STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: July 12, 2023)

WESTCONNAUG RECOVERY COMPANY, LLC,	:	
Petitioner,	:	
	:	
v.	:	**C.A. No. PM-2019-5838**
	:	
U.S. BANK NATIONAL ASSOCIATION as Trustee for ARMT 2007-2 and CITY OF PROVIDENCE,	:	
Respondents.	:	

DECISION

CRUISE, J. The matter before the Court for decision is Westconnaug Recovery Company, LLC's (Petitioner) Motion for Entry of Final Decree pursuant to G.L. 1956 § 44-9-30 to bar U.S. Bank National Association's (Respondent) right of redemption for 14 Maxcy Drive in Providence, Rhode Island (the Property). Jurisdiction is pursuant to § 44-9-30.

I

Facts and Travel

Respondent purchased the Property in 2009. (Respondent, U.S. Bank National Association as Trustee for ARMT 2007-2's Answer to Amended Petition to Foreclose Right of Redemption (Answer) ¶ 1.) On May 10, 2018, the Property was sold at tax sale by the City of Providence. (Amended Petition to Foreclose Right of Redemption 1.) On May 20, 2019, Petitioner filed a petition to foreclose Respondent's right of redemption and filed an amended petition on May 28, 2019 (the Amended Petition). (Docket.) Respondent answered the Amended Petition on June 27, 2019 (the Answer). *Id.*

In the Answer, Respondent challenged the validity of Petitioner's tax title to the Property by alleging that Respondent did not receive proper notice of the tax sale or this lawsuit. (Answer ¶¶ 3-5.) Additionally, Respondent alleged that it did not owe any outstanding taxes on the Property. *Id.* ¶ 2. The Answer did not include an offer to redeem the Property. *See id.*

On October 4, 2019, Petitioner filed a motion for entry of a final decree to foreclose Respondent's right of redemption and a memorandum of law in support thereof (the First Motion). *See generally* Motion for Entry of Final Decree with Incorporated Memorandum of Law. In the First Motion, Petitioner argued that the Answer was deficient because it failed to include an offer to redeem the Property prior to the return date, and therefore, Respondent was not entitled to redeem the Property. *Id.* at 2. Respondent objected to the First Motion on October 11, 2019. (Docket.)

On November 21, 2019, Respondent filed a motion to amend the Answer to include an offer to redeem the Property and a motion for leave to conduct discovery related to the underlying tax sale and, once completed, to conduct an evidentiary hearing on said issue. *Id.*; *see also* Respondent's Motion for Leave to Conduct Discovery and Request for an Evidentiary Hearing. On December 5, 2019, the Court granted Respondent's motions, denied Petitioner's First Motion, and entered an Order reflecting said decision on January 2, 2020. (Order (Jan. 2, 2020).) Respondent filed an amended answer on December 5, 2019 (the Amended Answer) that included additional factual allegations. (Respondent, U.S. Bank National Association as Trustee for ARMT 2007-2's Amended Answer to Amended Petition to Foreclose Right of Redemption (Am. Answer) ¶¶ 7-9.)

On July 10, 2020, Respondent filed a motion to set a redemption figure. (Docket.) Petitioner objected to said motion on August 7, 2020 and included a renewed motion for entry of

final decree pursuant to § 44-9-30 (the Second Motion) in said objection. *Id.* On September 1, 2020, the Court denied the Second Motion and granted Respondent's motion to set a redemption figure which allowed Respondent to redeem the Property by September 15, 2020 if Respondent paid Petitioner $65,000. (Order, (Sep. 18, 2020) 1.) Furthermore, within fourteen days of receipt of the $65,000, Petitioner was required to execute and deliver the redemption deed for the Property to Respondent. *Id.* Respondent attempted to pay the $65,000, but Petitioner refused to accept the payment and failed to deliver the redemption deed. (Respondent's Motion to Adjudge the Petitioner in Contempt and to Impose Sanctions 1.) As a result, on September 30, 2020, Respondent filed a motion to adjudge Petitioner in contempt for failure to deliver the redemption deed within the prescribed time and to impose sanctions against Petitioner. *See id.*

On October 2, 2020, Petitioner filed a Notice of Appeal to the Rhode Island Supreme Court which appealed the September 18, 2020 Order and Judgment that permitted Petitioner to redeem the Property for $65,000. (Notice of Appeal (Oct. 2, 2020).) The case was certified to the Supreme Court on October 21, 2020; however, the case was returned to the Superior Court on December 21, 2020 for an interim remand so that the Court could decide Respondent's motion to adjudge Petitioner in contempt and Petitioner's motion for a stay of the September 18, 2020 Order. (Supreme Court Order (Dec. 18, 2020).) On March 16, 2021, the Court granted both motions. (Order (Mar. 16, 2021).) The case was recertified to the Supreme Court on March 22, 2021. (Docket.)

