In the Missouri Court of Appeals
Eastern District

DIVISION THREE

CATHERINE NDEGWA and CATHERINE NDEGWA and ANALE MREMA, as legal co-guardians for JOHN MREMA, Plaintiffs/Respondents, vs. KSSO, LLC, Defendant/Appellant, and INDYMAC BANK, INTEGRITY LAND TITLE COMPANY, INC., JOHN FRIGANZA, Collector of Revenue for St. Louis County, Missouri, and ST. LOUIS COUNTY, Defendants.	)	No. ED96315 Appeal from the Circuit Court of St. Louis County Honorable Robert S. Cohen Filed: October 11, 2011

Introduction

KSSO, LLC (Appellant) appeals from the trial court's Order and Judgment granting partial summary judgment to Catherine Ndegwa (Ndegwa) and Ndegwa and Anale Mrema (Anale), as legal co-guardians for John Mrema (Mrema) (collectively Respondents),[1] on Count III of Respondents' first amended petition, and quieting title of

[1] On November 17, 2008, the Probate Court of St. Louis County appointed Ndegwa and Anale as co-guardians of Mrema, finding that Mrema is an incapacitated and disabled person by reason of dementia-Alzheimer's disease.

certain property in Ndegwa as Trustee of the Mrema Family Revocable Trust. We affirm.

Factual and Procedural Background

This case involves the property located at 10960 Warwickhall, Bridgeton, Missouri (the Property), which is improved with a multi-family dwelling containing four rental units and was the subject of a sale for delinquent taxes at which Appellant was the successful bidder.

On August 7, 1997, Mrema and Ndegwa, a married couple, acquired the Property by General Warranty Deed. They recorded the General Warranty Deed on August 19, 1997. The Property is legally described as "Lot 253 of Westhaven Plat Eight, according to the plat thereof recorded in Plat Book 108 Page 42 of the St. Louis County Records."

On January 22, 2004, Mrema and Ndegwa obtained a $98,000.00 loan on the Property from IndyMac Bank,[2] evidenced by a Promissory Note (Note) and secured by a Deed of Trust (IndyMac Deed) recorded on January 29, 2004. The IndyMac Deed names Mrema and Ndegwa as Borrowers, Integrity Land Title as Trustee, and IndyMac Bank as Lender, but describes the Property as being Lot 252, not 253, of Westhaven Plat Eight. The IndyMac Deed does contain the street address of the Property as being 10960 Warwickhall Drive, Bridgeton, Missouri.

Respondents did not pay real estate taxes on the Property for the tax years 2004, 2005 and 2006.

On August 27, 2007, Respondent John Friganza, the Collector of Revenue of St. Louis County (the Collector), offered for sale a Tax Sale Certificate of Purchase on the

[2]Respondent One West Bank has succeeded to the interests of IndyMac Bank, but this opinion will refer to the Deed of Trust as the IndyMac Deed of Trust for ease of discussion.

Property (Locator Number 13M411453; Lot 253 Westhaven Plat Eight), for the delinquent real estate taxes. Appellant acquired the Tax Sale Certificate of Purchase in exchange for $26,100.00, said total including $9,242.00 for delinquent taxes, interest and penalties, and $16,858.00 as surplus.

On February 15, 2008, Mrema and Ndegwa conveyed the Property to Mrema and Ndegwa as Trustees of the Mrema Family Revocable Trust. This conveyance was evidenced by Quit Claim Deed recorded on February 20, 2008.

On May 1, 2008, Appellant procured a title examination of Lot 253 by Title Professionals LLC, which did not show the IndyMac Deed as an encumbrance against Lot 253. On September 4, 2008, Title Professionals LLC updated its title examination of Lot 253 of Westhaven Plat Eight, said update again not showing the IndyMac Deed as an encumbrance against Lot 253.

By certified mail dated September 15, 2008, Appellant sent Mrema and Ndegwa letters setting out notice of their right to redeem "10960 Warwickhall Dr Bridgeton MO 63044 in St. Louis County, Missouri with locator or parcel number 13M411453," to-wit, in part:

> As a person or party that has, or may claim some interest in the property, you are advised, that the Missouri Status [sic] afford you the opportunity to redeem and/or otherwise protect your interest. Be further advised, that this opportunity will be available for a period of not less than 90 days from the date of this letter. The undersigned is obliged to send this notice to you, and to advise you that you have certain rights as defined under Section 140.405 R.S.MO. For your information, and for your further protection, you will find enclosed, a copy of this statute provision.
> ***
> The right of redemption continues to be available until that deed is recorded. Because the date the undersigned's mailed affidavit arrives may vary, it is possible that the period of redemption may exceed the 90 day period described in this notice. This indication is made to you to describe

> the current handling, and is not brought to your attention as an inducement for you to expect an extended period.
>
> It has been the practice of the St. Louis County Collector, in the past, to record the deed in favor of each foreclosure purchaser, not less than 90 days following its acceptance of the filed affidavit. St. Louis County may change that practice without prior notice or notification. You are advised to be in contact with the Office of the St. Louis County Collector should you have any questions, whatsoever.
>
> If you fail to redeem this property within the redemption period, you will be forever barred from redeeming the property.
>
> Thank You,
>
> /s/
> Charles Kramm
> Member, KSSO, LLC

Enclosed with this letter was a copy of Section 140.405[3] with the following wording bracketed:

> Once the purchaser has notified the county collector by affidavit that proper notice has been given, anyone with a publicly recorded deed of trust, mortgage, lease, lien or claim upon the property shall have ninety days to redeem said property or be forever barred from redeeming said property.

