381, 216 S.W. 599; *Illinois Central Ry. Co. v. City of Louisville,* 249 Ky. 219, 60 S.W.2d 603. The other class involved oil or gas leases, where in actuality there was a sale of the minerals, the removal of which would deplete the original value of the real estate. *See Wolfe County v. Beckett,* 127 Ky. 252, 105 S.W. 447, 17 L.R.A., N.S., 688; *Raydure v. Estill County Bd. of Supervisors,* 183 Ky. 84, 209 S.W. 19.
>
> Practical administration of ad valorem tax laws requires that in ordinary circumstances one person be held responsible for the tax liability of each item of property, and we think legislative recognition of this fact may be found in KRS 132.220(3), which we interpret as meaning that real property interests are not only to be listed by, but also assessed in the name of, the owner of the first freehold estate. In extremely unusual circumstances, such as in the case of 99-year leases and oil or gas leases, justification has been found for treating the leasehold as a separate taxable estate. However, the theory in those cases has been that the leasehold actually had more of the aspects of complete beneficial ownership than of a mere right of use and occupancy.

Id. at 578-79 (emphasis added).

land."). However, this is not one of those instances: The Finleys are not tax-exempt; this matter does not involve a severed mineral interest; nor is Georgetown, Kentucky – where 137 Scotland Drive is situated – a city of the first class.

The Finleys also assert there is another reason why the land underlying 137 Scotland Drive should not be considered encumbered with any tax liens that relate to the improvements formerly situated on that property, and their reason cites the terms of their lease with Lakewood. The Finleys note that under the terms of the lease, it was agreed that the improvements constituted Lakewood's "personal property."

To state the obvious, however, Bill # 7543 originated from an amount of unpaid *real* property taxes. For purposes of ownership, lessors and lessees are typically free to agree *between themselves* whether an improvement to real property qualifies as part of the real property or as a trade fixture (*i.e.*, the lessee's personal property).[8] But for purposes of taxation, and under the circumstances of this case, the land of a non-tax-exempt lessor cannot avoid ultimate liability for any portion of ad valorem taxes attributable to improvements made by a lessee. *See Kentucky Tax Comm'n. v. Jefferson Motel, Inc.*, 387 S.W.2d 293, 295-96 (Ky.

[8] *See, e.g., Am. Rolling Mill Co. v. Carol Min. Co.*, 282 Ky. 641, 37 S.W.2d 725, 727 (1940) (explaining, for purposes of determining ownership of improvements erected by a tenant, the key criterion of whether the improvement became part of the real property or remained the property of the tenant is the intent of the parties).

1965) (explaining "improvements, which regardless of who made them are nevertheless part of the real estate[,]" and that "[w]hen the lessor is not tax-exempt he bears the incidence of ad valorem taxes on the entire value of the property as a whole[.]").

With the above in mind, even if Bill # 7543 does relate only to a real property tax assessment for improvements,[9] the lien associated with it attached to both the improvements on, and land underlying, 137 Scotland Drive. To explain, we begin with the general rule: For purposes of real property taxation, land and improvements are ordinarily considered a singular unit of taxation. "Real property" is a statutorily defined taxable unit consisting of two elements: (1) specifically identified *land*; and (2) any *improvements* situated upon the land. *See* KRS 132.010(3) ("'Real Property' includes all lands within this state and improvements thereon[.]"). Real property is also taxed annually, and in an amount that can vary annually depending upon its "fair cash value"[10] as assessed each year

[9] Because Bill # 7543 was undisputedly an assessment of real property taxes and the validity of Bill # 7543 has never been questioned in this matter, it is unnecessary for this Court to express any opinion regarding whether Bill # 7543 demonstrates that the Scott County Property Valuation Administrator actually did apportion the total amount of 2001 real property taxes that were due and payable relative to 137 Scotland Drive (*i.e.*, by assessing Lakewood for the improvements only). Nor do we express any opinion regarding the propriety of such an apportionment.

[10] *See* KRS 132.190(3).

by a property valuation administrator.[11] In other words, the total amount of real property taxes due for a given year on a unit of real property is generally based upon the combination of: (1) the fair cash value of the land on that given year; and (2) the fair cash value of the improvements situated upon the land on that given year.

If the specific amount of real property taxes due on a given year goes unpaid, ultimately becoming a certificate of delinquency, then "[t]he state and each county, city, or other taxing district shall have a lien on the property assessed for taxes due them respectively for eleven (11) years following the date when the taxes become delinquent." KRS 134.420(1). Thus, where "the property assessed" is real property, a lien attaches to the *real property*, not simply the land *or* the improvements. The lien, in turn, secures a specific amount of unpaid real property taxes – real property taxes that were based upon the assessed value of the real property on a specific tax year.[12]

---

[11] *See* KRS 132.690(1).

[12] As to the full extent of what this lien encompasses, KRS 134.420(3) provides:

> The lien shall include all interest, penalties, fees, commissions, charges, costs, attorney fees, and other expenses as provided by this chapter that have been incurred by reason of delinquency in payment of the tax claim certificate of delinquency, personal property certificate of delinquency, or in the process of collecting any of them, and shall have priority over any other obligation or liability for which the property is liable.

Certainly, real property can be worth less in later tax years. For instance, real property can be worth less and subsequently assessed at a lower value if the improvements situated upon the land are destroyed. However, one cannot destroy a tax lien that has already attached to real property by subsequently destroying the improvements on real property. This is because real property does not *disappear*,[13] and *ad valorem* tax liens cannot be defeated by "any means except by sale to a bona fide purchaser[.]" *See* KRS 134.420(2). Accordingly, the lien associated with Bill # 7543 still exists on the real property at issue in this matter – even if there are no improvements on the real property, it remains attached to the land.

CONCLUSION

In short, to the extent the Scott Circuit Court determined the Finleys are not personally liable for Bill # 7543, we AFFIRM. To the extent it determined the Finleys' real property is not subject to the Grises' action to enforce the lien associated with Bill # 7543, we REVERSE and REMAND for further proceedings not inconsistent with this opinion.

ALL CONCUR.

[13] "Real property does not inexplicably disappear but must be sold, given away, or taken." *Goldsmith v. Bennett-Goldsmith*, 227 S.W.3d 459, 462 (Ky. App. 2007).

BRIEFS FOR APPELLANTS:

Whitney Dunlap III
Versailles, Kentucky

BRIEF FOR THE FINLEY APPELLEES:

Carolyn Carroway
R. Bruce Lankford
Georgetown, Kentucky