

FILED

JAN 03 2018

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

CIRCUIT CLERK, ST. LOUIS COUNTY

WMAC 2014, LLC,)	
)	
Plaintiff,)	
v.)	Case No.
SA, ET AL.)	
)	Div. 8
)	
Defendant.)	

ORDER AND JUDGMENT

The above styled matter was heard by the court without a jury on November 9, 2017. The parties appeared by counsel of record. Plaintiff called one (1) witness to testify and offered Exhibit 1, constituting 114 pages of documents along with Exhibit 2 consisting of a single page. Defendant SA testified on his own behalf and submitted two (2) exhibits. Upon the Court's own motion, the Court takes judicial notice of its file in this matter. The parties requested to submit proposed findings of fact, conclusions of law and judgment. The Court granted the parties until December 11, 2017 to file any proposed findings whereupon the matter would be taken under submission.

Any finding of fact herein equally applicable as a conclusion of law is adopted as such; and any conclusion of law equally applicable as a finding of fact is adopted as such. This Court has carefully and thoughtfully reviewed the proposed findings of fact filed by all parties, and has adopted in whole or part many of the findings contained therein without further attribution or acknowledgement.

The Court now having considered the evidence presented, the arguments of counsel and the law applicable to the case, and being fully advised in the premises makes the following Findings of Fact and Conclusions of Law in accordance with Supreme Court Rule 73.01:

FINDINGS OF FACT

A. The Parties

1. Plaintiff, WMAC 2014, LLC is a limited liability company who on August XX, 2014 purchased a tax lien on real property at the St. Louis County Collector's tax sale to cure a tax deficiency for tax years 2011, 2012 and 2013. The property in question is commonly known as [REDACTED] Avenue, St. Louis, MO [REDACTED] and is fully described as:

Lot 44 of [REDACTED], according to the plat thereof recorded in Plat Book [REDACTED] page [REDACTED] of the St. Louis County Records. (herein "the Property")

2. Defendant SA, a/k/a SA, purchased the property located at [REDACTED] Avenue, St. Louis, MO [REDACTED] by special warranty deed in the year 2000. He was the owner of record for the property at the time of the tax sale.

3. Defendant, Bank of America, NA held a deed of trust on the property at the time of the tax sale. Defendant PRLAP is the named trustee in the deed of trust held by Bank of America, NA.

B. The Property at [REDACTED]

4. Defendant SA was the title owner of the Property by virtue of a Special Warranty Deed from the Department of Veterans Affairs dated September 8, 2000 and recorded on September 21, 2000 in Book [REDACTED], Page [REDACTED] of the St. Louis County Recorder of Deeds. See Plaintiff's Exhibit 1, page 45/114.

5. Defendant SA executed a Deed of Trust in favor of Defendant PRLAP, as Trustee, for the benefit of Defendant BANA, on March 12, 2001, which created a first lien interest in the Property. The Deed of Trust was recorded on March 27, 2001 in Book [REDACTED], Page [REDACTED] of the St. Louis County Recorder of Deeds. See Plaintiff's Exhibit 1, page 48/114.

6. Defendant SA executed a Modification of Security Instrument dated April 2, 2008 in favor of Defendant BANA which increased the security interest from \$52,200.00 to \$90,355.00 with a maturity date of April 2, 2033. The Modification of Security Instrument was recorded on June 18, 2008 in Book [REDACTED], Page [REDACTED] of the St. Louis County Recorder of Deeds. *See* Plaintiff's Exhibit 1, page 61/114.

7. Defendant SA testified that he lived in the home on [REDACTED] from September of 2000 through 2008 when he moved to his current address in [REDACTED], MO. He stated that [REDACTED] property was vacant from 2008 through June of 2015 when he was able to rent the property. Although no one lived in the home during that time period, SA's son kept the grass cut and the home maintained. SA did not receive mail at the [REDACTED] address after he moved out. He further testified that he travels extensively to the Iraq and Egypt working for the government and he was out of the country at the time of the tax sale. He believed he had paid all of his taxes and recalled leaving the tax check with his wife to be mailed the next day after he left town. Defendant SA testified that he only learned of a problem with the property when his tenant told him of someone trying to change the locks. He stated he called the number on the business card of the man trying to change the locks but they would not give him any information. He testified that he contacted his bank and the County who indicated he was current in his payments. *Testimony of SA.*

8. Defendant SA testified that if you run his name on "Google" the address listed is most often his current address in [REDACTED], MO. SA indicated that he owns multiple properties in the St. Louis area and has often taken his tenants to [REDACTED] court. He stated that all of those lawsuits are on Case-net and the only address listed is the residence in [REDACTED], MO. *Testimony of SA.*

C. Tax sale

9. Plaintiff WMAC obtained a Tax Sale Certificate of Purchase dated August 25, 2014 from the St. Louis County Collector following a first-offering tax sale that took place on that same date. *See* Plaintiff's Exhibit A, page 7/114.

