

STATE OF RHODE ISLAND

WASHINGTON, SC.

SUPERIOR COURT

(FILED: February 25, 2025)

TIFFANY COZZOLINO,	:	
<i>Plaintiff</i>	:	
	:	
v.	:	C.A. No. WC-2019-0508
	:	
FRANK H. SAMUELSON, JR.,	:	
ALBERT T. KING, DANIEL J. DUGAN,	:	
COBBLE HILL DEVELOPMENT,	:	
LLC, LUIS FLOREZ, WESTERLY	:	
CAPITAL, LLC, and their heirs,	:	
administrators, executors, devisees,	:	
successors, grantees, and assigns, and all	:	
other persons, whether known or	:	
unknown, ascertained or unascertained,	:	
claiming by, through or under them.	:	
Also all other persons unknown and	:	
unascertained, claiming, or who may	:	
claim, any right, title, estate, lien, or	:	
interest in the real estate involved,	:	
which is, or might become, adverse to	:	
Plaintiff's right, title or interest therein	:	
as alleged or which does or may	:	
constitute any cloud upon Plaintiff's title	:	
thereto, as set forth in this petition,	:	
<i>Defendants.</i>	:	
	:	Consolidated With
FRANK H. SAMUELSON, JR.	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	C.A. No. WC-2023-0001
	:	
TIFFANY COZZOLINO, THE	:	
TOWN OF WESTERLY,	:	
R. RICHARD NICHOLS, TRACY	:	
NOBLE, ALLYSON MILLER, GREG	:	
BROWN, MEGHAN MCANENY,	:	
MICHAEL BROWN, KEVIN BROWN,	:	

**COBBLE HILL DEVELOPMENT,** :  
**LLC, LUIS FLOREZ, WESTERLY** :  
**CAPITAL, LLC, and their heirs,** :  
**administrators, executors, devisees,** :  
**successors, grantees, and assigns, and all** :  
**other persons, whether known or** :  
**unknown, ascertained or unascertained,** :  
**claiming by, through or under them,** :  
**also all other persons unknown or** :  
**unascertained, claiming, or who may** :  
**claim, any right, title, estate, lien, or** :  
**interest in the real estate involved,** :  
**which is, or might become, adverse to** :  
**Plaintiff's right, title or interest therein as** :  
**alleged or which does or may constitute** :  
**any cloud upon Plaintiff's title thereto, as** :  
**set forth in this petition,** :  
*Defendants.* :

## **DECISION**

**TAFT-CARTER, J.** Before this Court for decision is Tiffany Cozzolino's (Cozzolino) Motion for Summary Judgment filed in each of the consolidated cases. Frank H. Samuelson (Samuelson) and Westerly Capital, LLC (Westerly Capital) object to the motions.<sup>1</sup> In these motions, Cozzolino seeks to assert an extant right of redemption. Jurisdiction is pursuant to G.L. 1956 § 8-2-14 and Rule 56 of the Superior Court Rules of Civil Procedure.

## **I**

### **Facts and Travel**

On June 2, 1972, Gerald T. Dugan and Albert E. Carlson (Dugan and Carlson) purchased property designated by the Westerly Tax Assessor as Plat 130, Lot 38, with an address of 11 Rock

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<sup>1</sup> Cozzolino filed identical motions for summary judgment in each of the consolidated cases, and Samuelson's objections likewise contain identical arguments. The Court considers them together for judicial economy.

Ridge Road, Westerly, as tenants in common (hereinafter, the Property). (Cozzolino's Appendix to her Mem. Supp. Mot. Summ. J. (Cozzolino's App.) at 25, Havenwood Deed.) In 2004, Cobble Hill Development, LLC (Cobble Hill) acquired tax title to the Property as a result of Dugan and Carlson's failure to pay property taxes. (Cozzolino's App. at 129, Tax Collector's Deed to Cobble Hill.) Thereafter, Cobble Hill failed to pay property taxes on the Property, and, on January 11, 2008, Luis Florez (Florez) acquired tax title. (Cozzolino's App. at 131, Tax Collector's Deed to Luis Florez.) In turn, Florez failed to pay property taxes on the Property, and, on November 19, 2013, Westerly Capital acquired tax title. (Cozzolino's App. at 133, Tax Collector's Deed to Westerly Capital.) Samuelson purchased tax title to the Property from Westerly Capital by quitclaim deed on September 14, 2017. (Cozzolino's App. at 137-39, Westerly Capital Quit Claim Deed.)

