No. 126929

IN THE

Supreme Court of Illinois

In re APPLICATION OF THE COUNTY COLLECTOR, for Judgment and Order of Sale Against Lands and Lot returned Delinquent for Nonpayment of General Taxes for the Year 2014 and Prior Years

BLOSSOM63 ENTERPRISES LLC,

Petitioner-Appellee,

—v.—

DEVONSHIRE, LLC,

Respondent-Appellant.

ON APPEAL FROM THE APPELLATE COURT COLLECTOR, FOR JUDGMENT AND ORDER OF FIRST JUDICIAL DISTRICT, NO. 1 19 1464 THERE HEARD ON APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS CASE NO. 2017COTD002611, THE HONORABLE JAMES ROBERT CARROLL, JUDGE PRESIDING

BRIEF OF PETITIONER-APPELLEE BLOSSOM63 ENTERPRISE LLC

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NATURE OF THE CASE

This case involves a petition for tax deed arising out of the 2014 Cook County annual tax sale. The trial court entered an order directing the county clerk to issue a tax deed to Petitioner-Appellee Blossom63 Enterprises, LLC (herein "Blossom"). The trial court vacated its order after Intervenor-Appellant Devonshire, LLC (herein "Devonshire"), filed a motion to vacate. The First District Appellate Court reversed the trial court's order vacating the tax deed order. Devonshire appeals the appellate court's judgment reversing the circuit court's order. No issues are raised on the pleadings.

ISSUES PRESENTED

1. Whether Blossom strictly complied with 35 ILCS 200/22-5.

2. Whether the reimbursement payment for the taxes sold under 35 ILCS 200/22-80 accrues interest through the date of payment or just through the redemption period.

3. Whether the majority appellate opinion will set a dangerous precedent.

STANDARD OF REVIEW

Blossom agrees with Devonshire the standard of review is *de novo* because this case involves statutory construction, which is a question of law. *Chicago Teachers Union, Local No. 1 v. Board of Education of the City of Chicago*, 2012 IL 112566, ¶ 15.

JURISDICTION

This court has jurisdiction under Supreme Court Rule 315 as this court granted a timely petition for leave to appeal.

STATEMENT OF FACTS

The property which is the subject matter of this tax deed proceeding is a commercial condominium unit located at 7225 N. Kostner Ave, Lincolnwood, Illinois ("Subject Property"). C100.[1] Blossom's predecessor in interest acquired a certificate of purchase for the Subject Property on June 3, 2016, at the Cook County Treasurer's 2014 annual tax sale. C107. The last day to redeem the 2014 tax sale was September 13, 2017, and no redemption was made from the tax sale. C107. On May 18, 2018, after a hearing, the trial court entered an order directing the issuance of a tax deed, and a tax deed was issued to Blossom and recorded. C143-159.

Devonshire was not an owner or other interested party responsible for paying the 2014 real estate taxes. Devonshire acquired an interest in the Subject Property on May 6, 2018, seven months *after* the last day to redeem, paying just $15,000 for a Warranty Deed. C223-224. At the same time, Devonshire also acquired an assignment of mortgage on the Subject Property. C213-215.

On May 17, 2018, Devonshire filed a petition to intervene in this case (it had no interest in the property when the tax deed petition was filed and

[1] "C__" denotes the common law record, "R___" the report of proceedings and "Br. __" appellant's brief.

thus was not a party). C155. The trial court granted Devonshire leave to intervene, and Devonshire filed a motion to vacate the order directing the issuance of the tax deed. C150. In its motion to vacate, Devonshire argued (a) the notice required by 35 ILCS 200/22-5 was not in strict compliance as required by 35 ILCS 200/22-40 because it listed the tax year sold as 2014 and not 2014 and 2013. C236. On March 18, 2019, the trial court vacated the order directing the issuance of the tax deed finding Blossom was required to list both 2013 and 2014 on the "Sold for General Taxes of (year)" line. R.28 and C254. The parties then disputed Blossom's right to interest on the taxes sold through the date of payment under 35 ILCS 200/22-80. C265. On May 29, 2019, the trial court held Blossom was not entitled to interest on the amount sold through the date of payment. C286. A timely appeal followed. C307.

