

STATE OF MICHIGAN
COURT OF APPEALS

EARL D. SMITH and SUZANNE C. SMITH,

Plaintiffs-Appellees,

v

CLIFFS ON THE BAY CONDOMINIUM
ASSOCIATION,

Defendant-Appellant.

FOR PUBLICATION
March 13, 2001
9:05 a.m.

No. 199498
Washtenaw Circuit Court
LC No. 96-006784-CH

ON REMAND
Updated Copy
April 27, 2001

Before: Saad, P.J., and Holbrook, Jr., and O'Connell, JJ.

O'CONNELL, J.

We review this case on remand from our Supreme Court, which, in lieu of granting leave to appeal, reversed our earlier opinion in this matter and remanded the matter to us for consideration of claims raised by the defendant but not discussed in our prior opinion. The Supreme Court held that while defendant did not receive actual notice of a tax sale with respect to a parcel of its land, notice mailed to defendant's last known (but outdated) address complied with the minimum requirements of procedural due process. *Smith v Cliffs on the Bay Condominium Ass'n*, 463 Mich 420, 427-431; 617 NW2d 536 (2000). The facts of this case were amply set forth in this Court's earlier opinion, *Smith v Cliffs on the Bay Condominium Ass'n*, 226 Mich App 245; 573 NW2d 296 (1997), as well as that of the Supreme Court, and we do not reiterate them here. We affirm.

Defendant asserts that an erroneous description of the property contained in the notice of hearing, even if it had actually reached defendant, would not have provided defendant with legal notice because defendant had no interest in the property described in the notice. Defendant cites the Department of Treasury's subsequent correction of the error, in an affidavit recorded with the register of deeds, as proof of the seriousness of the mistake.

Pursuant to MCL 211.61a; MSA 7.106, defendant was entitled to notice that a parcel of its land was to be the subject of an annual tax sale, as well as a description of the land at issue. As our Supreme Court noted in *Thompson v Auditor General*, 261 Mich 624, 652; 247 NW 360 (1933):

Such foreclosure is a proceeding *in rem*, against the land itself,—and it is the holding of the courts of this country that valid notice which must describe with reasonable certainty the lands to be sold, must be given before sale, and that any statute which provides for the sale of lands for delinquent taxes which fails to provide for description of the particular lands to be sold is repugnant to the Constitution, because it may deprive the owner of his property without due process of law.

In the present case, the notice of hearing included a thorough, detailed description of the property in question, and the only error was the designation of "Section 4," instead of "Section 14." Despite this typographical error, the challenged notice, in the hands of an interested party of ordinary intelligence, would have served to identify the property at issue with reasonable certainty. Therefore, while the inadvertent omission of one of the digits in the number 14 was a defect, it was not fatal. See *Jackson v Mason*, 143 Mich 355, 357; 106 NW 1112 (1906) (description with omission of decimal point nevertheless valid). See also *Mann v Carson*, 120 Mich 631, 636; 79 NW 941 (1899).

Defendant also argues that the trial court erred in applying the doctrine of laches. According to defendant, the application of laches here required factual findings, precluding summary disposition. As an initial matter, we note that the trial court only hinted at the doctrine of laches, remarking that "after this very, very late date suddenly now someone wants to come in and claim that they have the right to redeem." Assuming that the trial court did apply laches, which is doubtful, we need not determine whether its ruling was in error. Our Supreme Court rejected the merits of defendant's due process argument, and we do so today with respect to the property description issue. Therefore, because defendant's claims of error are without merit, if the trial court improperly applied the doctrine of laches, any error was harmless.

Affirmed.

/s/ Peter D. O'Connell
/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.