

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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IMMOBOLIARE, INC.,

Plaintiff-Appellee,

v

CITY OF DETROIT, DEPARTMENT OF  
TREASURY and DEPARTMENT OF NATURAL  
RESOURCES,

Defendants-Appellants.

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UNPUBLISHED

April 7, 2000

No. 209966

Wayne Circuit Court

LC No. 97-712344-CH

Before: Smolenski, P.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order granting summary disposition for plaintiff and denying summary disposition for defendants in this action to quiet title to real property conveyed as a result of a tax sale. We reverse.

Facts

Plaintiff is a holding company engaged in the business of purchasing real property tax certificates. Peter Adamo is plaintiff's registered agent. Adamo is an experienced investor in real estate, who owns one-hundred percent of plaintiff corporation's stock and serves as the plaintiff's only officer and director.

In 1992, Adamo purchased the tax certificate for real property located at 600 Woodward, Detroit. In early 1993, plaintiff purchased the 600 Woodward property on land contract from Conwood Properties, LP. Thereafter, an affidavit indicating plaintiff's interest in that property was filed with the Wayne County Register of Deeds. The affidavit listed 381 Kerby, Grosse Pointe Farms as the address of plaintiff corporation. A taxpayer change of address form filed by Adamo with the City of Detroit Finance Department on January 13, 1993, also listed 381 Kerby as Adamo's address. According to Adamo, he resided at 381 Kerby from August 1991 to September 1993, before moving to his parents' residence at 40614 Woodside, Mt. Clemens. On March 23, 1994, plaintiff corporation

filed a change of address form with the Michigan Department of Commerce (MDC), listing the corporation's mailing address as 40816 Woodside, Mt. Clemens.<sup>1</sup>

The 1990 and 1991 Wayne County taxes on the 600 Woodward property were not paid. It is also undisputed that Adamo never paid Detroit City taxes on the property. Consequently, the property was offered for sale at the 1994 annual tax sale in Wayne County Circuit Court. See MCL 211.60; MSA 7.104. Due to the lack of private bidders, the property was bid to the State of Michigan. See MCL 211.67a; MSA 7.112(1). On May 2, 1995, the deed to the property was transferred to the State of Michigan Department of Natural Resources.

On March 11, 1996, defendant Department of Treasury sent notice to interested owners of the 600 Woodward property of their right to redeem the property on or before April 17, 1996, pursuant to MCL 211.131e(1); MSA 7.190(3)(1). Specifically, notice was sent by registered mail to Immoboliare, Inc. at 381 Kerby, Grosse Pointe Farms under defendant Department of Treasury's belief that Adamo, plaintiff's registered agent, resided there. Notice was also sent to a representative of Conwood Properties. The notice addressed to plaintiff was returned by the post office, marked, "Moved, Left No Address" and "Attempted, Not Known." No redemption was made on the 600 Woodward property on or before the specified date. At some point after the tax sale, plaintiff paid Conwood Properties the balance owed on the land contract for the 600 Woodward property. Adamo claims plaintiff did so only after a representative of the Michigan Department of Treasury informed him that plaintiff would be able to redeem the property. On November 7, 1996, the 600 Woodward property was quitclaimed to defendant City of Detroit by public use deed. See MCL 324.2101; MSA 13A.2101.

On November 18, 1996, defendant Department of Treasury again sent notice pursuant to § 131e by registered mail to 4909 Algonquin, Clarkston, where it is undisputed Adamo resided at the time, and to Adamo at 1420 Woodward, Detroit, where it is undisputed plaintiff conducted its business at the time. Those notices provided that interested owners of the 600 Woodward property had until January 2, 1997, to redeem the property. The notice sent to 4909 Algonquin was returned by the post office, marked, "Unclaimed." It is undisputed that Adamo's partner, Julius Nemeth, signed for the notice sent to 1420 Woodward. According to Adamo, he did not learn of such notice until "long after" the redemption period expired. No redemption was made on or before the specified date.

Plaintiff filed the present action to quiet title to the 600 Woodward property, claiming defendant Department of Treasury knew plaintiff had not received notice of any redemption hearing and should have taken steps to determine plaintiff's correct address, including verifying plaintiff's address with the MDC. Plaintiff alleged that, because it was never properly notified of any hearing, its right to redeem the property had not expired. Defendants brought a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that title should be quieted with defendant City of Detroit because sufficient notice of the redemption hearings had been given and plaintiff took no steps to redeem. Plaintiff filed a cross-motion for summary disposition, again challenging the sufficiency of the notice. The trial court granted summary disposition for plaintiff and denied defendants summary disposition. On appeal, defendants argue that the trial court erred in ruling plaintiff was not given sufficient notice of its right to challenge the state's claim to the subject property and its right of redemption.

### Standard of Review

We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Id.*; *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). A court must consider the affidavits, pleadings, depositions, admissions or any other documentary evidence submitted in a light most favorable to the nonmoving party in deciding whether a genuine issue of material fact exists. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); *Rollert v Dep't of Civil Service*, 228 Mich App 534, 536; 579 NW2d 118 (1998). "If it appears . . . that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment for the opposing party." MCR 2.116(I)(2); *Marx v Dep't of Commerce*, 220 Mich App 66, 70; 558 NW2d 460 (1996).