On April 19, 2019, Cozzolino acquired her interest in the Property by an Executrix Deed executed by Margot Carlson as the executrix for the Estate of Albert Carlson. (Cozzolino's App. at 68, Executrix Deed.) This deed was recorded in the Westerly Land Evidence Records on May 17, 2019. *Id.*

Shortly thereafter, Cozzolino attempted to assert the existing right of redemption by a letter to Samuelson dated May 17, 2019. (Cozzolino's Compl. Ex. I, 2019 Letter.) Cozzolino contends, and Samuelson does not dispute, that Samuelson did not respond to the letter. *See Cozzolino's Mem. Supp. Mot. Summ. J. 5; see generally Samuelson's Compl.* Cozzolino then commenced the initial action, WC-2019-0508, on September 27, 2019. (Cozzolino's Compl.) The operative complaint in that case alleges three counts: (1) Count I, seeking declaratory judgment declaring and adjudicating that she holds the right of redemption to 11 Rock Ridge Road, along with Albert T. King, Daniel J. Dugan, or their heirs, and the heirs of Elizabeth King Pulford, Grace King

Eagles, Cobble Hill Development, LLC, and Luis Florez; (2) Count II, asking the Court to order Samuelson “to provide a true and accurate accounting of the sum that [Cozzolino] must tender in exchange for a certificate of redemption,” and, upon that tender, an order to Samuelson “to provide . . . a certificate of redemption suitable for recording in the Town of Westerly Land Evidence Records;” and (3) Count III, to quiet title to the Property under G.L. 1956 § 34-16-3. (Cozzolino’s Am. Compl. ¶¶ 34-41.)

Cozzolino filed a Motion for Summary Judgment in the initial action on September 11, 2022. (Cozzolino’s First Mot. Summ. J.) The Court denied the motion on February 17, 2023. *See* Hr’g Tr. 2:17-22, Feb. 17, 2023.

Samuelson filed a Complaint (Samuelson’s Complaint) on December 30, 2022, seeking, in Count I, “declaratory judgment declaring and adjudicating that [Samuelson] holds the right of redemption to 11 Rock Ridge Road” and costs pursuant to G.L. 1956 §§ 44-9-25(a) and 44-9-27(a); and in Count II, that the Court quiet title to the Property pursuant to § 34-16-3. (Samuelson’s Compl. 4-5 (WC-2023-0001).) Cozzolino never was served with Samuelson’s Complaint; nonetheless, her Answer was filed on February 20, 2023. *See* Cozzolino’s Answer. The Answer contained an offer to redeem the Property on terms fixed by the Court. *Id.* ¶ 7. The Court consolidated WC-2019-0508 and WC-2023-0001 for discovery and trial on March 27, 2023. (Order, Mar. 27, 2023.)

On March 25, 2024, Cozzolino again attempted to redeem the Property by tendering to Samuelson the sum of \$6,034.54, an amount which she alleges complies with § 44-9-21. *See* Cozzolino’s App. at 156, Tender Offer; *see also* § 44-9-21. Cozzolino contends, and Samuelson does not dispute, that Samuelson failed to respond to the March 25, 2024 tender. (Cozzolino’s Mot. Summ. J. 2; *see generally* Samuelson’s Compl.)

On August 23, 2024, the Court granted Samuelson’s motion to amend his Complaint to add the Town of Westerly as a Defendant. (Order, Aug. 23, 2024.) Cozzolino filed an Answer to Samuelson’s Amended Complaint on August 26, 2024, which Answer contained an offer to redeem the Property “upon terms fixed by this Court.” (Cozzolino’s Answer to Samuelson’s Am. Compl. ¶ 8.)

On October 7, 2024, Cozzolino filed the Motions for Summary Judgment in this consolidated action. *See* Cozzolino’s Mots. Summ. J. In these motions, Cozzolino asks the Court to enter judgment compelling Samuelson to provide a certificate of redemption suitable for recording or a deed of Samuelson’s right, title, and interest to the Property. *Id.*

The Court heard oral arguments on December 16, 2024, and the Court now renders its decision.