On appeal, our Supreme Court explained that § 44-9-29 required Respondent to "set forth in its answer an offer to redeem before the fixed return date" and determined the Answer did not include any "suggestion whatsoever of an intent by [R]espondent to redeem the Property." *Westconnaug Recovery Company, LLC v. U.S. Bank National Association as Trustee for ARMT*

2007-2, 290 A.3d 364, 368 (R.I. 2023). Accordingly, the Supreme Court held that "[R]espondent's right to redeem is consequently barred." *Id.* However, the Supreme Court went on to explain that "[t]he answer filed by [R]espondent allows [R]espondent to contest the validity of the tax sale pursuant to § 44-9-31; however, there was no offer to redeem to satisfy the strict statutory requirements of § 44-9-29." *Id.* As a result, the Supreme Court (1) vacated the September 18, 2020 Judgment that granted Respondent's right of redemption, (2) vacated the March 16, 2021 order of contempt, and (3) "remanded [the case] to the Superior Court for further proceedings consistent with this opinion on the [P]etitioner's amended petition for foreclosure of the right of redemption and [the] arguments raised." *Id.* The case was returned to the Superior Court on March 28, 2023. (Docket.)

On April 5, 2023, Petitioner filed a third motion for entry of final decree pursuant to § 44-9-30. (Motion for Entry of Final Decree in Tax Sale Case R.I. Gen Laws § 44-9-30 (Pet'r's Mot.) 1.) Respondent objected to the Petitioner's Motion on April 19, 2023. (Respondent's Opposition to Petitioner's Motion for Entry of Final Decree in Tax Sale Case (Resp't's Obj.).) The Court heard argument on Petitioner's Motion on April 20, 2023, and at the conclusion of the hearing, the Court decided additional briefing was necessary and ordered the parties to submit supplemental memoranda in support of their respective positions. (Docket.) Petitioner filed its supplemental memorandum on May 4, 2023, and Respondent filed its response to Petitioner's memorandum on May 26, 2023. *Id.* No further argument was heard.

II

Standard of Review

"A tax sale foreclosure proceeding 'is a unique procedure created by statute for a limited purpose; to provide a forum for the exercise of the right to redeem the subject land.'" *ABAR*

Associates v. Luna, 870 A.2d 990, 994 (R.I. 2005) (internal quotation omitted). Furthermore, pursuant to Rule 81(a)(2)(B) of the Superior Court Rules of Civil Procedure, the rules do not apply to "[p]etitions for foreclosure of redemption of interests in land sold for nonpayment of taxes." Super. R. Civ. P. 81(a)(2)(B). Therefore, "because the foreclosure of the right of redemption 'is a statutory proceeding and not an ordinary civil action, the jurisdiction of the Superior Court is sharply circumscribed.'" *E.T. Investments, LLC v. Riley*, 262 A.3d 673, 676 (R.I. 2021) (quoting *Johnson v. QBAR Associates*, 78 A.3d 48, 53 (R.I. 2013)).

III

Analysis

Petitioner argues that our Supreme Court's statement that "the answer filed by respondent allows respondent to contest the validity of the tax sale pursuant to § 44-9-31" is nothing more than nonbinding dicta because "it was unnecessary to the decision rendered[.]" (Petitioner Westconnaug's Memorandum in Support of its Motion for Entry of Final Decree (Pet'r's Mem.) 4.) Furthermore, Petitioner submits that this Court may enter a final decree forever barring Respondent's rights of redemption because (1) the Supreme Court's ruling barred Respondent's rights to redeem the Property and (2) Respondent is not an "interested party" under § 44-9-31 now that its rights to redeem have been barred by the Supreme Court and, as such, Respondent does not have the proper standing to contest Petitioner's title to the Property. *Id.* at 4-7. In the alternative, Petitioner argues that if the Respondent still has standing to contest the validity of the tax title, Respondent failed to file separate factual specifications of Respondent's basis for defeating the tax title as required by § 44-9-31, and therefore, the Court is without the power and jurisdiction to hold a hearing on the validity of Petitioner's tax title pursuant to § 44-9-31. *Id.* at 7-10. Lastly, Petitioner contends that Respondent cannot challenge the tax title because (1) Respondent "expressly

elected—on the record in open court—to pursue redemption under § 44-9-29 rather than challenge [Petitioner's] tax title," and the September 18, 2020 Judgment reflects the finality of Respondent's election to solely pursue redemption instead of challenging the tax title; (2) Respondent is barred by the doctrine of laches; and (3) Respondent's successive efforts to confirm the validity of the tax title judicially estops Respondent from challenging the tax title that it vigorously sought to affirm. *Id.* at 11-18.

