In the Missouri Court of Appeals
Eastern District

DIVISION ONE

ECLIPSE PROPERTY DEVELOPMENT LLC,	)	No. ED109298
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of Jefferson County
vs.	)	
	)	Honorable Troy A. Cardona
FAREED AMMARI, ET AL.,	)	
	)	
Respondents.	)	FILED: September 21, 2021

Introduction

The issues presented on appeal address the validity and priority of unpaid sewer fees charged against property owners by a statutorily-created public sewer district. Eclipse Property Development, LLC ("Eclipse") appeals from the trial court's grant of summary judgment to the Northeast Public Sewer District (the "District") ordering satisfaction of the District's lien for unpaid sewer fees on property purchased by Eclipse at a delinquent tax sale (the "Property"). Eclipse raises two points on appeal. Eclipse first challenges the trial court's judgment that it pay the sewer lien by characterizing the base user sewer fee as a tax subject to the voting approval requirements of the Hancock Amendment in the Missouri Constitution, Article X, Section 22(a). Eclipse next argues that the trial court erred because under Section 140.420[1] the District's sewer lien is inferior to the general real estate tax lien and thus did not survive foreclosure of the

[1] All Section and Chapter references are to RSMo (2016), unless otherwise indicated.

general lien release when Eclipse obtained the collector's deed from Jefferson County (the "County"). Because the base user sewer fee is charged only to properties connected to the District's sewer service line, the District's base sewer fee is not an unconstitutional tax, and is properly charged to the Property. Because Section 249.255 gives the District's sewer liens special priority and enforcement status equal to state and county tax liens, the District's unrecorded lien was not extinguished by the County tax sale. Accordingly, we affirm the trial court's judgment.

Factual and Procedural History

Our review of the summary-judgment record shows that Eclipse purchased the Property at a delinquent tax sale and obtained the collector's deed from the County in March 2018. In April 2018, Eclipse filed a petition seeking declaratory judgment to confirm the tax sale and to quiet title to the Property against various parties who either claimed to have an interest in the Property or who may possibly assert an interest in the Property. Eclipse also included a claim for ejectment in the petition. The District was not a named party to the petition.

The District is a statutorily-created public sewer district located in the County organized under Chapter 204. The District sent Eclipse a bill in January 2019 for unpaid sewer fees on the Property at a base user fee of $31.73 per month. The unpaid fees dated back to April 16, 2015, for a total of $2,343.68 in unpaid fees. The District explained that the base user fee is calculated to support and maintain the operation, administration, and infrastructure of the individual sewer lines and overall sewer system. The District charges the base fee only to properties that access the sewer service line. Not all properties within the District are connected to the sewer service line. A property owner may disconnect a property from the sewer service line. To do so, the District performs an inspection, which it provides free of charge, following which the District caps off the infrastructure connecting the property to the sewer line.

The Public Water Supply District No. 2 of the County terminated water service to the Property in March 2012. The Property has not used metered water service since that time. Correspondingly, Eclipse suggests, and there is no evidence to the contrary, that the Property has since not used sewer service. The Property was connected to the sewer service line in March 2012 and remained connected to the sewer service line throughout the period claimed for unpaid sewer fees.

After the District sent its bill for unpaid sewer fees, Eclipse amended its petition to add the District as a party-defendant. The District filed a lien against the Property for the unpaid sewer fees in the amount of $3,528.45. With regard to its declaratory-judgment claim, Eclipse noted that the District only recorded, noticed, and asserted any lien on the Property on March 15, 2019, eleven months after Eclipse filed the initial petition. The trial court granted Eclipse a default judgment and interlocutory order of default against all defendants except the District.

Eclipse then moved for partial summary judgment against the District on its claims for declaratory judgment and quiet title. The District cross-moved for summary judgment.[2] The trial court entered an order and judgment granting the District's motion for summary judgment and denying Eclipse's motion for partial summary judgment. The trial court ordered Eclipse to pay the District's lien for unpaid sewer fees for the Property in the amount of $3,528.45. Eclipse now appeals.

Jurisdiction

Before addressing the merits of this appeal, we first must determine whether we have jurisdiction. First Nat'l Bank of Dieterich v. Pointe Royale Prop. Owners' Ass'n, Inc., 515 S.W.3d 219, 221 (Mo. banc 2017) (citing Gibson v. Brewer, 952 S.W.2d 239, 244 (Mo. banc

[2] After amending its petition, Eclipse again moved for partial summary judgment, and the District again cross-moved for summary judgment.