## II

### Standard of Review

“Summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously.” *Andrade v. Westlo Management LLC*, 276 A.3d 393, 399 (R.I. 2022) (internal quotation omitted). When considering a motion for summary judgment under Rule 56(c), the Court considers the competent evidence in the light most favorable to the nonmoving party and may only grant the motion if the evidence “show[s] that there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as matter of law.” Super. R. Civ. P. 56(c); *see also Andrade*, 276 A.3d at 399-400 (quoting *Cancel v. City of Providence*, 187 A.3d 347, 350 (R.I. 2018)). “A party opposing a motion for summary judgment ‘bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere

allegations or denials in the pleadings, mere conclusions or mere legal opinions.” *Andrade*, 276 A.3d at 400 (quoting *Cancel*, 187 A.3d at 350).

“‘[C]ompetent evidence’ . . . is generally presented on summary judgment in the form of ‘pleadings, depositions, answers to interrogatories, . . . admissions on file, . . . [and] affidavits.’” *Flynn v. Nickerson Community Center*, 177 A.3d 468, 476 (R.I. 2018) (internal quotation omitted). “Our Supreme Court permits a motion justice to rule on motions for summary judgment when faced with pure questions of law and statutory interpretation.” *Alves v. Cintas Corporation No. 2*, No. PC-2009-2412, 2013 WL 3722200, at \*7 (R.I. Super. July 8, 2013) (citing *DelSanto v. Hyundai Motor Finance Co.*, 882 A.2d 561, 564 n.9 (R.I. 2005)).

### III

#### Analysis

In her Motions for Summary Judgment, Cozzolino asks this Court to enter judgment compelling Samuelson to provide a certificate of redemption to her in a form suitable for recording or a deed of his right, title, and interest to the Property at 11 Rock Ridge Road in the Town of Westerly. (Cozzolino’s Mot. Summ. J. 1; *see also* Cozzolino’s Am. Compl. ¶¶ 34-41.) She argues that Samuelson’s Complaint is an ineffective vehicle to initiate a tax sale foreclosure proceeding. (Cozzolino’s Mem. 8.)

“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). “Because it is a statutory proceeding and not an ordinary civil action, the jurisdiction of the Superior Court is sharply circumscribed.” *Id.* Our Supreme Court holds that “[t]he authority for the sale of real estate for delinquent taxes must be found in the statutes and such statutes will not be enlarged by

judicial construction but will be strictly construed in favor of the owner.” *Pratt v. Woolley*, 117 R.I. 154, 161, 365 A.2d 424, 428 (1976) (internal quotation omitted).

“[I]n entertaining petitions to foreclose rights of redemption, a Superior Court justice does not have ‘an ordinary civil action’ before him or her but, instead, a unique procedure created by statute for a limited purpose.” *Finnegan v. Bing*, 772 A.2d 1070, 1072 (R.I. 2001). “Thus, he or she may consider matters only that the statute specifically empowers him or her to hear and may not invoke his or her equitable jurisdiction and fashion remedies for the parties.” *Id.* (citing *Pratt*, 117 R.I. at 157, 365 A.2d at 426).

In Rhode Island, a person holding a right of redemption after a tax sale may exercise that right as provided in G.L. 1956 chapter 9 of title 44. *Johnson v. QBAR Associates*, 78 A.3d 48, 52 (R.I. 2013). “Initially, within one year following a tax sale, a person holding an interest in the property has an absolute right to redeem the property[.]” *Id.* “If the property has not been redeemed within that year, the purchaser at the tax sale may file a petition to foreclose upon any interested party’s right of redemption.” *Id.* (citing § 44–9–25(a)). “In order to do so, the purchaser is required to send notice of the foreclosure petition to all interested parties, including mortgagees of record.” *Id.* (citing § 44–9–27).

## A

### Ownership of the Property

Cozzolino argues that she is the holder of an existing right of redemption. (Cozzolino’s Mot. Summ. J. 1.) Samuelson and Westerly Capital counter that the Town of Westerly, not Cozzolino, is the owner of the Property, and, as such, a genuine issue of material fact exists which precludes the entry of summary judgment. *See* Samuelson’s Obj. 2-3. At hearing, the attorney representing the Town of Westerly stated that the Town did not have an interest in the Property and did not intend to assert one.