### Analysis

Defendants argue on appeal that defendant Department of Treasury provided plaintiff sufficient notice to satisfy due process and the notice requirement of MCL 211.131e(1); MSA 7.190(3)(1). We agree. "Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *Traxler v Ford Motor Co*, 227 Mich App 276, 288; 576 NW2d 398 (1998), citing *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). Specifically, in regard to the state's taking of property for nonpayment of taxes, the Due Process Clause, US Const, Am XIV; Const 1963, art 1, § 17, requires that an owner of a significant interest in property be given "proper notice" and the opportunity to challenge the state's claim to the property. *Dow v State of Michigan*, 396 Mich 192, 196; 240 NW2d 450 (1976); *Ottaco, Inc v Kalport Development Co, Inc*, \_\_ Mich App \_\_; \_\_ NW2d \_\_ (Docket No. 209243, issued 12/10/99), slip op p 4. MCL 211.131e(1); MSA 7.190(3)(1) generally references the notice that must be given to land owners whose property has been acquired by the state through tax sale, providing:

The redemption period on property deeded to the state under section 67a shall be extended until the owners of a recorded property interest in the property have been notified of a hearing before the department of treasury. Proof of the notice of the hearing shall be recorded with the register of deeds in the county in which the property is located. [Footnote omitted.]

Strict compliance with statutory tax sale notice provisions is required. *Brandon Twp v Tomkow*, 211 Mich App 275, 284; 535 NW2d 268 (1995); *Stein v Hemminger*, 165 Mich App 678, 682; 419 NW2d 50 (1988); *Richard v Ryno*, 158 Mich App 513, 516; 405 NW2d 184 (1987). However, neither §131e nor applicable case law requires that notice be mailed to the address a corporation registers with the MDC or any other agency. Instead, it has been generally established that notice of the hearing sent by mail is adequate if it is "reasonably calculated, under all the circumstances" to apprise interested parties of their opportunity to challenge the state's claim to the property. *Ottaco, supra* at slip op p 4, quoting *Dow, supra* at 206-207.

Here, defendant Department of Treasury's conduct of sending notice by certified mail to plaintiff's registered agent's home address and to plaintiff's place of business provided plaintiff sufficient notice of its right to contest the state's claim to the subject property and to assert its right of redemption. Such mailings were sufficient under *Dow* as they were sent to addresses "reasonably calculated to reach the person entitled to notice." *Dow, supra* at 211. This is not a case in which defendants were informed that the notices sent ultimately were not delivered. Cf. *Smith v Cliffs Bay Condo Ass'n*, 226 Mich App 245; 573 NW2d 296 (1997).<sup>2</sup> To the contrary, it is undisputed that Nemeth signed for the certified mailing sent to the address where plaintiff conducts its business. Consequently, defendants were justified in not taking further action to acquire plaintiff's address from the MDC or otherwise determine another address where plaintiff may accept mail. Cf. *Id.* at 248.<sup>3</sup>

Although it cannot be said as a matter of law that the notices sent by defendant Department of Treasury provided plaintiff actual notice of the tax sale proceedings,<sup>4</sup> strict compliance with § 131e does not require that the interested owners be provided actual notice of the proceedings. Indeed, the Michigan Supreme Court made clear in *Dow*, "[i]f the state exerts reasonable efforts, then failure to effectuate actual notice would not preclude foreclosure of the statutory lien and indefeasible vesting of title on expiration of the redemption period." *Dow, supra* at 211. Here, the notices sent by defendant Department of Treasury were reasonably calculated to apprise plaintiff of its opportunity to challenge the state's claim to the subject property. Accordingly, the trial court erred in granting summary disposition for plaintiff and in denying defendants' motion for summary disposition.

Reversed and remanded for entry of summary disposition in favor of defendants. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ William C. Whitbeck

/s/ Brian K. Zahra

<sup>1</sup> Adamo testified with certainty at deposition that his parents' address is 40614 Woodside and explained that his listing of 40816 Woodside with the MDC was "a mental block, possibly." Adamo has no knowledge of the exact location of 40816 Woodside or who resides at that address.

<sup>2</sup> Judgment vacated 459 Mich 925 (1998) and order vacating judgment vacated on reconsideration and remanded 460 Mich 866 (1999).

<sup>3</sup> Even if notice was sent to the address on file with the MDC, it is not clear that such notice would have reached plaintiff because Adamo had provided the MDC with an incorrect address.

<sup>4</sup> We note that Adamo's acknowledgment that plaintiff paid the balance of the land contract for the 600 Woodward property after allegedly being assured by the Department of Treasury that plaintiff could redeem the property is compelling evidence that plaintiff had actual notice of the tax proceedings on the property. However, we recognize that strict compliance with the tax sale notice provisions is required regardless of an interested party's actual notice of tax proceedings. *Brandon Twp, supra* at 284; *Stein, supra* at 682; *Richard, supra* at 516. Thus, dispositive of this case is whether it can be said that

the notice sent by defendant Department of Treasury strictly complied with § 131e as a matter of law, not whether plaintiff had actual notice of the proceedings.