1997)). An appeal only lies from a final judgment resolving all issues in the case. See id. (internal citation omitted). However, Rule 74.01(b)[3] authorizes a trial court to enter judgment on fewer than all claims and certify that judgment as a "final judgment" for purposes of appeal where there is no just reason for delay. Id. at 221–22. We apply the following four-factor test to determine whether Rule 74.01(b) certification for appeal is proper:

> (1) whether the action remains pending in the trial court as to all parties; (2) whether similar relief can be awarded in each separate count; (3) whether determination of the claims pending in the trial court would moot the claim being appealed; and (4) whether the factual underpinnings of all the claims are intertwined.

Mo. Land Dev. I, LLC v. Raleigh Dev., LLC, 407 S.W.3d 676, 685 (Mo. App. E.D. 2013) (internal citation omitted).

"Ordinarily, the denial of a motion for summary judgment will not be reviewed on appeal." Behrick v. Konert Farms Homeowners' Ass'n, 601 S.W.3d 567, 573 (Mo. App. E.D. 2020) (internal quotation omitted). "Where, however, the material facts are undisputed and the merits of the denied cross-motion for summary judgment are inextricably intertwined with the issues raised in the granted motion for summary judgment, the merits of the denial of the cross-motion may be reviewed on appeal." Id. (internal quotation omitted).

In the matter before us, not all of the claims pending before the trial court were resolved with the trial court's judgment. Although the judgment disposed of all claims between Eclipse and the District related to tax sale confirmation, quiet title, and declaratory judgment, there remain unadjudicated claims for breach of deed and warranties of title against the County and its tax trustee. Those claims seek contribution from the County as a third-party defendant and do not directly affect the issues on appeal and cannot moot the appeal. See Bank of Birch Tree v. Am. Mod. Home Ins. Co., 561 S.W.3d 439, 442 (Mo. App. S.D. 2018) (finding adjudication of

[3] All Rule references are to Mo. R. Civ. P. (2021), unless otherwise indicated.

third-party claims for contribution or indemnification by cross-motion for summary judgment was not a distinct judicial unit for appeal when the underlying claims remained pending).

Although Eclipse's claims against the County remain pending before the trial court, Eclipse maintains the trial court's judgment is final for purposes of appeal under Rule 74.01(b). The record is clear that the remaining claims in the trial court are not pending as to all parties but only to the County. Because similar relief cannot be awarded in each count, the remaining claims against the County would not moot this appeal. Because the factual underpinnings of Eclipse's claims against the County and the District are not inextricably intertwined, the trial court properly certified the judgment as a final judgment under Rule 74.01(b). See Mo. Land Dev. I, LLC, 407 S.W.3d at 685. Therefore, we have jurisdiction to hear the appeal. See Dietrich, 515 S.W.3d at 221 (citing Gibson, 952 S.W.2d at 244).

Points on Appeal

Eclipse raises two points on appeal. Point One asserts the trial court erred in granting summary judgment to the District, denying partial summary judgment to Eclipse, and ordering Eclipse to pay the sewer lien because the unpaid sewer fees at the base charge of $31.73 monthly are invalid in that the fee is a disguised or hidden tax subject to the voter approval requirements of the Hancock Amendment. Point Two claims the trial court erred because under Section 140.420 the District's lien is inferior to the general real estate tax lien and thus did not survive the foreclosure on the general release tax lien when Eclipse obtained the collector's deed.

Standard of Review

The standard of review on appeal regarding summary judgment is essentially de novo. York v. Horner, 564 S.W.3d 641, 644 (Mo. App. E.D. 2018) (internal citation omitted). We will uphold the trial court's ruling on summary judgment if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Id. (citing Rule

74.04(c)). "We review the record in the light most favorable to the party against whom judgment was entered, taking uncontradicted facts in support of the motion as true and according the non-movant the benefit of all reasonable inferences from the record." Id. (internal citation omitted). "We will affirm the trial court's granting of summary judgment if it is correct as a matter of law on any grounds." Behrick, 601 S.W.3d at 573 (citing Rice v. Shelter Mut. Ins. Co., 301 S.W.3d 43, 46 (Mo. banc 2009)).

Further, "[w]here an issue of statutory interpretation is preserved and presented in accord with the rules of appellate procedure, our review of that issue on appeal from summary judgment is de novo." Real Est. Recovery, LLC v. Branson Hills Facility Infrastructure Cmty. Improvement Dist., 614 S.W.3d 541, 550 (Mo. App. S.D. 2020) (citing Sofia v. Dodson, 601 S.W.3d 205, 209 (Mo. banc 2020)). Likewise, constitutional interpretation is reviewed as a matter of law. Mo. Prosecuting Att'ys v. Barton Cnty., 311 S.W.3d 737, 741 (Mo. banc 2010).