ARGUMENT

I. Blossom strictly complied with 35 ILCS 200/22-5 when it listed the tax year sold as 2014.

At issue in this case is the required substance of one line in the Take Notice required by 35 ILCS 200/22-5 (herein "§22-5"). A review of the particular nature of the Cook County annual tax sale system is helpful to understand and decide the issue.

(a) The Cook County Annual Tax Sale

In Illinois, a county may collect its delinquent real estate taxes through an annual tax sale. 35 ILCS 200/21-150. At the tax sale, the county

offers delinquent tax bills for purchase to registered bidders. *United Legal Found. v. Pappas*, 2011 ILApp (1st) 093470, ¶4.

In Cook County, only one tax year may be offered and included in its annual tax sale. 35 ILCS 200/21-240. §21-240 provides the Cook County "application for judgment upon delinquent special assessments or special taxes in each year shall include only special assessments, special taxes, or installments thereof, and interest, as are returned as delinquent to the county collector on or before August 1 in the year in which the application is made." 35 ILCS 200/21-155 (emphasis added). Should Cook County wish to include more than one tax year in its tax sale, it may conduct a scavenger sale where three or more years may be included and sold. 35 ICLS 200/21-145.

After the tax sale, the winning bidder "shall be liable to the county for the amount due and shall forthwith pay to the county collector the amount charged on the property." 35 ILCS 200/21-240. In Cook County, "only the taxes, special assessments, interest, and costs as advertised in the sale shall be required to be paid forthwith." *Id*. The purchaser must make a written application and pay a fee to the county clerk for a statement of any prior taxes due. *Id*. After obtaining this "back tax" statement from the county clerk, if prior taxes are due, the buyer may pay "all the remaining taxes, interest and costs, and the amount necessary to redeem the forfeited general taxes." *Id*. Upon payment of these prior taxes, the bidder "then shall be

entitled to a certificate of purchase." *Id*. This process is known as the Cook County "Two-Step Process." See IICLE Real Estate Taxation, §6.9 (2020).

In Cook County, the tax purchaser is only required to pay the taxes advertised for the sale and is not required to pay any other remaining taxes due on the property. 35 ILCS 200/21-240. If the purchaser refuses to pay the prior taxes due, the "lien for taxes for the amount paid shall remain on the property, in favor of the purchaser, … until paid with 5% interest per year." *Id*.

As explained below, because the statute only required Blossom to pay the 2014 taxes after the sale, and because the Treasurer was only authorized to sell the 2014 taxes at the sale, the tax sale to Blossom was for tax year 2014 only.

(b) In this case, the tax sale was for 2014 taxes only

After it was the winning bidder at the 2014 annual tax sale and made its written application for a back tax statement, the county clerk informed Blossom a balance was due for 2013 taxes. Blossom then chose to pay the 2013 taxes due on the property and received Certificate of Purchase number 14-0002715, which states the sale was for general taxes of 2014 and the amount of taxes and interest for 2014. Several lines below are various county selling fees and a line for the 2013 2nd installment. As required by §21-240, judgment and order of sale was made only for the non-payment of 2014 taxes.

No judgment for sale was entered for the 2013 taxes as doing so would have violated §21-240.

Devonshire argues the Take Notice "Sold for General Taxes of (year)" line should have read 2014 and 2013. However, since the sale at issue was an annual tax sale, the Treasurer could not sell the Subject Property for multiple years outside of a scavenger sale without violating the provisions of §21-240. Thus, no part of the 2014 annual tax sale included the 2013 taxes as a matter of law. Blossom paid 2013 voluntarily after the 2014 tax sale to obtain a certificate of purchase, as opposed to a 5% tax lien for the 2014 taxes. The 5% lien option demonstrates the sale was of 2014 taxes because, no matter what occurred after the sale, Blossom was entitled to a lien for 2014 taxes. Paying the prior year's taxes does not turn the 2014 tax sale into a 2014 and 2013 tax sale. It simply includes the prior year in the redemption amount.