It is well-established law “that admissions of attorneys in open court bind their clients in all matters relating to the progress and trial of the case.” *Cohen v. Goldman*, 85 R.I. 434, 438, 132 A.2d 414, 416 (1957). “[T]he admission of material facts, when made by attorneys in the trial of the case, precludes the necessity of proving such facts.” *Scotti v. District Court of Tenth Judicial District*, 42 R.I. 556, 109 A. 207, 207 (1920). Clearly, the Town of Westerly’s explicit denial of ownership removes this issue from genuine dispute. “A ‘genuine issue’ is one that could be resolved in favor of either party, and a ‘material fact’ is one that has the potential of affecting the outcome of the case.” *Bucci v. Hurd Buick Pontiac GMC Truck, LLC*, 85 A.3d 1160, 1175 n.7 (R.I. 2014) (quoting *Calero-Cerezo v. United States Department of Justice*, 355 F.3d 6, 19 (1st Cir. 2004)). Furthermore, the title report and affidavit of the Court-appointed title examiner confirm that the Town of Westerly is not an owner of and has no interest in the Property. *See* Aff. of Title Examiner (June 18, 2020). Accordingly, the Court finds that no genuine issue of material fact exists as to the ownership of the Property.

## **B**

### **Law of the Case**

Samuelson and Westerly Capital maintain that, because this Court denied Cozzolino’s prior Motion for Summary Judgment, the law of the case doctrine applies and requires the Court to deny these Motions for Summary Judgment. *See* Samuelson’s Obj. 3. In its February 17, 2023 ruling, the Court held that Cozzolino had not yet exercised her right of redemption in accordance with the statute. *See* Hr’g Tr. 2:17-22, Feb. 17, 2023.

“The law of the case doctrine is a rule of practice, based on sound policy that, when an issue is once . . . decided, that should be the end of the matter.” *DiMaggio v. Tucker*, 288 A.3d 981, 986 (R.I. 2023) (internal quotation omitted). “The doctrine states that after a judge has



decided an interlocutory matter in a pending suit, a second judge, confronted at a later stage of the suit with the same question in the identical manner, should refrain from disturbing the first ruling.” *Id.* (internal quotation omitted). The Rhode Island Supreme Court has noted that “[t]he purpose of the law of the case doctrine is to ensure the stability of decisions and avoid unseemly contests between judges that could result in a loss of public confidence in the judiciary.” *Id.* (internal quotation omitted). “Nevertheless, the law of the case doctrine is a flexible rule that may be disregarded when a subsequent ruling can be based on an expanded record.” *Id.* (internal quotation omitted).

Here, the motions before this Court are based on an expanded record. Since the denial of the initial motion on February 17, 2023, the Town of Westerly has been added as a party and Cozzolino has tendered to Samuelson a check for \$6,034.54, as well as a detailed explanation of how that figure was calculated pursuant to § 44-9-21.

Furthermore, in these motions, Cozzolino sets forth arguments distinguishable from those in the prior motion. The Court’s previous ruling was limited to a determination as to whether Cozzolino was entitled to judgment as a matter of law that she had, at that time, successfully redeemed the Property; she had not, and, therefore, this Court concluded that summary judgment was inappropriate. Now, the Court is asked to consider whether Samuelson’s Complaint is an effective petition for foreclosure under G.L. 1956 chapter 9 of title 44, as well as whether Cozzolino’s tender of redemption meets the statutory requirements. *See generally* Cozzolino’s Mem. Clearly, the Court’s rulings on these distinct issues would not disrupt the stability of its prior decision. Accordingly, the Court declines to apply the law of the case doctrine.

## C

### Cozzolino's Right to Redeem

The Court next must determine whether Cozzolino may exercise the right of redemption in the Property. “[A]fter one year, title conveyed by tax sale is ‘absolute, subject only to defeasance by redemption.’” *Theta Properties v. Ronci Realty Co. Inc.*, 814 A.2d 907, 918 (R.I. 2003) (quoting *Picerne v. Sylvestre*, 113 R.I. 598, 600-01, 324 A.2d 617, 618 (1974) (overruled on other grounds).

“Any person may redeem by paying or tendering to a purchaser, other than the city or town, his or her legal representatives, or assigns, or to the person to whom an assignment of a tax title has been made by the city or town, at any time prior to the filing of the petition for foreclosure[.]” Section 44-9-21.