Discussion

I. Point One—The District's Base User Sewer Fee is Not a Disguised Tax Under the Hancock Amendment[4]

In construing a constitutional provision, we "use[] the same rules that apply to statutory construction, except the former are given a broader construction due to their more permanent character." MOSERS v. Salva, 504 S.W.3d 748, 751 (Mo. App. W.D. 2016) (citing Barton Cnty., 311 S.W.3d at 741). "The primary goal in interpreting a constitutional provision is to ascribe to the words of the provision the meaning that the people understood them to have when the provision was adopted." Id.

[4] Although this Court has limited jurisdiction to address issues of constitutional interpretation, because this appeal raises a question of constitutional interpretation that previously has been addressed by the Supreme Court of Missouri, we have jurisdiction. See D.E.G. v. Juv. Officer of Jackson Cnty., 601 S.W.3d 212, 216 n.2 (Mo. banc 2020) (internal quotation omitted) ("If the United States Supreme Court or Missouri Supreme Court has addressed a constitutional challenge, the claim is merely colorable and the intermediate appellate court has jurisdiction.").

Article X, Section 22(a) of the Missouri Constitution prohibits political subdivisions of the state "from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution . . . above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that . . . political subdivision voting thereon.'" Mo. Const. art. X, section 22(a); Feese v. City of Lake Ozark, Mo., 893 S.W.2d 810, 812 (Mo. banc 1995). The Hancock Amendment by its plain language "prohibits political subdivisions from levying new or increased taxes" absent voter approval. Zweig v. Metro. St. Louis Sewer Dist., 412 S.W.3d 223, 232 (Mo. banc 2013) (emphasis omitted). In contrast, the Hancock Amendment "was not intended to apply to actions that cannot fairly be characterized as a levy." Id. (citing Keller v. Marion Cnty. Ambulance Dist., 820 S.W.2d 301, 304 (Mo. banc 1991)). "In ordinary usage, a tax is levied, but a fee is charged." Id. (quoting Keller, 820 S.W.2d at 303). "Reading 'levy' in this ordinary sense—as a term related to the power of government to impose a tax—it is clear that a 'fee' can only be levied if the 'fee' is actually a tax." Id. at 232–33 (quoting Keller, 820 S.W.2d at 303). "In other words, the verbs 'levy' and 'levying' are used in section 22(a) to refer to actions that create an obligation to pay that is not contingent upon each payer's actual use of the political subdivision's service." Id. "[I]f the political subdivision ties its charge to the use of the political subdivision's service, and if it charges this fee to all who use its service, it is likely that the political subdivision is setting the price for rendering its services to individual users and voter approval under section 22(a) is not required." Id. at 236. "But if the political subdivision ties the fee to residency or ownership instead of use, the charge is not a user fee and prior voter approval is required." Id.

Keller offered several criteria to aid in determining "whether the charge is closer to being a 'true' user fee or a tax denominated as a fee." Id. at 233 (quoting Keller, 820 S.W.2d at 304 n.10). Zweig presented the five criteria in the following order: (1) whether the political subdivision is providing a service in exchange for the charge; (2) whether the charges are paid by all or almost all the residents of the political subdivision or by those who actually use the good or service for which the fee is charged; (3) whether the charge is paid only on or after provision of a good or service; (4) whether the charge is more or less dependent on the level of goods or service provided to the fee payer; and (5) whether the service is historically and exclusively governmental. Id. at 234–40 (citing Keller, 820 S.W.2d at 304 n.10). No single criterion is determinative, and the criteria are not a set checklist but rather an aid in determining the fee's categorization. See id. at 233–34.

In Feese, the property owner argued that the city's imposition of a sewer service charge against property not connected to the sewer system violated the Hancock Amendment. Feese, 893 S.W.2d at 811–12. The Supreme Court agreed, distinguishing the case from the situation in which a sewer district imposes a sewer charge against all properties connected to the sewer system. Id. Feese reasoned that the city's imposition of the sewer charge against properties not connected to the sewer system was a tax within the meaning of Section 22(a). Id. (citing Keller, 820 S.W.2d at 304 n.10).