(c) The information in the take notice is for redemption purposes

The purpose of the take notice is for redemption purposes. *In re Application of County Treasurer v. Ballinger*, 307 Ill.App.3d 350, 354 (4th Dist. 1999). §22-5 requires the take notice to be mailed only once and to only one party, the party in whose name the taxes are last assessed. 35 ILCS 200/22-5. The notice must be mailed within 4 months and 15 days after the tax sale. *Id.* "The General Assembly transcripts confirm that the purpose of the section 22-5 post-sale notice provision was to provide a tax assessee, who

is usually the property owner, with additional notice which conveys all necessary information." *In re County Treasurer & Ex Officio County Collector (Glohry, LLC v. OneWest Bank)*, 2011 ILApp(1st) 101966, ¶34. Penalty provisions for Illinois tax sales accrue every six months. 35 ILCS 200/21-355. Thus, the §22-5 notice is designed to reach the taxpayer of record before the second penalty period occurs. The majority was correct when it stated, "[i]ncluding [the prior year] information does nothing to facilitate the purpose of this section, which is to notify the owner of the sale of the amount needed to redeem … and the date by which redemption must be made." *In Re Application of the County Collector*, 2020 IL App (1st) 191464 ¶27.

Devonshire is incorrect when it concludes the "notice is intended to give information … regarding the actual years of tax paid at the tax sale". Br. 12. An estimate of redemption, not a take notice, will provide all years associated with the tax sale. See 35 ILCS 200/21-355. The purpose of the line, "Sold for General Taxes of (year) ……." is to notify the recipient which tax sale it must redeem for a specific property. Delinquent property may have more than one tax sale at any one time. If neither the owner nor the tax purchaser pays the following year's taxes, the Treasurer will offer the property in the next annual sale. The "Sold for" line notifies the recipient of which tax sale year to request an estimate of redemption and to redeem.

The record is devoid of any effort to redeem the tax sale in this case. However, if the owner had attempted to redeem, it would have redeemed the

2014 annual tax sale - nothing more and nothing less. The *only* sale the owner could have redeemed was 2014. Had the owner requested to redeem the 2013 tax sale, the county clerk would have been unable to prepare an estimate of redemption for 2013 taxes as no 2013 tax sale had occurred. Similarly, if the owner had sought to pay the 2013 taxes, the county clerk would have directed them to redeem the 2014 sale.

(d) The Notice requires the year sold, not the years to be paid upon redemption

As the majority summarized, Devonshire "asserts that because it would need to pay both tax year 2014 and taxes for the second installment of 2013 to redeem the property, Blossom63's section 22-5 notice was deficient." *In re Application of County Treasurer*, 2020 IL App (1st) 191464, ¶25. The notice does not require a statement of which years are part of the redemption amount; instead, the Notice requires the year of the annual tax sale. After all, several tax years can be made part of one redemption estimate.

For example, in this case, on the date the §22-5 Notice was issued, Blossom had paid and posted the 2015 taxes to the 2014 tax sale and included the same in the cost to redeem. C274. See 35 ILCS 200/21-355(c). Under Devonshire's theory, the notice should also have stated the sale for 2015 taxes since 2015 was part of the redemption amount at the time the notice was issued. Of course, doing so would be confusing and could frustrate redemption efforts, the opposite of what the legislators intended. Just because more than one year is associated with the cost to redeem does not

mean the tax sale was for all those years. The court should consider what realistic difference it would have made in this case had Blossom included the prior year in the §22-5 take notice as suggested. We can think of none.