Appellant did not send a notice to IndyMac Bank.

On January 9, 2009, the Collector conveyed its Deed to the Property to Appellant, said Deed recorded February 4, 2009.

On August 24, 2009, Respondents filed their first amended petition against Appellant, the Collector, IndyMac Bank, Integrity Land Title Co., and St. Louis County, alleging the following:

[3] All statutory references are to RSMo 2006, unless otherwise indicated.

Count I for declaratory judgment that Section 140.170 is facially unconstitutional in violation of the Due Process Clauses of the Missouri and United States Constitutions;

Count II for declaratory judgment that Section 140.170 is unconstitutional under the Due Process Clauses of the Missouri and United States Constitutions as applied in this matter;

Count III for quiet title to Lot 253 of Westhaven Plat Eight;

Count IV for quiet title to Lot 252 of Westhaven Plat Eight;

Count V for quiet title to Lot 253 of Westhaven Plat Eight;

Count VI for preliminary and permanent injunction;

Count VII for ejectment to obtain possession of Lot 253 of Westhaven Plat Eight;

Count VIII for tortious interference with contract;

Count IX for estoppel;

Count X for negligence against IndyMac Bank;

Count XI for breach of fiduciary duty directed against IndyMac Bank.

Respondents filed a motion for partial summary judgment as to Count III.

Appellant filed Counterclaims and Cross-claims against Respondents and co-defendants, respectively. Appellant filed a motion for partial summary judgment as to Count I of its Counterclaims and Cross-claims, which asked the court to quiet title to Lot 253 in its favor.

On January 11, 2011, the trial court entered its Order and Judgment granting Respondents' motion and denying Appellant's. The trial court adjudged that "the Tax Sale of the Property is set aside; the Collector's Deed is void and of no force and effect; and [Appellant] has lost and is divested by this Judgment of all right, title and interest in

the Property commonly known as 10960 Warwickhall Avenue, in the County of St. Louis, and described as follows:

> Lot 253 of Westhaven Plat Eight, according to the plat thereof recorded in Plat Book 108 Page 42 of the St. Louis County Records."

The trial court then quieted fee simple title to the Property "solely in Catherine Ndegwa, as Trustee of the Mrema Family Revocable Trust dated February 15, 2008, subject only to such secured interest as has been granted by Ndegwa and Mrema." The trial court found that pursuant to Rule 74.01(b),[4] there was no just reason for delay with respect to the matters raised in Count III of Respondents' first amended petition and thus its Order and Judgment was final with respect to those matters. This appeal follows.

Points on Appeal

In its first point, Appellant contends the trial court erred in granting partial summary judgment on Count III of Respondents' petition on the ground that the Section 140.405 notice letter dated September 15, 2008 sent by Appellant was not mailed at least 90 days prior to the expiration of one year from the August 27, 2007 tax sale (*i.e.,* August 27, 2008) because Hobson v. Elmer, 163 S.W.2d 1020 (Mo. 1942) held that the one-year redemption period in Section 140.340.1 actually extends beyond one year, until the time the tax sale purchaser is authorized to acquire a collector's deed, but not beyond two years.

In its second point, Appellant claims the trial court erred in granting Respondents' motion for partial summary judgment on Count III of their amended petition on the ground that Appellant's September 15, 2008 Section 140.405 notices failed to correctly

[4] All rule references are to Mo. R. Civ. P. 2010, unless otherwise indicated.

inform Respondents that their redemption period ended on August 27, 2008, one year from the date of the tax sale because (1) there is no fixed one-year redemption period ending on August 27, 2008, as set out in Point I; (2) there are exceptions to this fixed one-year period for infants, disabled and incapacitated persons, as well as for people claiming bankruptcy; (3) tax sale purchasers cannot give advance notice of the time when they may be authorized to acquire a collector's deed because that time varies; (4) neither Section 140.405 nor due process requires a tax sale purchaser to provide advance notice of the time limits applicable for redemption; and (5) the notice letters Appellant sent Respondents informed them of their right to redeem, which is all that Section 140.405 requires.

In its third point, Appellant asserts the trial court erred in granting partial summary judgment on Count III of Respondents' petition on the ground that Appellant failed to provide IndyMac Bank with notice in compliance with Section 140.405, because IndyMac Bank was the named beneficiary under a publicly recorded deed of trust affecting Lot 252, not Lot 253 of Westhaven Plat Eight.