Similarly, in Zweig, the Supreme Court determined the sewer district's stormwater charge imposed on all properties in the district was a disguised tax under the Hancock Amendment. 412 S.W.3d at 244. As Eclipse accurately summarizes, pertinent characteristics of the stormwater charge in Zweig included that the charge was based upon the amount of impervious area on the property owner's land, that there was no way to measure any individual

property's use of the storm water drainage system, and that the land would be charged even though it was not connected to the stormwater drainage system. Id. at 228–30. Zweig weighed the Keller criteria and determined that the availability of drainage and oversight service was to the district as a whole. Id. at 237. Zweig found that the stormwater charge imposed on the property was neither a charge for a property owner's actual use of the drainage system nor for the use of the sewer district's oversight services, which were rendered as needed, regardless of whether or not that property owner paid the stormwater charge. Id. at 234, 236. Further, Zweig noted the sewer district could not link the obligation to pay the stormwater charge to an individual property owner's use of the sewer district's "availability" of service because the service was rendered to the district as a whole, not to individual property owners. Id. at 237. In other words, Zweig found that sewer district's stormwater charge was tied to property ownership. Id. Zweig emphasized the inability of property owners to do, or refrain from doing, anything to reduce or eliminate the obligation to pay the stormwater charge. Id. Given these and other characteristics of the stormwater charge, Zweig concluded the charge was more like a tax and thus was subject to the Hancock Amendment's voter approval requirements. Id. at 244.

Eclipse argues that the District's base sewer fee constitutes a tax because the fee is applied to all properties regardless of actual sewer usage, including the subject Property. Eclipse directs us to the summary-judgment record, which contains an uncontroverted statement of fact that the Property did not use the sewer service line since 2012. However, the summary-judgment record also contains an uncontroverted statement of fact that the Property remained connected to the sewer service line for the relevant time period of the sewer fees dating back to April 2015. That the Property was connected to the District's sewer line clearly distinguishes the matter

before us from Feese because in Feese the sewer district imposed its sewer charge against a property that was not connected to the sewer system. See Feese, 893 S.W.2d at 812.

We also distinguish this matter from Zweig, because the base sewer fee imposed could have been eliminated had the Property been disconnected from the District's sewer service line and had its sewer service capped off. See Zweig, 412 S.W.3d at 237. Instead, both before and after being acquired by Eclipse, the Property remained connected to the District's sewer service line, such that availability of sewer service attributable to individual properties was ascertainable and determinative. This factual scenario radically differs from that in Zweig, where stormwater services were rendered regardless of whether the properties were connected to the stormwater drainage system or paid the stormwater charge. See id. at 234, 236–37. Here, the District charges the base user fee only with regard to properties that maintain access to the sewer services.[5]

The summary judgment record presents uncontroverted evidence that the District did not and does not impose the base sewer fee against any property that is not connected to the sewer

[5] Although the parties do not rely on 249.255.2 for their arguments, we briefly discuss how Subsection 2 supports the holding in this opinion. Subsection 2 provides:

> Should the sewer charges of a public sewer district created and organized pursuant to constitutional or statutory authority remain unpaid for a period in excess of three months, the district, after notice to the customer by certified mail, shall have the authority at its discretion to disconnect the customer's sewer line from the district's line or request any private water company, public water supply district, or any municipality supplying water to the premises to discontinue service to the customer until such time as the sewer charges and all related costs of this section are paid.

Section 249.255.2. The statute gives a public sewer district "discretion" to address unpaid sewer fees by disconnecting the property from the sewer line or directing the water company to discontinue service, which would impact the property's use of the sewer line. See id. The plain and ordinary meaning of "discretion" conveys that these methods for enforcing payment of sewer charges are optional rather than required, thus the sewer district is not obligated to take these steps before continuing to charge the base user fee or filing a lien against the property. See id.; State ex rel. Robison v. Lindley-Myers, 551 S.W.3d 468, 474 n.4 (Mo. banc 2018) (internal quotation omitted) ("It is the general rule that in statutes the word 'may' is permissive only, and the word 'shall' is mandatory."). Indeed, Subsection 2 in no way limits the authority granted to the sewer district in Subsection 1 to file a lien against a property for unpaid sewer fees, nor does it set forth any obligation for the sewer district to take other steps rather than charging the base user fee for connected properties. See 249.255.1–2; Robison, 551 S.W.3d at 474 n.4.

service line. Equally uncontroverted in the summary-judgment record is that the availability of the sewer service supporting the base fee is tied directly to a property's access to the sewer service line ***over which a property owner has the ability to reduce or eliminate payment obligations***. Applying the relevant Keller criteria to the summary judgment record leads us to conclude the District's base sewer fee is not a levied tax subject to the Hancock Amendment. See Zweig, 412 S.W.3d at 236 (citing Keller, 820 S.W.2d at 304 n.10); Feese, 893 S.W.2d at 812. Therefore, the trial court did not err in granting summary judgment to the District. See Branson Hills, 614 S.W.3d at 550; York, 564 S.W.3d at 644. Point One is denied.