(e) The language of the statute requires only the tax year sold be listed

The principles of statutory construction are well known. As this court stated in *People v. Clark*, 2018 IL 122495 (P8):

> Our primary objective is to ascertain and give effect to legislative intent, the surest and most reliable indicator of which is the statutory language itself, given its plain and ordinary meaning. [Cite] In determining the plain meaning of statutory terms, we consider the statute in its entirety, keeping in mind the subject it addresses and the apparent intent of the Legislature in enacting it. [Cite] Where the language of the statute is clear and unambiguous, we must apply it as written, without resort to extrinsic aids of statutory construction. [Cite] We do not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the expressed intent. [Cite]

In this case, the statute at issue is the following line on the §22-5 Take Notice form: "Sold for General Taxes of (year) …….". The Legislature inserted the instruction to complete this line as "(year)", so it would be obvious how to complete the form. The plain and ordinary meaning of the phrase "Sold for General Taxes of (year)" is the annual tax sale year the Treasurer conducted. The statute does not state "(year(s))" nor does it state "(year)…. prior year(s) incl/paid." The Legislature could have required the form to contain prior tax information paid in the two-step process, but it did

not. The statute only requires the year of the annual tax sale, and in this case, it was 2014. Blossom so complied.

Applying §22-5 as written and with the legislative intent in mind, the notice calls only for the year of the tax sale. It is this year, and only this year, which requires redemption. Here, the tax sale year to redeem was 2014. All other taxes and fees paid and posted to the 2014 tax sale (whether 2013, 2015, 2016, ect.) became part of the redemption estimate for the 2014 tax sale. If this notice intends to reach the taxpayer before the second penalty period to provide redemption information, the notice must state exactly which tax sale the taxpayer is to redeem. Here, Blossom correctly listed 2014.

(f) No authority exists for requiring prior taxes to be placed on the Take Notice

Devonshire cites this court's decisions in *Gage v. Davis*, 129 Ill. 236, 239 (1889) and *Gaither v. Lager*, 2 Ill.2d 293 (1954) for support that "all tax years paid at a sale of property for delinquent taxes must be included in a Section 22-5 Take Notice." However, this is not the holding of these cases. First, the court decided these two cases long before the establishment of the §22-5 Take Notice form or any Take Notice form. See Emmerman, *Legislating protection of the delinquent property owner in an era of super-marketable tax titles,* DePaul L. Rev. 348 @ 356 (1969) (in footnote 68, describing the lack of statutory notice as of 1969). When the court decided the *Gage* and *Gaither* cases, the sole notice served on the owner was prepared

by the tax purchaser. While some mandatory information was required, there was no statutory form. See *Gage v. Bailey*, 100 Ill. 530 (1881). Today, the Property Tax Code provides the exact form of the notices to be served and the exact information to be included therein. Therefore, §22-5 has rendered *Gage* and *Gaither* moot, and the statute now controls the substance of the notice. Even if not moot, the notice in this case complied with the holdings in *Gage* and *Gaither*.

In *Gaither v. Lager*, the notice served upon the owner did not state "which year's tax the land was sold and…whether the sale was for general taxes or special assessments." 2 Ill.2d at 298. Blossom did not leave the line at issue blank. If it did, the notice would be invalid. But in this case, Blossom stated the sale was the 2014 general tax sale. *Gaither* did not hold prior years' taxes paid after the sale must be included in the notice, but only the year sold must be included. In this case, Blossom did so.

In *Gage v. Davis,* 129 Ill. 236 (1889), this court held a tax sale notice was insufficient because it did not state whether the property was sold for general or special taxes. Since Blossom's notice stated the sale was for general taxes, the *Gage* decision is of no support to Devonshire in this case.

Neither *Davis* nor *Gaither* support Devonshire's position that a tax purchaser must list any prior taxes paid as part of Cook County's two-step process in the take notice. The notice does not require a statement that prior

taxes are part of the redemption amount, or which years are part of the redemption amount, just the tax year of the annual tax sale.

(g) Property sold vs. tax lien sold

Both Devonshire and the dissenting Justice emphasize the statutory language in 35 ILCS 200/21-190, stating real property, not tax liens, are sold at tax sales. As explained below, however, notwithstanding the language used in §21-190, State and Federal courts applying Illinois law have interpreted §21-190 as the sale of taxes. For the outcome of this case, however, the distinction is one without a difference.