Standard of Review

Summary judgment is designed to permit the trial court to enter judgment, without delay, when the moving party has demonstrated, on the basis of facts about which there is no genuine dispute, a right to judgment as a matter of law. ITT Commercial Fin. v. Mid-Am. Marine, 854 S.W.2d 371, 376 (Mo.banc 1993); Rule 74.04. Our review is essentially *de novo*. ITT, 854 S.W.2d at 376. We take as true the facts set forth by affidavit or otherwise in support of the moving party's summary judgment motion unless contradicted by the non-movant's response. Id. The non-moving party's

response must show the existence of some genuine dispute about one of the material facts necessary to the plaintiff's right to recover. Id. at 381. A defending party may establish a right to summary judgment by showing "that there is no genuine dispute as to the existence of each of the facts necessary to support the movant's properly-pleaded affirmative defense." Id. We may affirm a summary judgment under any theory that is supported by the record. Id. We must determine whether the moving party has demonstrated an "undisputed right to judgment as a matter of law" on the basis of the facts about which there is no genuine dispute. Id. at 380.

Discussion

Tax Sales

Chapter 140 of the Revised Statutes of Missouri provides for the annual sale by the county collector, each August, of real property on which property tax payments have been delinquent. Section 140.150.1; Keylien Corp. v. Johnson, 284 S.W.3d 606, 610 (Mo.App. E.D. 2009). The statute provides for successive tax sale offerings. Keylien, 284 S.W.3d at 610. At the first offering, if no one bids a sum equal to the delinquent taxes thereon with interest, penalty, and costs, the county collector conducts a second offering the following August. Id.; Section 140.240.1. If no one submits an adequate bid at the second offering, a third offering is made the following August. Keylien, 284 S.W.3d at 610. At that offering, the property is sold to the highest bidder. Id.; Section 140.250.1.

The landowner's right to redeem his property sold at a tax sale differs depending on whether it was a first, second, or third offering tax sale. The tax sale at issue here was a first offering tax sale.

Redemption

A first or second offering tax sale is followed by a one-year redemption period during which the owner or occupant of any land or lot sold for taxes, or any other persons having an interest therein, may redeem the same by paying the county collector the purchase price plus cost of the sale and interest. Keylien, 284 S.W.3d at 610; Section 140.340.1. The purchaser at a first or second offering tax sale acquires a certificate of purchase. Keylien, 284 S.W.3d at 610; Section 140.290.1. Legal title does not vest in the purchaser until the period of redemption has lapsed and the purchaser consummates the sale by exercising the right to have legal title transferred. Keylien, 284 S.W.3d at 610; State v. Marburger, 182 S.W.2d 163, 165 (1944). If no one redeems the property during the one-year statutory redemption period, at the expiration thereof, and on production of certificate of purchase, the Collector is required to execute to the purchaser a deed to the property, which vests in the grantee an absolute estate in fee simple. Keylien, 284 S.W.3d at 610; Section 140.420.

The legislature has treated third offering tax sales differently from first and second offering tax sales. Keylien, 284 S.W.3d at 610. In addition, the legislature has changed the provisions governing third offering tax sales over the years. Id. In 1939, Section 11130, the precursor to Section 140.250, provided that there was no redemption period for property sold at a third offering tax sale. Keylien, 284 S.W.3d at 610. The purchaser at a third offering sale did not get a certificate of purchase but was entitled to immediate issuance and delivery of a collector's deed. Keylien, 284 S.W.3d at 610; Section 11130 RSMo (1939).

In 1984, after the Missouri Supreme Court's decision in Lohr v. Cobur Corp., 654 S.W.2d 883, 886 (Mo.banc 1983) with regard to due process requirements for notice, the General Assembly enacted Section 140.405, which required the purchaser of property at any tax sale offering to conduct a title examination and, if the search revealed lienholders, to mail notice to the lienholders of their right to redeem the property. Keylien, 284 S.W.3d at 610. In 1987, the General Assembly amended Section 140.405 to exempt purchasers at third offerings from its requirements. Id. at 611. In 1997, the Missouri Supreme Court held in M & P Enterprises v. Transamerica Finan., 944 S.W.2d 154, 159 (Mo.banc 1997) that the statutory amendment made clear that the title search and redemption procedures of Section 140.405 no longer applied to third offering tax sales. Id.

Section 140.340 - Landowner's Statutory Right to Redeem Property

Section 140.340, entitled "Redemption, when – manner," sets forth the landowner's right to redeem his property that is sold at a tax sale. Section 140.340 states that:

> 1. **The owner or occupant of any land or lot sold for taxes or any other persons having an interest therein, may redeem the same at any time during the one year next ensuing**, in the following manner: by paying to the county collector, for the use of the purchaser, his heirs or assigns, the full sum of the purchase money named in his certificate of purchase and all the cost of the sale together with interest at the rate specified in such certificate, not to exceed ten percent annually, except on a sum paid by a purchaser in excess of the delinquent taxes due plus costs of the sale, no interest shall be owing on the excess amount, with all subsequent taxes which have been paid thereon by the purchaser, his heirs or assigns, with interest at the rate of eight percent per annum on such taxes subsequently paid, and in addition thereto the person redeeming any land shall pay the costs incident to entry of recital of such redemption.