II. Point Two— The District's Sewer Lien Has Priority and Was Not Extinguished

Our "primary rule of statutory interpretation is to give effect to the legislative intent as reflected in the plain language of the statute at issue." Branson Hills, 614 S.W.3d at 550 (quoting Harpagon MO, LLC v. Bosch, 370 S.W.3d 579, 583 (Mo. banc 2012)). "The provisions of a legislative act must be construed and considered together and, if possible, all provisions must be harmonized and every clause given some meaning." Id. at 552 (quoting Dickemann v. Costco Wholesale Corp., 550 S.W.3d 65, 68 (Mo. banc 2018)). "[O]ur Supreme Court specifically directs that in construing '[C]hapter 140 [(the Jones-Munger Act)], the words must be considered in context and sections of the statutes in pari materia, as well as cognate sections, must be considered in order to arrive at the true meaning and scope of the words.'" Id. (quoting Harpagon, 370 S.W.3d at 584) (third alteration in original). "Pari materia 'requires that statutes relating to the same subject matter be construed together even though the statutes are found in different chapters and were enacted at different times.'" Id. at 550 (quoting State ex rel. Dir. of Revenue, State of Mo. v. Gaertner, 32 S.W.3d 564, 566 (Mo. banc 2000)). "[W]here one statute deals with a subject in general terms and another deals with the same subject in a more minute way, the two should be harmonized if possible, but to the extent of any repugnancy

between them the definite prevails over the general." Id. at 555 (quoting Gaertner, 32 S.W.3d at 566).

Section 249.255 prescribes how we must treat a lien imposed against a property by a public sewer district for unpaid sewer charges:

> Should a public sewer district created and organized pursuant to constitutional or statutory authority place a lien upon a customer's property for unpaid sewer charges, ***the lien shall have priority as and be enforced in the same manner as taxes levied for state and county purposes.***

Section 249.255.1 (emphasis added). Section 249.255 "expressly gave [a statutorily-created sewer district] the power to collect and enforce the collection of sewer charges from the property served . . . . necessarily includ[ing] the power to impose a lien for those charges[.]" St. Louis Inv. Props., Inc. v. Metro. St. Louis Sewer Dist., 873 S.W.2d 303, 307, 307 n.1 (Mo. App. E.D. 1994) (noting "[d]elinquent service charges of statutory sewer districts are liens on the property served").

"The legislature has the power to change the priorities of liens and to give a statutory lien priority over other liens." Id. (internal citation omitted); see also Collector of Revenue of St. Louis v. Parcels of Land Encumbered With Delinquent Tax Liens Land Tax Suit 178, 533 S.W.3d 816, 822 (Mo. App. E.D. 2017) (finding that while public policy dictates dependent children must be maintained, the trial court lacked statutory authority to give the family division's unpaid child-support lien special priority status over a prior recorded judgment lien when distributing the proceeds from the sale of real estate). In St. Louis Inv., we recognized that Section 249.255 prioritized liens for unpaid sewer charges the same as state and county taxes. 873 S.W.2d at 306 (citing Gershman Inv. Corp. v. Duckett Creek Sewer Dist., 851 S.W.2d 765, 769 (Mo. App. E.D. 1993) (noting, however, that Section 249.255 did not apply retrospectively to give the sewer liens priority over deeds of trust recorded before the statute's enactment)). "It

is settled law that state tax liens are superior to all other liens." Gershman, 851 S.W.2d at 768 (internal citations omitted). Because Section 249.255's language unequivocally gives sewer liens the same priority as state and county tax liens, "sewer liens placed on the property after the enactment of the statute will have priority [over deeds of trust]." Id. at 769; see also Simms v. Nationstar Mortg., LLC, No. 4:14-CV-243 CAS, 2014 WL 1515881, at *7 n.5 (E.D. Mo. Apr. 18, 2014) (interpreting Section 249.255.1 to find that a sewer district's lien must be removed from a property the same way as a county tax lien and not through a quiet-title action).

In applying the priority and enforceability of sewer tax liens, Missouri courts have found that an unrecorded special tax sewer lien has priority over an earlier-recorded trustee's deed following a foreclosure sale. Golden Delta Enters. v. City of Arnold, 151 S.W.3d 119 (Mo. App. E.D. 2004). In Golden Delta, the property owner acquired the property in a foreclosure sale and obtained a trustee's deed. Id. at 122. The city filed a sewer lien against the property for delinquent payment of a special assessment for sewer improvements after the foreclosure sale and issuance of the trustee's deed. Id. Although Missouri's recording statutes declare a real estate instrument is not valid until recorded, and thus failure to record forfeits priority, Golden Delta held that the more specific statutes for special assessments applied over general recording statutes. Id. at 122–23 (citing Sections 88.812, 442.400). We held in Golden Delta that the city's right to satisfy a special tax sewer bill was granted priority by statute, thus the lien against the property was not subject to the "first in time, first in right" rule of perfecting a security interest. Id. We recognized that the legislature exercised its power to exempt special assessments from the recording statutes under Section 88.812. See id. (noting "[t]he special tax bill at issue has no other requirements for its issuance than those set forth under Chapter 88").