10. The St. Louis County Collector of Revenue mailed a letter dated September 2, 2014 and postmarked September 10, 2014 to Defendant SA at the Property advising that the Property was sold at the August 25, 2014 tax sale and that he had a limited time to redeem the same; that there may be a surplus overbid to which he may be entitled if he would choose not to redeem the Property; and to contact the Collector's office if he had questions about his redemption rights or claim to the surplus. The letter was returned to sender as not deliverable and unable to forward. *See* Plaintiff's Exhibit 1, pages 114/114 and 9/114.

11. The taxes owed on the Property, plus applicable fees, penalties, and interest, at the time of the tax sale totaled \$6,206.00. *Id.*

12. Plaintiff's successful bid amount at the tax sale was Eight Thousand Nine Hundred Thirty Dollars and 00/100 (\$8,930.00). *Id.*

13. WMAC obtained a Letter Report on the Property from Security Title Insurance Agency, LLC dated April 7, 2015. *See* Plaintiff's Exhibit 1, page 35/114.

14. An updated Letter Report dated August 4, 2015 was obtained by Plaintiff WMAC in August 2015. *See* Plaintiff's Exhibit 1, page 32/114.

15. The April 7, 2015 and August 4, 2015 Letter Reports identify Defendant SA (spelled "SA" in the Letter Reports) as the record owner of the Property and listed several unsatisfied liens for the BANA Deed of Trust, the BANA Modification of Security Instrument, a Notice of Lien recorded by the Metropolitan St. Louis Sewer District ("MSD"),

and a Transcript Judgment filed August 28, 2013 against Defendant SA in favor of MSD for \$1,681.51. *See* Plaintiff's Exhibit 1 at pages 35/114 and 32/114.

16. On May 15, 2015, WMAC sent letters entitled "Legal Notice – Right to Redeem Real Property" (hereinafter "Redemption Notices") via certified and first class mail as follows:

Addressee:	Address:
Resident/Tenant/Occupant	Ave., Saint Louis, MO
City of St. Louis	1200 Market Street, Rm. 110, St. Louis, MO 63106
St. Louis County Collector	41 South Central, Clayton, MO 63105
Missouri Department of Revenue	P.O. Box 3390, Jefferson City, MO 65105
SA	Ave., Saint Louis, MO
SA	, St. Ann, MO 63074
Bank of America	100 North Tryon Street, Charlotte, NC 28255
PRLAP, Inc.	Drive, Richmond, VA
Metro St. Louis Sewer Dist.	2350 Market St., St. Louis, MO 63103

See Plaintiff's Exhibit 1, Pages 84/114 through 100/114 and 102/114 through 112/114.

17. The Redemption Notice sent via certified mail by WMAC to "Resident/Tenant/Occupant" at the Property was returned "Vacant – Unable to Forward." *See* Plaintiff's Exhibit 1, Page 13/114.

18. The Redemption Notice sent via certified mail by WMAC to "SA" at the Property was returned "Vacant – Unable to Forward." *See* Plaintiff's Exhibit 1, Page 14/114.

19. The Redemption Notice sent via certified mail by WMAC to "SA" at Ave. was returned "Unclaimed - Unable to Forward." *See* Plaintiff's Exhibit 1, Page 15/114.

20. The Redemption Notice sent via certified mail by WMAC to "PRLAP, Inc." at Drive was returned "Not Deliverable As Addressed – Unable to Forward." *See* Plaintiff's Exhibit 1, Page 16/114.

21. No evidence was provided as to whether the Redemption Notices sent via regular first class mail to the persons/addresses listed in Paragraphs 10-13 herein were returned or delivered. Defendant SA denied ever receiving any notices regarding the tax sale. Defendant SA denied ever receiving mail or living at the Avenue address. *Testimony of SA.*

22. WMAC did not attempt to locate any additional addresses for or send any additional Redemption Notices to Defendant SA or PRLAP, Inc. WMAC used "TLO", a paid subscription data base to search for addresses. They did not conduct any other searches for the Defendant(s). WMAC did not search for address information for Defendant SA under the alternate spellings of his first or last name showing on the Letter Reports. *Testimony of AE, corporate representative of WMAC.*

23. WMAC submitted an Affidavit to the St. Louis County Collector of Revenue dated August 12, 2015 providing copies of the Redemption Notices, proof of mailing, and returned mail and receipts, and requesting that a Collector's Deed be issued. *See Plaintiff's Exhibit 1, page 38/114.*

24. The Collector's Deed for Taxes was issued on September 18, 2015 and recorded on October 5, 2015 in Book , Page of the St. Louis County Recorder of Deeds. *See Plaintiff's Exhibit 1, page 41/114.*

CONCLUSIONS OF LAW

In accordance with the foregoing Findings of Fact, the Court hereby makes the following Conclusions of Law:

A. Quiet Title

1. Defendant SA provided credible testimony.

2. Section 140.405(2) RSMo 2000 provides in part:

“...[n]otice 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.”