“The right of redemption may be exercised only by those entitled to notice of the sale pursuant to §§ 44-9-10 and 44-9-11.” *Id.* Pursuant to § 44-9-11(a), a tax collector must provide notice to certain interested parties, provided their interest was of record at least ninety days prior to the date set for the sale, including but not limited to: “the present owner of record,” “former fee holders whose right to redeem has not been foreclosed,” “and/or their assignees of record[.]” Section 44-9-11(a). After a petition for foreclosure is filed, an interested party may still redeem, provided that

“on or before the return day or within that further time as may on motion be allowed by the court, providing the motion is made prior to the fixed return day, shall, if he or she desires to redeem, file an answer setting forth his or her right in the land, and an offer to redeem upon the terms as may be fixed by the court.” Section 44-9-29.

Here, competent evidence on the record demonstrates that Cozzolino acquired the right of redemption by Executrix Deed. *See* Cozzolino's App. at 52, Will of Albert E. Carlson; *id.* at 68, Executrix Deed. At the time the Property was sold at tax sale, Margot Carlson, as executrix of the Estate of Albert E. Carlson, was a “present owner of record,” and thus an interested party that held

an “absolute right to redeem the property” for one year. *Johnson*, 78 A.3d at 52; *see also* § 44-9-11. Until the Property is redeemed, the title conveyed by the tax collector’s deed is “absolute, subject only to defeasance by redemption.” *ABAR Associates*, 870 A.2d at 997 (internal quotation omitted).

Rhode Island courts have held that the right of redemption is a transferrable property right. *See, e.g., Theta Properties*, 814 A.2d at 918 (holding that a purchaser of an interest in property “owns [the] right of redemption”); *Demaine v. Cedrone*, No. 76-2425, 1979 WL 196133, at \*1 (R.I. Super. Aug. 23, 1979), *aff’d*, 442 A.2d 1275 (R.I. 1982) (recognizing that an interested party held the right of redemption after several successive transfers of the subject property); *Lydwin R. Young Associates v. Byrne*, Nos. P.M. 87-4991, P.C. 88-2054, 1989 WL 1129426, at \*1 (R.I. Super. Apr. 27, 1989) (holding that a city’s sale of a tax title “did not convey title free of the equity of redemption held by [the delinquent taxpayers] and their heirs, successors and assigns”). Therefore, when Cozzolino acquired the Executrix Deed from Margot Carlson on April 19, 2019, she became the “assignee of record” of an interested party, and thus successor to all of the grantor’s rights, including the right of redemption.

## D

### **Whether Samuelson’s Filings in WC-2019-0508 Constitute a Petition Under § 44-9-25**

Though Cozzolino is eligible to exercise the right of redemption, she only may do so “any time prior to the filing of the petition for foreclosure,” or after a petition for foreclosure has been filed, at the discretion of the Court. *See* §§ 44-9-21, 44-9-29. A petition for foreclosure must conform to the specific requirements of § 44-9-25.

Samuelson argues that, under Rhode Island’s notice pleading standards, there should be “no question” that Samuelson’s Complaint “was specifically undertaken pursuant to [G.L. 1956]

§ 44-9-25 seeking to Foreclose the Right of Redemption,” and therefore the window for redemption provided in § 44-9-21 closed when that action began. *See* Samuelson’s Obj. 3.

A petition to foreclose the right of redemption “shall set forth a description of the land to which it applies, with its assessed valuation, the petitioner’s source of title, giving a reference to the place, book, and page of record, and other facts as may be necessary for the information of the court.” Section 44-9-25(a). “The petitioner, at the time of filing his or her petition, shall deposit with the clerk of the superior court a sum sufficient to cover the costs of the proceedings as estimated by the court.” Section 44-9-26. “Upon the filing of a petition, the petitioner shall, at his or her own cost, select, with the approval of the court, a title company or an attorney familiar with the examination of land titles.” Section 44-9-27(a). “This company or attorney shall make an examination of the title . . . and the petitioner shall, upon the filing of the examiner’s report, notify all persons appearing to be interested, . . . the notice to be sent to each by registered or certified mail and return of receipt required.” *Id.*

“Once notice of the petition is effectuated, any interested party may redeem the property by filing an answer to the petition along with an offer to redeem on or before the specified return day, which may be fixed no sooner than twenty days after the issuance of the notice.” *Johnson*, 78 A.3d at 52. However, “if an interested party fails to [file an answer along with an offer to redeem on or before the specified return day,] a decree shall be entered which shall forever bar all rights of redemption.” *Conley v. Fontaine*, 138 A.3d 756, 760 (R.I. 2016) (internal quotation omitted).