(1) A Certificate of Purchase is personal property

After the tax sale, a certificate of purchase is issued to the purchaser. 35 ILCS 200/21-250. The certificate of purchase is a form of personal property similar to a negotiable instrument that may be sold or assigned by endorsement. *Stanley v. Bank of Marion*, 23 Ill.2d 414 (1961). A tax purchaser's certificate of purchase for delinquent taxes has no effect on the delinquent property owner's legal or equitable title to the property. *In re County Treasurer*, 394 Ill.App.3d 111, 119 (2nd Dist. 2009) also see *Wells v. Glos*, 277 Ill. 516 (1917). The certificate of purchase relieves the property owner of the personal liability for the taxes sold. 35 ILCS 200/21-240. A tax purchaser is only entitled to a tax deed after the redemption period has expired with no redemption, strict proof it complied with the notice serving provisions of the property tax code and payment of subsequent taxes. 35

ILCS 200/22-40. The redemption period can be as long as three years. 35 ILCS 200/21-385. Should the tax purchaser fail to take the necessary steps to acquire and record the tax deed, its certificate of purchase will become null and void, and no tax deed will issue. 35 ILCS 200/22-85

(2) Courts have applied §21-190 as the selling of liens

Devonshire argues, "no taxes were purchased by Blossom just as no taxes have ever been purchased at any tax sale in Illinois." Br. 17. The dissent takes the same opinion and relies heavily on its distinction of the nature of what is sold at tax sale to conclude the §22-5 notice should have included the back taxes.

There are cases where courts describe the tax sale as selling tax liens and cases where courts describe the tax sale as the sale of real estate. However, as explained below, no court has applied §21-190 as the sale of real estate, although several courts have applied §21-190 as the sale of liens.

As a matter of description, courts and commentators use these terms interchangeably. Contrast *DG Enters., LLC v. Cornelius* 2015 IL 118975, ¶3 (describing a tax purchaser as having "purchased the 2007 delinquent real estate taxes for the property") with *In re County Collector (Apex Tax Investments, Inc. v. Lowe*), 225 Ill.2d 208 (2007) (describing how a bidder "purchased the home at the annual Cook County tax sale for ... the 1991 tax delinquency and fees.") 225 Ill.2d at 213.

As a matter of interpretation, courts have interpreted the tax sale as the selling of tax liens. Our research has not located one case where the court applied the tax sale as selling the real estate itself. The county does not issue a judicial deed at a tax sale, just a certificate of purchase which is "a species of personal property, a lien for taxes." See *Wiebrecht v. City of Chicago*, 14 Ill.App.3d 1062 (1973) (emphasis added), See *City of Chicago v. City Realty Exchange, Inc.*, 127 Ill.App.2d 185 (1970), and *In Re Lemont*, 740 F.3d 397 (7th Cir. 2014) and *Smith v. SIPI, LLC*, 811 F.3d 288 (7th Cir. 2016) (both applying Illinois tax sale law). In *Smith*, the Seventh Circuit described the tax sale as follows: "[a]t the county tax auction, bidders vie to purchase the tax lien, not the property itself. They do so by bidding down." 811 F.3d at 237.

The dissent cites this court's decision in A.*P. Properties, Inc. v. Goshinksy*, 186 Ill.2d 524, for support that the county sells real estate at tax sales. However, a reading of *A.P.* demonstrates no support. The dissent incorrectly describes this court as having "explained" the issue in *A.P.*, but there was no explanation. The dissent found the purported explanation on page 529, in the background section of *A.P.*, where this court stated, "[i]f the taxes are not paid before the sale, the county collector may sell the property to the highest bidder." Id at 529. The court was merely reciting §190 of the property tax code; it did not explain the nature of a tax purchase. Like many other cases, the *A.P.* court described the tax purchaser as having, "purchased

the delinquent taxes on property." 186 Ill.2d at 527. Despite the language used in *A.P.* to describe the tax sale, *A.P.* does not change the correct outcome of this case. *A.P.* was not similar in facts as it involved the Fraudulent Transfer Act and redemption rights and its holding not relevant here.