3. In order to satisfy the statutory requirement that notice be given to the owner, “due process requires that a person seeking to acquire property in which another person has an interest ‘take reasonable steps to give notice’ that the owner is in danger of losing the owner’s interest in the property so ‘the owner can pursue available remedies.’” *Sneil, LLC v. Tybe Learning Ctr., Inc.*, 370 S.W.3d 562, 573 (Mo. 2012) (citing *City of West Covina v. Perkins*, 525 U.S. 234, 240 (1999)). “Due process requires that the notice be ‘reasonably calculated, under all circumstances, to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.* (citing *Mennonite Bd. Of Missions v. Adams*, 462 U.S. 791, 795 (1983)). Further, “[i]f the tax sale purchaser receives notice that the certified mail was not claimed, i.e. that the intended recipient did not receive notice of the sale, the purchaser must take additional, reasonable steps to effectuate notice. *CedarBridge, LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App. E.D. 2009) (citing *Schlereth v. Hardy*, 280 S.W.3d 47 (Mo. 2009)).

4. “In order to satisfy the statutory requirement that notice be given to the owner at the ‘last known available address,’ ...the purchaser must use due diligence to notify the owner at the last known ‘available’ address.” *Harpagon Mo, LLC v. Clay County Collector*, 335 S.W.3d 99, 104 (Mo. App. W.D. 2011) (citing *Crossland v. Thompson*, 317 S.W.3d 635, 642 (Mo. App. S.D. 2010)). “What that means is that the word ‘available’ in section 140.405 encompasses the concept that reasonable efforts should be used to notify the owner that someone else is claiming

an interest in the property. *Id.* "Due diligence in this regard is a factual question that must be assessed on a case by case basis." *Id.*

5. WMAC failed to put forth any reasonable effort to notify Defendant SA that it was claiming an interest in the Property or advising of the statutory right to redeem.

6. The certified mail sent to SA was returned as "vacant" or "unclaimed" and "not deliverable," yet WMAC admittedly did not take any further steps to find valid addresses for Defendant SA, nor did WMAC attempt to search for a valid address for Defendant SA under any other variation of spelling of his name that were clearly shown on the Letter Reports obtained by WMAC.

7. WMAC's failure to exercise due diligence by taking additional, reasonable steps to ensure that proper Notice was received effectively deprived Defendant SA of his due process rights. A simple internet search or search of Case-net would have provided a current address for the Defendant.

8. Under section 140.405 (8), RSMo 2000, "Failure of the purchaser to comply with this section shall result in such purchaser's loss of all interest in the real estate."

9. Section 140.330(2), RSMo 2000, provides that:

"... [t]he court shall examine in to the facts, and if upon the hearing of such cause it shall appear that the complainant's title was or is invalid for any cause, such suit shall not be dismissed by the court, but the court, in cases where the tax was due and unpaid, or where the complainant's title was invalid for defect or uncertainty of description shall ascertain the amount due to the complainant, for principal and interest, to be computed at not to exceed ten percent per annum, and from whom due, and shall decree the payment thereof within a reasonable time by the owner of such land, the owner of any life estate therein, or any other person in possession as lessee thereof and owing such sum ascertained, and in default thereof shall direct that such leasehold, life estate and land or lot be sold therefor, and that the equity and right of redemption of all defendants in such suit, and all persons claiming under them shall be forever foreclosed."

10. By the preponderance of the evidence, the Collector's Deed is invalid.

B. Ejectment

1. Ejectment is a “possessory action for recovery of property as authorized by Section 524.010, et seq.” *Rychnovsky v. Cole*, 119 S.W.3d 204, 212 (Mo App.W.D. 2003).

2. To make a claim for ejectment, a “plaintiff must show the defendant was in possession of premises to which plaintiff had a right of possession.” *Id.*

3. The plaintiff “must further plead that he was damaged as a result of the defendant’s unlawful possession of the premises.” *Id.*

4. WMAC has failed to show that any Defendant is in possession of the Property or that WMAC has a right to possession, and has therefore failed to prove its claim for ejectment.

Judgment

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Collector’s Deed is declared invalid as set forth herein, and fee simple title is hereby reverted back to Defendant SA, subject to the Deed of Trust and Modification of Security Instrument held by Defendant Bank of America, NA.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant SA shall reimburse to Plaintiff WMAC the total amount of \$14,940.55, which breaks down as follows:

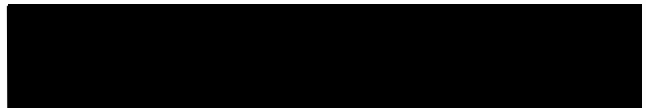
Taxes Paid at Sale	\$ 8,930.00
2014 Taxes Paid	\$ 1,796.74
2015 Taxes Paid	\$ 2,031.52
10% interest	<u>\$ 2,182.29</u>
TOTAL	\$14,940.55

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant SA shall have forty-five (45) days from the date of this Judgment to tender \$14,940.55 to WMAC.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant SA is entitled to the surplus funds held by the St. Louis County Collector in the amount of \$2,724.00.

Costs assessed against Plaintiff.

SO ORDERED:



Judge Dean P. Waldemer
St. Louis County Circuit Court
Division No. 8

Entered this ^{3RD} day of January, 2018.

cc: Attorneys of Record 