[Emphasis added.] The emphasized language of Section 140.340.1 provides the *when*; specifically, *the landowner has one year from the date of the tax sale to redeem his property*. See also United Asset Management Trust Company v. Clark, 332 S.W.3d 159, 170 (Mo.App. W.D. 2010) (the landowner's period of redemption for first and second offering tax sales is one year pursuant to Section 140.340.1) and CedarBridge, LLC v. Eason, 293 S.W.3d 462, 465 (Mo.App. E.D. 2009) (the one-year redemption period begins on the date of the tax sale).

Notice

Section 140.405 - Purchaser's Statutory Duty to Notify Landowner of Right to Redeem Property

Section 140.405, titled "Purchaser of property at delinquent land tax auction, deed issued to, when-notification-loss of interest, when," provides for *when* and *how* the tax sale purchaser acquires the deed to the property, and *when* and *how* the tax sale purchaser must notify the landowner of the landowner's right to redeem his property, as set forth in Section 140.340.1. Section 140.405 provides:

> 1. Any person purchasing property at a delinquent land tax auction shall not acquire the deed to the real estate, as provided for in section 140.250 or 140.420, until the person meets the requirements of this section, except that such requirements shall not apply to post-third year sales, which shall be conducted under subsection 4 of section 140.250. The purchaser shall obtain a title search report from a licensed attorney or licensed title company detailing the ownership and encumbrances on the property. Such title search report shall be declared invalid if the effective date is more than one hundred twenty days from the date the purchaser applies for a collector's deed under section 140.250 or 140.420.
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> 2. **At least ninety days prior to the date when a purchaser is authorized to acquire the deed, the purchaser shall notify the owner of record and any person who holds a publicly recorded unreleased deed of trust, mortgage, lease, lien, judgment, or any other publicly recorded claim upon that real estate of such person's right to redeem**

> **the property.** Notice shall be sent by both first class mail and certified mail return receipt requested to such person's last known available address. If the certified mail return receipt is returned signed, the first class mail notice is not returned, the first class mail notice is refused where noted by the United States Postal Service, or any combination thereof, notice shall be presumed received by the recipient. At the conclusion of the applicable redemption period, the purchaser shall make an affidavit in accordance with subsection 4 of this section.
>
> …
>
> 9. **Failure of the purchaser to comply with this section shall result in such purchaser's loss of all interest in the real estate.**

[Emphasis added.]

The Eastern District Court of Appeals has held that the tax sale purchaser must send the notice at least ninety days before it is authorized to acquire the deed to the property, *i.e.*, at least ninety days before the expiration of the one-year redemption period. CedarBridge, 293 S.W.3d at 465; Section 140.405. The Eastern District has also held that in a first or second offering tax sale, the tax sale purchaser's notice must inform the recipient that he has one year from the date of the tax sale to redeem the property or be forever barred from doing so. Keylien, 284 S.W.3d at 612-13; CedarBridge, 293 S.W.3d at 465; Hames v. Bellestri, 300 S.W.3d 235, 239-240 (Mo.App. E.D. 2009); Valli v. Glasgow Enterprises, 204 S.W.3d 273, 277 (Mo.App. E.D. 2006); Glasgow Enterprises, Inc. v. Kusher, 231 S.W.3d 201, 204 (Mo.App. E.D. 2007). The Southern District agrees. See Drake Dev. & Const., LLC v. Jacob Holdings, Inc., 306 S.W.3d 171 (Mo.App. S.D. 2010).

A delinquent tax sale purchaser's failure to comply with the above notice requirements will result in its losing all interest in the real estate as a matter of law. Section 140.405.9. See also CedarBridge, 293 S.W.3d at 466.

By contrast, the Western District has held that Section 140.405 "does not spell out what the contents of the notice to the lien holders or the owner must contain aside from requiring that they be notified of their 'right to redeem' their 'publicly recorded security or claim.'" United Asset Management, 332 S.W.3d at 169. The Western District in United Asset Management disagreed with the Eastern District's position that the tax sale purchaser's notice to the landowner must inform the landowner that he has one year from the date of the tax sale to redeem the property or be forever barred from doing so, and considered such notice to be tantamount to providing legal advice.[5] Specifically, the United Asset Management court stated:

> Keylien held that the notice required by Section 140.405 must inform recipients not merely of their right to redeem, as required by express wording of the statute, but also provide legal advice as to what period of redemption exists depending on what type of tax sale was conducted. Id. In other words, according to Keylien, the notice sent after a first or second offering tax sale must inform those receiving it that they have a right to redeem during the one-year after the date of the tax sale. Id. On the other hand, Keylien asserts that the notice of the right to redeem after the third offering tax sale must inform the recipients that they have ninety-days from the date the purchaser files the affidavit with the County Collector in which to redeem. Id. As noted supra, Section 140.405 nowhere provides that the notices required by the statute must state anything other than that the recipient has a 'right to redeem.'