In response, Respondent argues that from the "very beginning of this matter, [it] has disputed the validity of the underlying tax sale;" specifically, in the Answer, Respondent denied receiving proper notice of the sale and denied that there were outstanding taxes owed on the Property. (Respondent's Response to Petitioner's Memorandum in Support of its Motion for Entry of Final Decree (Resp't's Mem.) 2.) Additionally, Respondent submits that, on appeal, the Supreme Court specifically explained that the Answer allows Respondent to contest the validity of the tax sale pursuant to § 44-9-31. *Id.* (citing *Westconnaug*, 290 A.3d at 368). In support, Respondent submits that the Supreme Court remanded this matter for further proceedings, not simply the entry of a final decree, and therefore, Respondent should be given additional time to complete the discovery that was previously initiated in support of its challenge to the validity of the tax title. *Id.* at 3. Lastly, Respondent argues that its challenge to the validity of the tax sale is "one of the 'arguments raised,' and in accordance with the remand order of the Supreme Court" and, as such, this Court must address said argument on remand. *Id.* at 4.

A

Entry of Final Decree Pursuant to § 44-9-30

Section 44-9-30 states, in pertinent part:

> "[I]f redemption is not made within the time and upon the terms fixed by the court under § 44-9-29, or if at the time fixed for the

> hearing the person claiming the right to redeem does not appear to urge his or her claim, after having filed a timely answer, or if upon hearing the court determines that the facts shown do not entitle the person to redeem, a decree shall be entered which shall forever bar all rights of redemption." Section 44-9-30.

The mandate rule "'provides that a lower court on remand must implement both the *letter* and *spirit* of the [appellate court's] mandate, and may not disregard the explicit directives of that court.'" *America Condominium Association, Inc. v. Mardo*, 270 A.3d 612, 620-21 (R.I. 2022) (quoting *Ferrell v. Wall*, 971 A.2d 615, 624 (R.I. 2009)). Furthermore, this Court "'cannot vary [the Supreme Court's mandate], or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded.'" *Id.* at 621 (quoting *Sisto v. America Condominium Association, Inc.*, 140 A.3d 124, 128 (R.I. 2016)). However, this Court "'may consider and decide any matters left open by the mandate of [the Supreme Court].'" *Sisto*, 140 A.3d at 128 (quoting *Pleasant Management, LLC v. Carrasco*, 906 A.2d 216, 223 (R.I. 2008)).

The Supreme Court's mandate stated, in relevant part, "the final judgment granting the [R]espondent's right of redemption is vacated. The order of contempt is likewise vacated. This case is remanded . . . for further proceedings consistent with this opinion on the [P]etitioner's amended petition for foreclosure of the right of redemption and arguments raised." *Westconnaug*, 290 A.3d at 368. The Supreme Court was clear that "[t]he [A]nswer included no suggestion whatsoever of an intent by [R]espondent to redeem the Property," and because Respondent failed to include an offer to redeem, "[R]espondent's right to redeem is consequently barred." *Id.*

In accordance with the mandate rule, and the language of § 44-9-30, it would appear at first glance that this Court has no choice but to enter a final decree that bars Respondent's rights to redeem the Property. *See America Condominium Association*, 270 A.3d at 620-21 (on remand the Superior Court "must implement both the *letter* and *spirit*" of the Supreme Court's mandate); *see*