While Rhode Island does embrace liberal notice pleading standards, *see* Super. R. Civ. P. 8(a)(1); *Haley v. Town of Lincoln*, 611 A.2d 845, 848 (R.I. 1992), the Superior Court Rules of Civil Procedure “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); *see also Izzo v. Victor Realty*, 132

A.3d 680, 687 (R.I. 2016) (“[W]e have . . . expressly stated that the Superior Court Rules of Civil Procedure do not apply to tax foreclosure actions.”). As such, Samuelson must comply with the statutory mandates.

Samuelson’s Complaint does not comply with the procedural requirements established in G.L. 1956 chapter 9 of title 44. First, though Samuelson’s Complaint does set forth “a description of the land . . ., [his] source of title, [and] give[s] a reference to the place, book, and page of record,” it does not provide the land’s “assessed valuation,” an express requirement of § 44-9-25(a). *See generally* Samuelson’s Am. Compl. (WC-2023-0001); *see also* § 44-9-25(a).

In addition, the statute requires a petitioner to “deposit with the clerk of the superior court a sum sufficient to cover the costs of the proceedings as estimated by the court.” Section 44-9-26. Here, there is no record of a deposit. A petitioner also must select—with the Court’s approval—a title examiner who will determine all interested parties and file that examiner’s report with the Court. *See* § 44-9-27(a). The petitioner then is required to provide notice of the proceedings to all interested parties by registered or certified mail. *Id.* Samuelson has failed to petition the Court for the appointment of a title examiner.

Further, the Samuelson Complaint and Amended Complaint in WC-2023-0001 are void of a request to this Court to *foreclose* the right of redemption—instead, in Count I, Samuelson asks the Court for “declaratory judgment declaring and adjudicating that [he] holds the right of redemption to 11 Rock Ridge Road” and asks for “costs pursuant to . . . § 44-9-25(a) and § 44-9-27(a).” (Samuelson’s Am. Compl. ¶ 34.) These sections of the statute do not provide for costs, and, moreover, Samuelson does not hold the right of redemption—he holds title *subject to* the right of redemption. *See* § 44-9-12. In Count II, Samuelson asks the Court to quiet title pursuant to § 34-16-3. *Id.* ¶ 40. Section 34-16-3 specifically provides that “[a] cause of action under this

chapter shall follow the course of equity so far as equity is applicable” and allows the Court to determine the validity of titles, but a foreclosure proceeding “is a unique procedure created by statute for a limited purpose” and the Court “may hear only those matters which the statute specifically empowers it to hear.” *See* § 34-16-3; *see also Pratt*, 117 R.I. at 157, 365 A.2d at 426. Thus, the Court is not empowered to foreclose the right of redemption through § 34-16-3, which is separate from the foreclosure statutes within G.L. 1956 title 44.

Moreover, the filing of the petition alone does not foreclose an owner’s right of redemption. After a petitioner provides the required notice, “[a]ny person claiming an interest, on or before the return day . . . shall, if he or she desires to redeem, file an answer setting forth his or her right in the land, and an offer to redeem upon the terms as may be fixed by the court.” Section 44-9-29. “Where an answer has been timely filed, the court shall hear the parties, and may in its discretion make a finding allowing the party to redeem[.]” *Id.*

The Court notes that Cozzolino never was served with the Samuelson Complaint. *See* Docket, WC-2023-0001. Nonetheless, Cozzolino submitted an Answer, wherein she states that she “files her answer to the petition to foreclose right of redemption and other claims filed by Petitioner Frank H. Samuelson, Jr.” *See* Cozzolino’s Answer 1. There, Cozzolino sets forth “her right in the land” and “an offer to redeem the property on terms fixed by this Court” language taken directly from § 44-9-29. *See* § 44-9-29; Cozzolino’s Answer ¶¶ 1, 7. Had Samuelson initiated an effective foreclosure proceeding, Cozzolino’s Answer, being timely filed and compliant with § 44-9-29, would have obligated the Court to hear the parties, and then the Court, at its discretion, would have been empowered to make a finding allowing Cozzolino to redeem the Property. *See* § 44-9-29. However, neither the Samuelson Complaint nor Amended Complaint function as effective petitions to foreclose the right of redemption. Therefore, as an assignee of a

fee holder whose right of redemption has not been foreclosed, Cozzolino may exercise the right of redemption by tendering the fees, penalties, and interest required by § 44-9-21.