Id. at 171. United Asset Management applied this same analysis in its criticism of Keylien's progeny:

> As can be seen, Keylien, CedarBridge, Hames, and Drake Development all find Section 140.405 notices defective because the content of the

[5] The Missouri Supreme Court accepted transfer of the Eastern District's opinion in Hames v. Bellestri, 300 S.W.3d 235, 239-240 (Mo.App. E.D. 2009) and retransferred the opinion back to be reinstated without comment. Transfer of the Western District's opinion in United Asset Management Trust Company v. Clark, 332 S.W.3d 159, 170 (Mo.App. W.D. 2010) was rejected by the Missouri Supreme Court. Although Respondents maintain that this implies that our Supreme Court has adopted the Eastern District's position on the issue of notice, we believe the dispute between the Eastern and Southern and Western Districts needs to be resolved through opinion by the Missouri Supreme Court.

> notices was deemed insufficient. However, none of those cases addressed what content is required by statute or due process. Rather, they assumed that the Section 140.405 notice must contain specific details. As suggested supra, a review of the statute and case law leads to a different conclusion.

Id. at 172. After declaring it was not inclined to follow Keylien and its progeny's "assumption" that the Section 140.405 notice must contain specific details, the United Asset Management court stated:

> Based on the express wording of the statute, it is apparent that the legislature is directing that tax sale purchasers notify those specified of their 'right to redeem.' The question then becomes what, if anything, the notice must state beyond informing the recipient that he or she has a 'right to redeem' the property.

Id. at 172-73. Applying a due process analysis to determine what the *minimal acceptable requirements* of the Section 140.405-notice would be, United Asset Management concluded that nothing was required beyond a bare-bones notice that the property owner had a generic right to redeem.

We disagree with this conclusion. We conclude, under reasonable notice requirements of due process, fundamental principles of public policy and certainty in the law, and basic canons of statutory construction, that the required Section 140.405 notice by a tax sale purchaser of the landowner's right to redeem the property must contain the time component of the landowner's right of redemption as defined and set forth in Section 140.340.

Due Process

United Asset Management holds that "there is no due process requirement to inform those receiving notice of the specific time limits applicable for redemption, the specific procedures that must be followed, or any other details, nor is there any such

requirement in Section 140.405." Id. at 175. We believe fundamental due process compels a different conclusion.

Due process imposes corresponding duties upon those who would affect the rights of holders of property interests. Schwartz v. Dey, 665 S.W.2d 933, 934-35 (Mo.banc 1984). The right to meaningful notice extends to actions affecting property interests in a variety of circumstances, including parties whose rights would be affected by a tax sale, who should be afforded notice reasonably calculated under all of the circumstances to apprise them of the pendency of the action and afford them an opportunity to present their objections. Id.at 935; Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). See also Investment Corp. of Virginias, Inc. v. Acquaviva, 302 S.W.3d 195, 200 (Mo.App. E.D. 2009). "While what constitutes sufficient notice may vary … 'notice must be reasonably calculated to inform parties of proceedings which may directly and adversely affect their legally protected interests.'" Conseco Finance Servicing Corp. v. Missouri Dept. of Revenue, 195 S.W.3d 410, 416 (Mo.banc 2006), quoting Walker v. City of Hutchinson, Kan., 352 U.S. 112, 115 (1956).

The rule of proper notice by one who would affect the rights of a property owner is to advise that owner of the "pendency," not the "existence," of an action. Schwartz, 665 S.W.2d at 934. The word "existence" is static. The word "pendency" has a time component. A pending action is one that is approaching, imminent, around the corner. Correspondingly, notice of the pendency, as opposed to the existence, of an action implies notice of a time component in order to be reasonable. Notice of the pendency of proceedings has great significance because the termination of the proceedings means rights forever lost. This crucial aspect of the proceedings is illustrated by the statute's

requirement that the tax sale purchaser must send notice to the landowner at least 90 days prior to the expiration of one year from the date of the tax sale, or forfeit his rights to the property. Section 140.405.9. If the landowner fails to redeem within the time required by the statute, he is forever barred from doing so. CedarBridge, 293 S.W.3d at 465; Keylien, 284 S.W.3d at 612-13. One year from the date of the tax sale, the tax sale purchaser is entitled to redeem his certificate of purchase with the Collector, and take title to the property if he has completed the list of other required tasks set forth in the statutory scheme. Clearly, timing is an important component of the tax sale and purchase process, and therefore for any statutorily required notice of those proceedings to be meaningful, such notice must include a time component to comport with due process. We find such reasonable notice comports with fundamental due process without rising to the level of constituting legal advice.