Thus, the city could recover on its sewer lien despite not having recorded the lien prior to the trustee's deed. See id.

The facts before us are remarkably similar to those presented in Golden Delta. Here, Eclipse purchased the Property at a delinquent tax sale, then obtained a collector's deed from the County. Only after Eclipse purchased the Property and obtained the collector's deed did the District file a lien for unpaid sewer charges. The question before us is whether the priority and enforcement mandate in Section 249.255.1 permits the District's sewer lien to survive the tax sale such that the trial court properly held Eclipse must satisfy the sewer lien.

The District argues the analysis in Golden Delta should govern the outcome of this appeal. The District posits that because sewer liens are statutorily granted the same priority and enforceability as state taxes under Section 249.255, its sewer lien was superior in priority to the collector's deed despite being recorded later in time. See id. at 122–23. The District further reasons that sewer liens are not extinguished by delinquent tax sales, just as they are not extinguished by general foreclosure sales as in Golden Delta. See id.

Generally, a delinquent tax sale extinguishes all other liens against the foreclosed property. See McMullin v. Carter, 639 S.W.2d 815, 817 (Mo. banc 1982) (internal citation omitted); see, e.g., Collector of Revenue by and through the Dir. of Collections for Jackson Cnty. v. Parcels of Land Encumbered with Delinquent Land Tax Liens, 453 S.W.3d 746, 755–56 (Mo. banc 2015) (finding a mechanic's lien is a property interest comparable to that of a mortgage lien and is extinguished by a tax sale); York, 564 S.W.3d at 645 (denying relief to adverse-possession claimants who were entitled to seek redemption of the property sold in a tax sale but failed to do so); Bank of New York v. Yonts, 388 S.W.3d 560, 564–65 (Mo. App. S.D. 2012) (finding a bank holding a deed of trust was not entitled to set aside a valid tax sale); Dean Realty Co. v. City of

Kansas City, 85 S.W.3d 83, 89 (Mo. App. W.D. 2002) (noting a tax sale extinguished the city's right to satisfy its demolition debt against the property). Tax sales are distinguished from general foreclosure sales, and specific statutes govern the effect of a collector's deed issued to a purchaser who acquired the property by paying its delinquent taxes. See Chapter 140 (the "Jones-Munger Act"). The Jones-Munger Act governs tax sales of properties with unpaid taxes. York, 564 S.W.3d at 644. Here, the County has adopted the Jones-Munger Act, thus its provisions apply to this appeal. See id.

Historically, "[b]efore the Jones-Munger Act, the lien for taxes was foreclosed by suit." McMullin, 639 S.W.2d at 817 (internal quotation omitted). "If inferior lien holders were made parties to the suit, their liens were extinguished." Id. (internal quotation omitted). "Jones-Munger substituted an administrative proceeding for the judicial foreclosure and instead of being made parties to the suit, lienholders are notified by publication." Id. at 817–18. "[W]here the collector follows the publication procedure, the collector and the purchaser cannot be at fault for failing to include interested parties in the tax sale process." York, 564 S.W.3d at 647.

"Section 140.405 sets forth the requirements with which a purchaser of property sold under a third-offering delinquent land tax auction must comply in order to procure a collector's deed." Brock v. Caldwell, 358 S.W.3d 542, 544 (Mo. App. S.D. 2012). "If all such requirements are met and there is no redemption within the applicable period, a purchaser may acquire a collector's deed vesting in the purchaser an absolute estate in fee simple." Id. (citing Sections 140.405, .420). The purchaser may then sue to quiet title, naming all interested defendants, after which "no outstanding unrecorded deed, mortgage, lease or claim shall be of any effect as against the title or right of the complainant[.]" York, 564 S.W.3d at 645 (quoting Section 140.330.1). Before the collector issues the collector's deed to the purchaser at a

delinquent tax sale, the purchaser "shall . . . pay all taxes that have accrued thereon since the issuance of said certificate, or any prior taxes that may remain due and unpaid on said property, and the lien for which was not foreclosed by the sale under which such [purchaser] makes demand for deed[.]" Section 140.440. Important to this appeal, Section 140.420 provides that when a purchaser obtains a collector's deed following a delinquent tax sale, title passes free and clear to the purchaser, "subject, however, to all claims thereon for unpaid taxes except such unpaid taxes existing at time of the purchase of said lands and the lien for which taxes were inferior to the lien for taxes for which said tract or lot of land was sold." Relatedly, Section 140.460.2 recognizes that a collector's deed is prima facie evidence that all the delinquent taxes were paid. See Braun v. Petty, 129 S.W.3d 449, 453 (Mo. App. E.D. 2004) (internal citation omitted) (noting a collector's deed is prima face evidence of good title, but parties with a competing interest have a right to challenge the validity of the collector's deed).