## E

### **Whether Cozzolino Has Exercised the Right of Redemption**

Next, the Court must determine whether Cozzolino properly has redeemed her interest in the Property. Section 44-9-21 provides, in pertinent part:

“Any person may redeem by paying or tendering to a purchaser, other than the city or town, . . . at any time prior to the filing of the petition for foreclosure, . . . the original sum and any intervening taxes that have been paid to the municipality plus interest thereon at the rate of one percent (1%) per month and costs paid by him or her, plus a penalty as provided in § 44-9-19, or in the case of an assignee of a tax title from a city or town, the amount stated in the instrument of assignment, plus the above-mentioned penalty.” Section 44-9-21.

On March 25, 2024, Cozzolino mailed Samuelson a letter offering to redeem his tax title to the Property. (Cozzolino’s App. at 154-57, Tender Offer.) In that letter, she included a check for \$6,034.54, as well as a detailed explanation of how that figure was calculated pursuant to § 44-9-21. (Cozzolino’s App. at 154-57, Tender Offer.) The letter, having met the requirements of § 44-9-21, entitles Cozzolino, as a holder of the right of redemption, to exercise that right.

Samuelson attempts to preclude Cozzolino’s right of redemption by refusing to accept this lawful tender. Nonetheless, “[t]he clear language of the statute provides no limitation on the right to redeem the property.” *Monarch Builders, Inc. v. Natynak*, Nos. 99-5681, 00-0036, 2004 WL 1351360, at \*3 (R.I. Super. May 17, 2004). “[U]ntil the tax titleholder petitions the court to foreclose these rights, the titleholder may seek to redeem property sold at a tax sale at any time prior to the filing of the petition for foreclosure or at any time during the pendency of the petition[.]” *Id.* at \*2 (internal quotation omitted). Indeed, property owners in Rhode Island have

attempted to exercise the right of redemption after as many as twenty-five years. *See Sleboda v. Heirs at Law of Harris*, 508 A.2d 652, 653 (R.I. 1986).

It has been stated that “one who claims the right to redeem property may compel a recalcitrant purchaser at the tax sale to do that which he is required to do under the law[.]” *Machen v. Wolande Management Group, Inc.*, 517 S.E.2d 58, 59 (Ga. 1999) (internal quotation omitted). Here, Samuelson may not *refuse* an owner her right of redemption. While Samuelson did have the right to *foreclose* the right of redemption, he failed to do so in strict compliance with G.L. 1956 title 44. Under a strict reading of § 44-9-21, which provides that a “person may redeem by . . . tendering to a purchaser, other than the city or town, . . . at any time prior to the filing of the petition for foreclosure,” Cozzolino’s March 25, 2024 tender constituted successful redemption of the Property. Section 44-9-21.

#### IV

#### Conclusion

For the reasons stated above, Cozzolino’s Motions for Summary Judgment are **GRANTED**. Counsel shall submit the appropriate order for entry.





**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** **Tiffany Cozzolino v. Frank H. Samuelson, Jr., et al.**

*Consolidated with*

**Frank H. Samuelson, Jr. v. Tiffany Cozzolino, et al.**

**CASE NOS:** **WC-2019-0508 consolidated with WC-2023-0001**

**COURT:** **Washington County Superior Court**

**DATE DECISION FILED:** **February 25, 2025**

**JUSTICE/MAGISTRATE:** **Taft-Carter, J.**

**ATTORNEYS:**

**For Plaintiff:** **Kelly M. Fracassa, Esq. (WC-2019-0508)**  
**Michael P. Lynch, Esq. (WC-2023-0001)**

**For Defendant:** **Michael J. Riley, Esq. (WC-2019-0508)**  
**Michael P. Lynch, Esq. (WC-2019-0508)**  
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**Mario Martone, Esq. (WC-2023-0001)**

**For Third Party Defendant Town of Westerly:** **William J. Conley, Jr., Esq. (WC-2019-0508 and WC-2023-0001)**