In United Asset Management, 332 S.W.3d at 173-74, the Western District cited City of West Covina v. Perkins, 525 U.S. 234, 236-37 (1999); State v. Goodbar, 297 S.W.2d 525, 527 (Mo. 1957); Bishop v. Bd. of Educ. of Francis Howell Sch. Dist., 575 S.W.2d 827, 829 (Mo.App. E.D. 1978); and Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 13-15 (1978), for their general principles that due process does not require notice that some particular step must be taken or that a certain procedure be followed, and the opportunity afforded by notice is to simply make a choice of whether to appear or default, acquiesce or contest and that once a property owner is informed that his property has been seized, he can turn to available public sources to learn about the remedial procedures available to him. From these general principles, the United Asset Management Court concluded, "[c]onsistent with West Covina, Goodbar, and Bishop,

there is no due process requirement to inform those receiving notice of the specific time limits applicable for redemption, the specific procedures that must be followed, or any other details, nor is there any such requirement in Section 140.405." Id. at 175.

We find the cases relied on by United Asset Management to be distinguishable on a fundamental basis. None of them involve the permanent taking of a homeowner's property for a fraction of its worth or the time-sensitive right of the homeowner to redeem it or forever lose it. Rather, West Covina involved criminal proceedings where an accused's personal property items were temporarily seized pursuant to a search warrant during a criminal investigation. Goodbar involved an attempt to return to insurance policyholders unclaimed excess premiums wrongfully paid. Bishop involved a notice to a teacher of a hearing on charges contemplating possible termination of the teacher's contract with the school district. Memphis Light involved temporarily turning off someone's lights for not paying the bill. The dissimilarities between these cases and the instant case are not only in subject matter, but in the seriousness, scope and permanency of the taking; the parties involved; the background of the taking; and the differences in procedure, whether criminal, administrative, or civil. We do not find their reasoning applicable or instructive in our particular case.

Public Policy and Certainty in the Law

In the instant case, Appellant's notice, dated September 15, 2008, stated that Respondents' opportunity to redeem "… will be available for a period of not less than 90 days from the date of this letter…. [and] [t]he right of redemption continues to be available until that deed is recorded." The form of notice propounded by Appellant, to-wit: 90 days from the date of this letter, renders the standards of notice required by

Section 140.405 so vague as to allow arbitrary and discriminatory enforcement by the tax sale purchaser. A statute is not supposed to be so vague that its standards lack sufficient specificity to prevent arbitrary and discriminatory enforcement. State v. Stone, 926 S.W.2d 895, 899 (Mo.App. W.D. 1996). Furthermore, the tax sale purchaser should not be allowed to set the date by his own actions for a property owner to reclaim his property. Such an allowance would undermine our need for certainty in the law and place too much control in the hands of those who are not unbiased with regard to whether or not the landowner successfully redeems his property. We have grave reservations about the implications of vesting a tax sale purchaser with the authority to set the deadline for a landowner to act to save his own property by something as subjective and uncertain as the date the purchaser decides to put on his letter. Not only is such a date completely arbitrary, but there is great potential for error, uncertainty, and deception in allowing such a practice.

In cases involving the transfer of property, where it can be reasonably assumed that settled rules are necessary and necessarily relied upon, stability and adherence to precedent are important. Matter of Eckart's Estate, 39 N.Y.2d 493, 348 N.E.2d 905, 384 N.Y.S.2d 429 (N.Y. 1976). Public policy favors certainty in title to real property. 26A C.J.S. Deeds § 361 (2011). While redemption is favored, forfeiture is not. 85 C.J.S. Taxation § 1354 (2011). The policy of the law is to give the taxpayer every opportunity to redeem his property, compatible with the rights of the state. Id.

Statutory Construction

Statutes are considered to be in *pari materia* when they relate to the same person or thing, to the same class of persons or things, or have the same purpose or object.

Norman J. Singer, Statutes and Statutory Construction § 51.03 (6th ed. 2000). Missouri courts recognize the doctrine of *pari materia*, a rule of construction wherein statutes relating to the same subject matter are considered together. State ex rel. Rothermich v. Gallagher, 816 S.W.2d 194, 200 (Mo.banc 1991). When read in *pari materia*, the "right to redeem" of which the tax sale purchaser has a duty to notify the landowner in Section 140.405 is a right created by and defined in Section 140.340, as follows: "The owner or occupant of any land or lot sold for taxes or any other persons having an interest therein, *may redeem the same at any time during the one year next ensuing*." [Emphasis added.] The landowner's right to redeem *is* the right to redeem the land sold for taxes within one year of such sale.

If statutory language is not defined expressly, it is given its plain and ordinary meaning, as typically found in the dictionary. Derousse v. State Farm Mut. Auto. Ins. Co., 298 S.W.3d 891, 895 (Mo.banc 2009). Here, the right to redeem is defined expressly in the statute. In fact, the title of the statute itself, Section 140.340 **Redemption, when – manner**, tells the reader that the definition of the right to redeem is forthcoming in the statute, to-wit: "may redeem the same at any time during the one year next ensuing." See Section 140.340.1.