Here, the District does not challenge the validity of the collector's deed or that all inferior liens were extinguished. See Sections 140.420, .460.2. Indeed, Section 140.440 requires the purchaser to pay all prior unpaid taxes remaining due on a property prior to being issued the collector's deed. Rather than attacking the validity of the collector's deed, which sets forth only a rebuttable presumption that all delinquent taxes were paid until title is quieted in an action like the present case, the District submits that its sewer lien was not an inferior lien that was foreclosed by the tax sale. See York, 564 S.W.3d at 645 (citing Section 140.330.1); Braun, 129 S.W.3d at 453. Notwithstanding the fact that it did not record its lien prior to the tax sale nor challenge the validity of the collector's deed when issued, the District nevertheless maintains its sewer lien dating back to April 2015 survived the tax sale because Section 249.255 grants the

sewer lien special priority status and exempts the District from any general statutes providing for the extinguishment of inferior liens. We agree.

The plain language of Section 249.255 mandates that the District's sewer lien be accorded the same treatment as a tax lien for purposes of interpreting and applying Section 249.255 and the tax sale procedures of the Jones-Munger Act. See Sections 140.420, .440, .460.2, .690 (providing city and other local taxes on real property create a lien subject to the same enforcement under Chapter 140 as state and county taxes); Section 249.255.1 (providing a sewer lien "shall have priority as and be enforced in the same manner as taxes levied for state and county purposes"); see also Branson Hills, 614 S.W.3d at 545, 551 (emphasis omitted) (treating a Community Improvement District Act ("CID") assessment as a real estate tax for purpose of the Jones-Munger Act tax sales procedure given language in the CID Act that the county collector "shall collect the real property taxes and special assessment made upon all real property within that county and district, in the same manner as other property taxes are collected"). While tax sales extinguish ***junior liens***, Section 249.255 expressly gives sewer liens the ***same superior priority status*** as state and county tax liens. See McMullin, 639 S.W.2d at 817 (internal citation omitted). The District's failure to record the sewer lien until after the tax sale does not defeat the District's claim because the sewer lien was not subject to the recording rules for perfecting a security interest due to the special priority status granted to sewer liens in Section 249.255. See Golden Delta, 151 S.W.3d at 122–23; see also Land Tax Suit 178, 533 S.W.3d at 822 (noting special priority must be granted by statute to overcome the general first-in-time rules).

We acknowledge that Golden Delta is distinguished from this matter because Golden Delta involved a general foreclosure sale as opposed to a delinquent tax sale, only the latter of

which is governed by the Jones-Munger Act. See Golden Delta, 151 S.W.3d at 122–23. We find this to be a distinction without a difference and reject the argument that the Jones-Munger Act dictates a different result in light of the express and specific mandate of the legislature as to priority accorded to sewer liens in Section 249.255. See St. Louis Inv., 873 S.W.2d at 307 (internal citation omitted) ("The legislature has the power to change the priorities of liens and to give a statutory lien priority over other liens."). Accepting the premise that Section 249.255 grants a sewer lien the same priority as a tax lien, we next consider the survivability of a tax lien following the completion of a tax sale and issuance of a collector's deed.

The Supreme Court long has recognized that the Jones-Munger Act contemplates the possibility that some unpaid tax liens may survive a tax sale. See State ex rel. McGhee v. Baumann, 160 S.W.2d 697, 700 (Mo. banc 1942). Although Eclipse heavily relies on McGhee for its preferred interpretation of the superior priority of a collector's deed over all other liens, even preexisting tax liens, Eclipse's reliance on McGhee is misguided because the question before us is one of statutory interpretation, not stare decisis. We note first that McGhee decided a different question concerning when a collector's deed may be issued. See id. But more particularly, we limit our consideration of McGhee because the Supreme Court has admonished that we should not rely upon significantly older cases discussing the Jones-Munger Act. See Branson Hills, 614 S.W.3d at 551, 551 n.28 (citing Sneil, LLC v. Tybe Learning Ctr., Inc., 370 S.W.3d 562, 566 n.3 (Mo. banc 2012); Harpagon, 370 S.W.3d at 582 n.4). The legislature had recently amended the 1933 Jones-Munger Act at the time McGhee was decided. See McGhee, 160 S.W.2d at 700. McGhee found the revised statutes were not necessarily determinative of the issues before it because the parties' claims were filed before their enactment. Id. We limit our discussion of McGhee accordingly. In McGhee, the collector of revenue for the City of St. Louis

refused to deliver collector's deeds to purchasers at tax sales where the purchasers only paid the most recent unpaid tax liens and not the tax liens that had accrued earlier. Id. at 699. McGhee found it was proper for the collector of revenue to refuse to issue the collector's deed until the purchasers paid ***all*** the prior unpaid general taxes. Id. at 700.

