STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: January 15, 2016)

U.S. BANK NATIONAL ASSOCIATION, TRUSTEE FOR STRUCTURED ASSET INVESTMENT LOAN TRUST MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-8	:	
VS.	:	**P.M. No. 15-3374**
ANGEL'S DELI, RIGP, L BRAYTON FOUNDRY BUILDING CORPORATION	:	

DECISION

LANPHEAR, J. This is a petition to vacate a decree which foreclosed the rights of redemption after a tax sale. The rights of redemption were foreclosed in another court action.

Facts and Travel

The Court file in Providence County Superior Court Miscellaneous Petition number 14-1547 indicates that a tax sale was held on March 8, 2013 as the owners of certain property on Massachusetts Avenue in Providence had failed to pay their taxes, use charges and assessments. Angel's Deli purchased the tax sale interest and the deed was recorded on May 1, 2013.

On March 20, 2014, Angel's filed the 2014 case seeking to foreclose the interests of others who may hold an interest in the property. A title search was completed. It revealed that U.S. Bank National Association, Trustee for Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates Series 2005-2008 (U.S. Bank) had received an interest by a Confirmatory Assignment (apparently from a prior mortgage). There is no dispute that U.S. Bank had an interest in the property.

Notice was sent to those who were reported to have an interest in the property. Angel's Deli attempted to serve them by certified mail, and then served the foreclosure citation by advertising on three different dates in The Providence Journal. Unable to serve the owners at one point, a citation was tacked to the door of the property. Although a statement by petitioner's attorney indicates that U.S. Bank refused the certified mail service of process, there is a green certified mail card for a package that was addressed to U.S. Bank, signed as received.

Angel's scheduled a hearing on the motion for entry of a final decree. Although no party responded to the served petition, Angel's sent a notice of the hearing to those listed on the title. Unfortunately, the letter listed "October 89, 2014" as the date of hearing, a date which does not exist. Regardless, a new hearing was issued for "October 22, 2014." The Court granted the decree foreclosing the right of redemption on October 22, 2014.

In November 2014, the Rhode Island Superior Court converted to an electronic filing system for civil cases. During the summer and fall of 2014, the court's clerks scanned the active civil files into electronic images. The final foreclosure decree was not scanned, but was loose in the file when the Court reviewed it. The Court prepared a special order identifying the contents of the file (Order entered August 2015 contained in P.M. 2014-1547), and it was then scanned.

In August 2015, U.S. Bank filed this action to vacate the decree in the 2014 case.

Analysis

U.S. mail was timely served. Service appears to have been made by certified mail and was clearly made by publication. The final decree of foreclosure was entered after service, with U.S. Bank neither appearing nor contesting the foreclosure in writing. Therefore service was effective.

U.S. Bank contends that the notice listing "October 89, 2014" was incorrect, confusing, and establishes a basis to foreclose the sale. There are several reasons why the error does not justify voiding the decree:

- Although this date of notice was given, it does not appear that anything happened on that day, but for a continuance. The decree was entered on October 22, 2014, and the court file reflects that another notice was mailed reflecting the October 22, 2014 date.
- U.S. Bank never appeared in 2014. The citation requires an answer to be filed, under oath. Whether it was confused or not, certainly the notices should have piqued its interest. U.S. Bank did not respond to the notices, the certified mail letter or the advertising. U.S. Bank does not offer an explanation for its failure to respond.
- The petitioner may not have needed to send the notice for the hearing, as service of process was completed months before, and U.S. Bank never responded. The petitioner was courteous by sending formal notice of the hearing date.
- The procedure for foreclosing the rights of redemption is detailed in the statutes, and a matter of law. R.I.G.L. § 44-9-35 establishes that insubstantial errors and irregularities do not void a tax sale, nor justify voiding a decree. See also Medeiros v. Bankers Trust Co., 38 A.3d 1112 (R.I. 2012).

Conclusion

The motion to vacate the judgment and decree is denied.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	U.S. Bank National Association, Trustee for Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates Series 2005-8 v. Angel's Deli, et al.
CASE NO:	P.M. No. 15-3374
COURT:	Providence County Superior Court
DATE DECISION FILED:	January 15, 2016
JUSTICE/MAGISTRATE:	Lanphear, J.
ATTORNEYS:	
For Plaintiff:	Michael R. Hagopian, Esq.
For Defendant:	Patrick T. Conley, Esq.