

No. 126150

IN THE SUPREME COURT  
OF ILLINOIS

IN RE APPLICATION FOR TAX DEED	)	On Appeal from the Appellate Court
<u>OPAL AND STEPHEN R. CASTLEMAN</u>	)	Fifth Judicial District No. 5-19-0168
	)	
SI RESOURCES, LLC AND	)	There Heard on Appeal from the
CADIJAH BROWN	)	Circuit Court of the Second Judicial
	)	Circuit, Hamilton County, Illinois
Petitioners–Appellants,	)	No. 2015-TX-10, the Honorable
	)	Barry L. Vaughan, Judge Presiding
v.	)	
	)	
OPAL CASTLEMAN, STEPHEN R.	)	
CASTLEMAN, WILLIAM GROOME	)	
AND VICKI GROOME	)	
	)	
Respondents–Appellees.	)	

**REPLY BRIEF OF PETITIONERS-APPELLANTS  
CADIJAH BROWN AND SI RESOURCES, LLC**

Attorneys for Petitioners-Appellants  
Cadijah Brown and SI Resources, LLC

Mindy S. Salyer ARDC #6288569  
Amanda L. Moressi ARDC #6285043  
Salyer Law Offices, LLC  
33 N. Dearborn Street – Suite 1505  
Chicago, IL 60602  
[mindy@salyer.law](mailto:mindy@salyer.law)  
[amanda@salyer.law](mailto:amanda@salyer.law)

## ORAL ARGUMENT REQUESTED

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## ARGUMENT

### I. CORRECTION OF RESPONDENTS' STATEMENT OF FACTS

The only relevant facts to the legal issues on appeal located in Respondents' Statement of Facts "Part One" are: (1) on October 10, 2015 redemption expired (C13); (2) on October 19, 2015 the circuit court entered an order directing the Hamilton County Clerk to issue a tax deed to Petitioner, Stephen R. and/or Opal Castleman, Pro-Se (Castleman)(Order) (A22), and (3) on October 27, 2017 the county clerk acted under its ministerial legal duty under the Order and issued the tax deed to Castleman. (A27-30)

The only relevant facts to the legal issues on appeal that are located in Respondents' Statement of Facts "Part Two" are: (1) the Mandamus action was an action to enforce (not contest) the Order that directed the county clerk to issue the tax deed to Castleman, and (2) the county clerk through its counsel the Assistant State's Attorney conceded the February 29, 2016 tax deed it had issued to Groome exceeded its authority and was in violation of the Order. (A27-28)

All other statements in Respondents' statement of facts are not pertinent to the legal issues in this case. Moreover, *In Re Application for Tax Deed, 2017 IL App 5th 160230-U* ("Castleman I") is not on review and Respondents' reference to the closed case is only intended to prejudice fair review. Petitioners are not aware of any case that supports continued jurisdiction of *In Re Application for Tax Deed, 2017 IL App 5th 160230-U*. Since Respondents spend a large portion of their brief talking about it,

Petitioners will briefly address the only relevant fact stemming from that case for purposes of this appeal.

In *Castleman I*, SI Resources filed a timely Section 2-1203 post judgment motion setting forth strict compliance objections based on petitioner Castleman's strict compliance violations of the notices required under the Property Tax Code that circuit courts shall insist on strict compliance with or without the appearance of any respondent. 35 ILCS 200/22-40 Thereafter, Brown filed a post-judgment motion. The only parties in *Castleman I* were SI Resources, Brown and Castleman. Castleman retained the same counsel as in this case and failed to take any steps to amend the Order to substitute William E. Groome and Vicki L. Groome (Groome) as the petitioner entitled to a tax deed within 30 days of its entry or during the extended jurisdiction of the Section 2-1203 proceeding. (C10-197)

While *Castleman I* was on appeal with the appellate court, it was discovered and presented at appellate court oral argument that a tax deed to Groome had been recorded despite the Order directing Castleman be issued a tax deed. After the Order was entered and while *Castleman I* was pending, at some point prior to the February 29, 2016 Castleman assigned and transferred all right in and to the certificate to Groome. (A24-26) At the appellate court oral argument in *Castleman I*, upon being advised of the forgoing, the appellate panel openly surmised the tax deed to Groome sounded in a Writ of Mandamus. *Appellant Brief, P. 8-9* Respondents do not dispute these facts.