Eclipse posits that McGhee stands for the proposition that a special local tax bill is inferior to a general real estate tax lien, and is thereby extinguished through the general tax release accompanying a tax sale. See id. at 699 (noting in a tax sale "the liens of all taxes which are inferior to that of the taxes for which the sale is made are also foreclosed or destroyed by the sale"). However, "[t]he general rule is that the lien of special tax bills for local improvements is inferior to that of general taxes ***where there is no provision to the contrary."*** Associated Holding Co. v. Carrigg, 65 S.W.2d 1059, 1060 (Mo. App. K.C.D. 1933) (emphasis added) (internal citations omitted). Here, there ***is a provision to the contrary***. Section 249.255.1 specifically elevates sewer liens by obligating their priority and enforcement "in the same manner as taxes levied for state and county purposes." When we read together Section 249.255 and the Jones-Munger Act in pari materia, as we must, we hold that unpaid public sewer liens have the same priority as unpaid state and county taxes, and thus the District's sewer lien was not inferior to the general real estate tax lien and was not extinguished by the County tax sale. See Sections 140.420, .440, .460, 249.255.1; St. Louis Inv., 873 S.W.2d at 306–07; see also Branson Hills, 614 S.W.3d at 552.

We lastly address Eclipse's contention that the District disingenuously argues both that the sewer lien is ***not*** a tax for purposes of the Hancock Amendment and that sewer lien should be treated ***like a tax*** for purposes of priority. We recognize the apparent logic of this argument—and the argument is appealing at a superficial level. But semantics gives way to legislative intent

and action. The plain language of Section 249.255 does not transform unpaid sewer fees into an actual tax subject to the Hancock Amendment in light of the Keller criteria. Rather, Section 249.255 mandates that unpaid sewer charges be treated as a lien against properties and that such liens be enforced the same as and be given the same priority as any tax lien. These two propositions adequately and meaningfully coexist. See Branson Hills, 614 S.W.3d at 552 (quoting Dickemann, 550 S.W.3d at 68) ("The provisions of a legislative act must be construed and considered together and, if possible, all provisions must be harmonized[.]")

We are cognizant and sympathetic to that fact that Eclipse paid the delinquent taxes on the Property only to later be confronted with an unpaid sewer lien of which it had no notice from public recording. We recognize that the District had ample opportunity to record its lien for unpaid sewer fees before the tax sale and that Eclipse had no reason to know of any unpaid sewer charges when it purchased the Property at the tax sale. But such sympathy does not permit us to disregard and fail to give effect to the applicable statutes. See id. The express language of Section 249.255 persuades us that the District's sewer lien did not have to be recorded prior to the collector's deed in order to obtain the priority status as any tax lien and to survive the tax sale. See Golden Delta, 151 S.W.3d at 123. We presume the legislature enacted Section 249.255 fully knowing it was granting sewer liens special priority status and enforcement based on its plain language, even if the outcome is inauspicious for bona fide purchasers at tax sales. See Howard v. City of Kansas City, 332 S.W.3d 772, 787 (Mo. banc 2011) (internal quotation omitted) ("The rules of statutory interpretation are not intended to be applied haphazardly or indiscriminately to achieve a desired result."); Branson Hills, 614 S.W.3d at 552 (quoting Dickemann, 550 S.W.3d at 68) ("The legislature is presumed not to enact meaningless provisions."). Because Section 249.255 mandates the sewer lien be enforced like state and

county taxes, we conclude the sewer lien was not extinguished by the tax sale of the Property. See Golden Delta, 151 S.W.3d at 123. Therefore, the trial court did not err in denying Eclipse's motion for partial summary judgment, granting summary judgment to the District, and ordering Eclipse to satisfy the sewer lien. See Branson Hills, 614 S.W.3d at 550; York, 564 S.W.3d at 644. Point Two is denied.

Conclusion

The judgment of the trial court is affirmed.

KURT S. ODENWALD, Judge

Sherri B. Sullivan, C.J., concurs.
Kelly C. Broniec, J., concurs.