As made clear, the specific time limits defining a landowner's right to redeem are set out in Section 140.340. Section 140.405 imposes on the tax sale purchaser an obligation to inform him of the right to redeem set out in Section 140.340. Such construction in *pari materia* proceeds upon the supposition that the statutes in question are intended to be read consistently and harmoniously in their several parts and provisions. Rothschild v. State Tax Commission of Missouri, 762 S.W.2d 35, 37 (Mo.

banc 1988). 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. Wollard v. City of Kansas City, 831 S.W.2d 200, 203 (Mo.banc 1992).

Words may vary greatly in content according to the circumstances and the time in which they are used. Towne v. Eisner, 245 U.S. 418, 425 (1918) (Mr. Justice Holmes). The "right to redeem" is a generic term that can be used in different senses in different contexts. See, e.g., Missouri Prosecuting Attorneys v. Barton County, 311 S.W.3d 737, 743 (Mo.banc 2010) ("the word 'compensation' is a generic term that can be used in different senses in different contexts."). A phrase such as "right to redeem" may have a different meaning depending on the statute in which it appears, and must be evaluated in light of the context in which it is used. Id. at 742. The Section 140.340 right to redeem does not exist in a vacuum – it has limits and boundaries which define it. Here, the phrase "right to redeem" of which the tax sale purchaser has the duty to notify the landowner, as set out in Section 140.405, directly refers to the landowner's year-long right of redemption set out in Section 140.340. Used in the context of Section 140.405, the right to redeem is given "a particularized meaning." Id. at 743. Thus, a notice to a landowner informing him of a generic right to redeem his property without some contextual time aspects contradicts our concept of meaningful notice.

The fact that the time limits of the Section 140.340 right to redeem are not set out again in Section 140.405 does not mean the right to redeem returns to a generic state when it comes time for the purchaser to notify the landowner of it. It is still the one year from tax sale right to redeem set out in Section 140.340. "When determining the meaning of words intended by the legislature, the general rules of statutory construction

require that meaning be given to each word used in the legislative enactment, insofar as possible and one word of the statute should not be considered a needless repetition of another." Lora v. Director of Revenue, 618 S.W.2d 630, 633 (Mo.1981). Further, "[w]hen one statute deals with a subject in general terms and another statute deals with the same subject in a more specific way, the two statutes should be harmonized if possible." KC Motorcycle Escorts, L.L.C. v. Easley, 53 S.W.3d 184, 187 (Mo.App. W.D. 2001). Here, harmonization of the two statutes at issue means not rendering the "right to redeem" fortified with meaning in Section 140.340 meaningless in Section 140.405. Courts presume every word in a statute has meaning. Missouri Prosecuting Attorneys v. Barton County, 311 S.W.3d 737, 742 (Mo.banc 2010); Civil Serv. Comm'n of City of St. Louis v. Members of Bd. of Aldermen, 92 S.W.3d 785, 788 (Mo. banc 2003).

Appellant's construction of Section 140.405, that a first offering tax sale purchaser must only give the landowner a notice of his right to redeem his property 90 days from the date of the purchaser's letter, renders Section 140.340's language of the landowner's right to redeem one year from the date of tax sale meaningless. It is presumed that the legislature did not intend a meaningless act or meaningless provisions within that act. Missouri ex rel. Bouchard v. Grady, 86 S.W.3d 121, 123 (Mo.App. E.D. 2002); Wollard, 831 S.W.2d at 203.

A harmonious and meaningful interpretation of the right to redeem in Section 140.405 is to give it the meaning consistent with that set out for it in Section 140.340. Thus, a proper statutory notice of the right to redeem pursuant to Section 140.405 would be that the landowner has one year from the date of the tax sale to redeem the property.

Discussion - Points on Appeal

Based on our foregoing understanding of the law of redemption and notice thereof with regard to property bought and sold at first offering tax sales, we now address Appellant's three points on appeal.

Point I - Time of Notice

Appellant sent notices to Mrema and Ndegwa of their Section 140.340 right to redeem on September 15, 2008. Section 140.405 requires the notices be sent at least 90 days before Appellant was authorized to acquire the deed to the Property, *i.e.* at least 90 days before the expiration of the one-year redemption period. Section 140.405; CedarBridge, 293 S.W.3d at 465. In this case, the expiration of the one-year redemption period was August 27, 2008. September 15, 2008 is clearly not 90 days before August 27, 2008, and therefore, Appellant's notice was untimely and deficient under Section 140.405. As a matter of law, a collector's deed becomes void and invalid if the purchaser fails to comply with the notice requirements of Section 140.405. Schlereth v. Hardy, 280 S.W.3d 47, 53 (Mo.banc 2009); Crossland v. Thompson, 317 S.W.3d 635, 642 (Mo.App. S.D. 2010). Therefore, the trial court correctly granted summary judgment and quieted title to the property in Respondents on this basis, as Appellant has forfeited the Property. See Section 140.405.9. Point I is denied.