(3) A distinction without a difference

Whether the tax sale is a sale of liens or the sale of real estate, while an interesting red herring does not matter to the outcome of this case. If the court determines the tax sale was for real property, the line at issue on the take notice would still read 2014. It is uncontested the tax sale was the 2014 annual tax sale. The Treasurer obtained judgment and order of sale for 2014 taxes, and the statute prohibited her from obtaining judgment for any other year. Thus, whether the property was sold for 2014 taxes at the 2014 annual sale, or the 2014 taxes were sold at the 2014 annual sale, one thing is for certain: the sale was the 2014 annual and, as such, Blossom correctly listed 2014 as the tax sale year.

(h) The Appellate court did not misconstrue or misapply *DG Enterprises*

Both Devonshire and the dissent argue the appellate court misconstrued and misapplied this court's decision in *DG Enterprises, LLC-Will Tax, LLC v. Cornelius*, 2015 IL 118975. They argue a distinction because the *DG* case related to a collateral attack on a tax deed whereas this case was a "direct attack" filed while the trial court still had jurisdiction.

Devonshire over-emphasizes the majority's citation to *DG,* a case never cited by Blossom in its appellate briefs.

The majority had already reached its conclusion in paragraph 26 before discussing the *DG* case in paragraph 27. While the majority found this court's *DG* opinion "instructive", it did not rely upon it. The majority arrived at its holding by evaluating the plain language of the statute. In *DG*, it was uncontested that the take notice was incorrect, but it did not deny the owner due process, nor was the tax deed void. As such, this court held the trial court should not have vacated the tax deed. The majority cited *DG* to note Blossom's notice "satisfied the purpose and requirements of the section 22-5 notice of sale and did not deny Devonshire any rights to redeem the sale or later present objections." *In re Application of the County Collector*, 2020 IL App (1st) 191464 ¶27.

Contrary to Devonshire's argument, the majority did not erroneously apply the holding of *DG* because it did not apply the holding in *DG*. Indeed, it could not, as none of the two issues in *DG* were issues in this case. The majority looked to *DG* and found support the notice was valid but based its opinion on the statutory language and its purpose. The majority followed the mandates of statutory construction by "examining the language of the statute and giving the words their plain meaning and construing them in context." *In re Tax Deed (S.I. Securities v. Jones)*, 311 Ill.App.3d 440, 443, (5th Dist., 2000).

II. Interest on payments under §22-80 is due through date of payment.

When the circuit court granted Devonshire's motion to vacate the tax deed order and entered an order vacating the tax deed, the provisions of 35 ILCS 200/22-80 applied. This section requires the party who successfully vacates an order for tax deed to make certain reimbursement to the tax purchaser. Here, there was a dispute about whether interest on the amount sold accrues through the date of payment or through the last day to redeem. The trial court held interest stops accruing on the last day to redeem. Blossom perfected an appeal from the trial court's order on the interest issue. Since the appellate court reversed the vacating of the tax deed, the §22-80 issue became moot. However, in the appellate court the dissent correctly interpreted §22-80. It noted that Devonshire would have been required to pay statutory interest through the date of payment upon vacating the tax deed.

Devonshire argues that it should not be required to pay interest on the tax amount sold after vacating the tax deed and, being ordered to do so would be, in its words, "absurd". Br. 22. Section §22-80, however, provides otherwise. §22-80 contemplates two situations. §22-80(a) applies when the court vacates a tax deed, and the sale is held to be a sale-in-error under 35 ILCS 200/21-310. Such situations involve jurisdictional issues such as the taxes paid prior to sale or bankruptcy automatic stays. Under §22-80(b), however, when the court vacates a tax deed for any other reason, the party who successfully contested the deed (here Devonshire) must pay the following

within 90 days: (a) the amount of redemption as of the last day to redeem, plus (b) any municipal liens paid by the tax purchaser, plus (c) the amounts specified in paragraphs (1) and (3) of §22-80(a) to the extent the amounts are not included in the amount to redeem. §22-80(a)(3) is not at issue here. At issue is §22-80(a)(1) which states the following:

> (1) all taxes and special assessments purchased, paid, or redeemed by the tax purchaser or his or her assignee, or by the tax deed grantee or his or her successors and assigns, whether before or after entry of the order for tax deed, with interest at the rate of 1% per month from the date each amount was paid until the date of payment pursuant to this Section;

Section 22-80(b) thus requires payment of interest on "all taxes purchased" or paid by the tax purchaser through the date of payment. Devonshire argues a plain reading of the statute is "nonsensical because tax purchasers would receive additional interest on top of the amount included in the estimate." (Br. 21).

First, interest in tax redemptions is never compounded. The interest is calculated by the number of penalty periods. 35 ILCS 200/21-355(b). If the tax lien is sold at 1% and redemption is made within the third penalty period, the interest due is 3%. Second, the statute provides for a 1% per month interest rate on "all taxes purchased" regardless of the interest rate sold at the sale. In other words, whether the interest rate from the tax sale was 18% or 0%, when §22-80 applies, the interest rate on the taxes sold is 1% per month until paid. This is set by statute, not tax sale bidding. Devonshire

appears to agree when it states, "[t]he only opportunity for Blossom to be paid interest on its purchase of the Certificate was to obtain an Order Directing County Clerk to Issue Tax Deed and subsequently have that order vacated." Br. 21. Indeed this is what occurred at the trial court in this case, and interest should have been ordered at 1% per month.

The plain and ordinary meaning of the term "all taxes purchased" means precisely that; the amounts purchased at the tax sale. Under the statute, taxes purchased at tax sale accrue interest at 1% per month until paid. There is no exception nor exclusion. If the Legislature wished to exclude taxes purchased at 0%, they would have done so. Instead, the Legislature wrote no limitations or exclusions into this provision and directed "all taxes purchased" are to be re-paid at 1% per month.

Blossom and the dissent cited the case of *In re Application for Tax Deed (S. I. Securities v. Jones)*, 311 Ill.App.3d 440 (5th Dist. 2000) is on point. In *S.I.* the Fifth District held the statutory 1% rate was provided by the Legislature to compensate the tax purchaser for the time value of the purchaser's money. *Id*. at 446. There is nothing absurd about this reasoning, as suggested by Devonshire. One arrives at this conclusion after a plain reading of the statute's language.

Applying §22-80 and *S.I.* decision to this case, Blossom was entitled to interest on "all taxes purchased" at the rate of 1% per month until fully paid. Thus, should this court reverse and order the tax deed vacated, the §22-80(b)

reimbursement should be calculated to include interest on the amount of all taxes purchased at the rate of 1% per month until paid.

III. No dangerous precedents were set in this case

Devonshire argues the majority opinion sets a dangerous precedent that will affect tax deed litigation. This case does not involve redemption rights or the tax sale system itself. This case simply involves whether the annual tax sale year is sufficient to be listed on one line in a Take Notice. Tax collection remains unaffected by the majority opinion. The only effect to tax deed litigation is that parties like Devonshire, who acquire title to tax delinquent property after the redemption deadline passes, will have one less clever argument to make to vacate tax deeds and claim property for itself.