also § 44-9-30 ("if upon hearing the court determines that the facts shown do not entitle the person to redeem, a decree shall be entered which shall forever bar all rights of redemption). However, on appeal, the Supreme Court ***only*** resolved the issue of whether Respondent had the right to redeem the Property; the Order left Respondent's challenge to the tax title and underlying tax sale undecided. *See Westconnaug*, 290 A.3d at 368. Specifically, our Supreme Court explained that "[R]espondent filed a timely answer that challenged the validity of title . . . [and] [t]he [A]nswer filed by [R]espondent allows [R]espondent to contest the validity of the tax sale pursuant to § 44-9-31[.]" *Id.* at 367-68. The Supreme Court did not resolve the issue of whether the tax sale was valid; instead, the Supreme Court remanded the case "for further proceedings consistent with this opinion on the [P]etitioner's amended petition for foreclosure of the right of redemption ***and [the] arguments raised***." *Id.* at 368 (emphasis added). If our Supreme Court only wanted this Court to enter a final decree, as Petitioner suggests, the Supreme Court would not have remanded the case with instructions for this Court to conduct further proceedings. *See e.g., Roger Williams College v. Gallison*, 572 A.2d 61, 63 (R.I. 1990) (case remanded to Superior Court with directions to enter judgment); *Faella v. Town of Johnston*, 274 A.3d 798, 808 (R.I. 2022) (case remanded for entry of final judgment consistent with the Supreme Court's opinion). Moreover, Respondent clearly raised the argument that the underlying tax sale was not valid because Respondent did not owe any outstanding taxes or receive notice of the tax sale. (Am. Answer ¶¶ 2-4.) Therefore, it is within the purview of this Court to decide whether the underlying tax sale was valid under § 44-9-31. *See Sisto*, 140 A.3d at 128 (the Superior Court "may consider and decide any matters left open by the mandate of [the Supreme Court]").

B

Validity of the Tax Sale Under § 44-9-31

Section 44-9-31 states, in pertinent part:

> "If a person claiming an interest desires to raise any question concerning the validity of a tax title, *the person shall do so by answer filed in the proceeding on or before the return day* . . . or else be forever barred from contesting or raising the question in any other proceeding. He or she *shall also file specifications setting forth the matters upon which he or she relies to defeat the title*; and unless the specifications are filed, all questions of the validity or invalidity of the title, whether in the form of the deed or proceedings relating to the sale, shall be deemed to have been waived. *Upon the filing of the specifications*, the court shall hear the parties and shall enter a decree in conformity with the law on the facts found." Section 44-9-31 (emphasis added).

Section 44-9-31 sets forth two prerequisites for challenging the validity of a tax title under § 44-9-31. *See id.* First, the "person claiming an interest . . . shall do so by answer filed in the proceeding on or before the return day." *Id.* In this case, the Answer contested the validity of the tax sale and was filed on June 27, 2019, which satisfied the "on or before the return day" requirement because it was filed on the return day for the Petition. (Docket.) The second prerequisite in § 44-9-31 is that the person challenging the tax sale "shall also file specifications setting forth the matters upon which he or she relies to defeat the title[.]" Section 44-9-31. Here, the Answer sets forth two bases why Respondent was challenging the tax title; first, Respondent alleged that there were not any outstanding taxes on the Property; and second, Respondent alleged that it did not receive proper notice of the outstanding taxes or the tax sale. Answer ¶¶ 2-4; *see also* Am. Answer ¶¶ 2-4. Based on the assertions set forth in the Answer and Amended Answer, the Court determines that the Answer and Amended Answer satisfy the prerequisites of § 44-9-31.

Accordingly, Respondent has satisfied the prerequisites of § 44-9-31 and may challenge Petitioner's tax title.

Having determined that Respondent has met the prerequisites for challenging the tax title under § 44-9-31, the next step under § 44-9-31 is for the Court to "hear the parties and . . . enter a decree in conformity with the law on the facts found." Section 44-9-31. At this time, the parties have not been heard by the Court on this specific issue nor have the parties presented evidence to the Court regarding the validity of Petitioner's tax title. Therefore, the Court declines to decide the validity of the tax sale until the parties have had the opportunity to present additional evidence to the Court on this particular issue. Furthermore, the Court will reserve entering a final decree pursuant to § 44-9-30 that would bar Respondent's right to redeem the Property (as decided by the Supreme Court) until the issue of the validity of the underlying tax sale has been heard and decided by this Court.

IV

Conclusion

For the foregoing reasons, Petitioner's Motion for Entry of a Final Decree barring Respondent's right to redeem the Property pursuant to § 44-9-30 is **DENIED** without prejudice. As to Respondent's challenge to the validity of the tax title under § 44-9-31, the parties shall confer amongst themselves and choose a mutually agreed upon date for hearing and/or briefing on this issue and shall contact the Court at that time. Counsel shall prepare and submit an order that is consistent with this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Westconnaug Recovery Company, LLC v. U.S. Bank National Association as Trustee for ARMT 2007-2 and City of Providence**
CASE NO:	**PM-2019-5838**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 12, 2023**
JUSTICE/MAGISTRATE:	**Cruise, J.**
ATTORNEYS:	
For Plaintiff:	**Michael J. Riley, Esq.**
For Defendant:	**Michael P. Robinson, Esq.**