Point II – Content of Notice

In the instant case, the date of the tax sale, which was a first offering, was August 27, 2007. Appellant's notice did not inform Mrema and Ndegwa that they had one year from August 27, 2007, the date of the tax sale, to redeem the property or be forever

barred from doing so. CedarBridge, 293 S.W.3d at 465; Keylien, 284 S.W.3d at 612-13. Rather, the notice, dated September 15, 2008, stated that their opportunity to redeem "… will be available for a period of not less than 90 days from the date of this letter…. [and] [t]he right of redemption continues to be available until that deed is recorded." This is an incorrect statement of the redemption period. See CedarBridge, 293 S.W.3d at 465; Keylien, 284 S.W.3d at 612-13 (in a first offering tax sale, the notice must inform the recipient that s/he has one year from the date of the tax sale to redeem the property or be forever barred from doing so). Failure to correctly state the redemption period results in the purchaser losing all rights to the property. Hames, 300 S.W.3d at 239-40; Valli, 204 S.W.3d at 277; Glasgow Enterprises, Inc., 234 S.W.3d at 411.

Additionally, the 90-day language of Section 140.405 included by Appellant is only applicable in the case of a third offering tax sale and not first and second offering tax sales, and was therefore misleading. CedarBridge, 293 S.W.3d at 465; Keylien, 284 S.W.3d at 612-13 (in a third offering, the notice must inform the recipient that s/he has ninety days from the date the purchaser files the affidavit with the county collector in which to redeem the property, or be forever barred from doing so). See also Hames, 300 S.W.3d at 239 (When 90-day language is used for first or second offering tax sale notices, the notice is inaccurate and misleading…thus purchaser loses all of his interest in the property as a result of his failure to comply with the notice provisions of Section 140.405.).

Appellant's notice was deficient as to content under Section 140.405. As a matter of law, a collector's deed becomes void and invalid if the purchaser fails to comply with the notice requirements of Section 140.405. Schlereth, 280 S.W.3d at 53; Crossland, 317

S.W.3d at 642. For this failure, Appellant forfeits the property. See Section 140.405.9. As such, the trial court correctly granted summary judgment to and quieted title to the property in Respondents on this basis. Point II is denied.

Point III – Notice to Bank

Finally, Appellant failed to send any notice to IndyMac Bank, which was a party whose name appeared on the front page of the IndyMac Deed as Lender and holds a publicly recorded unreleased deed of trust on the Property, and is thus required to receive notice under Section 140.405. CedarBridge, 293 S.W.3d at 465 (parties whose names and addresses appear on the front page of the deed of trust document, such as beneficiaries of deeds of trust and trustees of deeds of trusts, must receive notice as well); Glasgow Enterprises, Inc., 231 S.W.3d at 204. As a matter of law, a collector's deed becomes void and invalid if the purchaser fails to comply with the notice requirements of Section 140.405. Schlereth, 280 S.W.3d at 53; Crossland, 317 S.W.3d at 642.

In the case *sub judice*, Appellant contends that the IndyMac Deed mistakenly listed the Property as being comprised of Lot 252, not 253, of Westhaven Plat Eight. Appellant maintains that it did its title search of the Property and its lienholders by lot number, which did not reveal IndyMac Bank as a lienholder and therefore it cannot be blamed for a failure to send IndyMac Bank notice.

An examination of the record reveals that the IndyMac Deed does, indeed, list Lot 252 and not Lot 253. Further, the record contains copies of title searches performed by Integrity Land Title Company, Inc. that do not reveal IndyMac Bank as a lienholder on the Property by virtue of the January 22, 2004 loan to Respondents and corresponding deed recorded on January 29, 2004. However, we do not reach the issue of whether

Appellant should have conducted a more thorough title search since resolution of this issue is not determinative of this appeal, as Respondents are entitled to summary judgment based on the failure of Appellant's notice to them in the two regards set out in Points I and II. Consequently, Point III is moot and denied as such.

Conclusion

For the foregoing reasons, we find that Appellant's notice was insufficient under our current relevant statutory and case law; Appellant's failure to comply with the relevant statutory requirements resulted in his collector's deed becoming void and invalid and his loss of all interest in and forfeiture of the Property; and therefore as between Appellant and Respondents, Respondents were entitled to quiet title in the Property. The judgment of the trial court is affirmed.[6]

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Sherri B. Sullivan, J.

Robert G. Dowd, Jr., P.J. and
Mary K. Hoff, J., concur.

[6]In this appeal, Appellant substantially relies upon Hobson v. Elmer, 163 S.W.2d 1020, 1023 (Mo. 1942), wherein the Missouri Supreme Court stated that there is an absolute right of redemption on the part of the landowner for two years after his property is sold at a tax sale, but that subsequent to the two-year period of redemption, the property owner may still redeem if the tax sale purchaser has not complied with the statutory conditions necessary to acquire the deed. Appellant's reliance on Hobson is misplaced because Hobson involved a third offering tax sale and the tax sale in the instant case was a first offering. In addition, the statutes relevant to our analysis of the issues before us have been amended several times since Hobson. Finally, Hobson was not a notice case. In fact, Section 140.405's notice requirement was enacted more than forty years after Hobson, in 1984.