The dissent also opined the City of Chicago and its citizens face "severe financial hardship" (¶45) and that the majority opinion will give windfalls and exacerbate "the destructive effects of economic hardship" (¶43). The dissent's concerns are overstated and misplaced. As for government revenue, tax sales and tax deeds must be encouraged to provide an efficient way to collect revenue. After all, "[t]ax revenues are literally the lifeblood of government." *Rosewell v. Chicago Title & Trust Co.*, 99 Ill.2d 407 (1984). As this court has stated, "[t]he purpose of the sections of the Revenue Act involved in this matter providing for certificates of purchase and tax deeds is to encourage buyers at tax sales, increase the collection of taxes by governmental authorities, and to free land to re-enter the stream of

commerce and bear its aliquot share of the tax burden. *Cherin v. The R. & C. Co.*, 11 Ill.2d 447 (1957). When owners fail to pay taxes, tax sales provide the needed revenue for local governments to operate. "The overall purpose and goal of the enforcement provisions of the Property Tax Code is to place 'property in the hands of those who are both willing and able to pay their taxes.'" See *Demos v. Pappas*, 2011 IL App(1st) 100829 citing *Garcia v. Rosewell*, 43 Ill. App. 3d 512, 516 (1976).

From the local government's perspective, tax sales must be freely encouraged and merchantable tax deeds freely issued. When a court denies a petition for tax deed due to technical defects such as the one purported in this case, the tax sale is declared a sale in error. See 35 ILCS 200/22-50. In such cases, the county refunds the purchase amount and all taxes paid after the sale to the purchaser. Upon making the refund, tax years become unpaid once again, and the government is without the revenue. In this case, the trial court's order, vacating the tax deed upon hyper-technical grounds may discourage buyers, and, by extension, decrease government revenue at tax sales. Here, for example, an intervenor was able to appear and have a deed vacated based on a notice it never received.

Court's have held the "protection of the rights of purchasers of real estate sold for delinquent and forfeited general taxes is in the public interest." *City of Chicago v. City Realty Exchange, Inc.*, 127 Ill.App.2d 185 (1st Dist., 1970). Illinois law encourages tax purchasers to bid by providing

either an interest rate return upon redemption or a merchantable tax deed if no redemption. "The clear intent of these [tax sale] provisions are to make tax deeds desirable so as to induce reasonable bids at tax sales and also to further the general goal of having certainty in title to real estate." *Bloomington v. John Allan Co.*, 18 Ill.App.3d 569, 581 (1974).

There is no evidence Blossom has obtained any sort of "windfall" in this case nor that Devonshire is suffering from any economic hardship. Devonshire is a company located in Skokie and does not occupy the Subject Property in Lincolnwood. Devonshire purchased the Subject Property on pure speculation, paying only $15,000 after the tax sale redemption period expired for a purported Warranty Deed, hoping its legal arguments would vacate the tax deed and secure its ownership.

Holding that back tax years must be included in a line on a take notice does nothing to alleviate economic hardship. As stated above, it creates economic hardship to local government because the court will be forced to deny tax deed petitions due to strict compliance issues and to refund tax money through sale in errors. The trial court's order adds another hyper-technical reason to deny a tax deed petition and declare a sale in error. Further, the Property Tax Code's tax sale provisions do not recognize economic hardships as grounds for consideration when evaluating whether to vacate a tax deed. Not to say hardship does not appear in the Property Tax Code, such circumstances become relevant to petitions for indemnity under

35 ILCS 200/21-305, which was enacted by the legislature "to ameliorate in some instances the harsh consequences of a tax foreclosure." *In Re Kane County Collector*, 102 Ill. App. 3d 43 (2nd Dist. 1981). Courts must apply the tax sale laws equally to all parties and cannot have one set of standards for times of economic hardship and another set of standards in economic booms. As difficult as the circumstances may appear to be, the law must be applied equally to everyone during all economic conditions.

CONCLUSION

For at least the reasons stated herein, Blossom strictly complied with the property tax code and the court should affirm the appellate court's judgment. The plain language of the statute requires only year of the annual tax sale to be listed as it is required for redemption purposes.

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 23 pages.

Dated: June 2, 2021

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CERTIFICATE OF FILING AND SERVICE

I, David R. Gray, Jr., an attorney, do hereby certify that I electronically filed the foregoing Brief with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that a true and correct copy of the Brief was served through Odyssey eFileIL File & Serve on June 2, 2021, to Eric H. Wudtke (service@carterlegalgroup.com), in accordance with Illinois Supreme Court Rule 11.

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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