After the *Castleman I* appellate oral arguments, SI Resources researched Mandamus actions and filed the Mandamus action that sought to compel the county clerk to enforce the Order. (A27-28) Upon the county clerk confessing the Mandamus and while the agreed judgment order was being worked out, Petitioners filed their original Count I Section 22-85 Motion to Void Tax Deed and Count II 2-1401/22-45 Petition to Vacate the Order pursuant to Section 22-45. (C200-235)(A27-28)

Respondents' statement of facts contains argumentative legal conclusion and misstatements of fact. In example, Respondents inaccurately claim that the Mandamus action that sought to enforce the Order's direction to the county clerk to perform its ministerial duty to issue a tax deed to Castleman should have been interpreted the Order to include Castleman "or their [Castleman's] assignees." Ill. S. Ct. R. 347(h)(7); *Appellee Brief, P. 5* The Property Tax Code's use of the term "purchaser or assignee" does not mean both. The statutory interpretation analysis contained in Petitioners' brief and wholly absent in Respondents brief. Petitioners will address the legal argument in the argument section of their Reply brief instead of in the statement of facts as Respondents have elected to do.

Another example is Respondents misstate the appellate court's decision that is on review in this case. The decision did not conclude "...that Count I failed to state a claim for relief under 35 ILCS 200/22-85...." *Appellee Brief, P. 6* The decision plainly demonstrates the appellate court affirmed Section 2-



615 dismissal finding a Section 22-85 motion is not a procedural motion that can be used to attack a tax deed as in this case, or to attack an order directing the issuance of a tax deed which was not applicable to the facts of this case. (A10-14, ¶¶21-28) The appellate court was not confused and its decision is clear that Petitioners' appeal was from the lower court's Section 2-615 dismissal of Petitioners' "...Count I motion to void the October 27, 2017 tax deed" that the lower court, and Respondents, treated as a Count I Section 2-1401 petition. (A08, ¶17) Emphasis Added

Rule 341(h)(6) requires a statement of facts that "contains the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6) There is no value in false statements of fact or unsupported inaccurate misstatements of law in Respondents' statement of facts, other than to interfere and preclude review. Respondents' misstatements are serious enough that the decisional process could be affected if left uncorrected.

## **II. "PURCHASER OR ASSIGNEE" MEANS ONE OR THE OTHER, NOT BOTH**

Respondents claim Petitioners failed to state a permissible cause of action to void the tax deed without citation to controlling legal authority claiming the legislature intended "purchaser or assignee" to mean both the purchaser or the assignee. *Appellee Brief, P. 14*

Respondents fail to assert why settled statutory construction of the Property Tax Code holds that the Property Tax Code terms should be read as a whole, meaning different sections of the same statute should be considered in reference to one another so that they are given a harmonious effect. *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 504 (2000); *Appellant Brief*, P.14-15, 41-46

Respondents also fail to present any legal argument or analysis regarding the legislature's use of "purchaser or assignee" as disjunctive intended to mean that one or the other—not both. Only the holder of the certificate may obtain the Order directing the county clerk to issue a tax deed to one or the other. 35 ILCS 200/21-350; 35 ILCS 200/21-385; 35 ILCS 200/21-260; 35 ILCS 200/22-5; 35 ILCS 200/22-10; 35 ILCS 200/22-15; 35 ILCS 200/22-20; 35 ILCS 200/22-25; 35 ILCS 200/22-30; 35 ILCS 200/22-40(a); 35 ILCS 200/22-65; 35 ILCS 200/22-85; *Appellant Brief*, P. 40-46

Once the Section 22-40(a) Order is entered, the petitioner/holder found to be entitled to the Order can be the only tax deed grantee. 35 ILCS 200/22-40(a) The Property Tax Code provides no authority to that holder to collaterally alter or modify the Section 22-40(a) Order without judicial adjudication within 30 days of the order being entered. 735 ILCS 5/2-1203; 735 ILCS 5/2-1401 In turn, the Property Tax Code provides no authority for the county clerk to alter, modify, violate or make further findings other than located in the Section 22-40(a) Order. 35 ILCS 200/22-40; 35 ILCS 200/22-60; 35 ILCS 200/22-65

Respondents' misguided claim that after the Section 22-40(a) Order is entered, both the purchaser and the assignee are able to direct the county clerk to issue a tax deed regardless of the holder judicially adjudicated in the Order to be the designated grantee in the tax deed, is contrary to the Property Tax Code provisions. *In re County Treasurer (MB Financial v. CCPI, LLC)*, 2012 IL App (1st) 101976; 35 ILCS 200/22-40; 35 ILCS 200/22-60; 35 ILCS 200/22-65

Therefore, the question before the Court is whether, after more than 30 days from the entry of the Section 22-40(a) Order, the petitioner or county clerk may collaterally modify and alter who the petitioner was found to be at the time of the Order.

Since 1951, the legislature has expressly amended the Property Tax Code to consistently exclude the county clerk from judicially determining conditions precedent to the issuance of a tax deed which includes determination of who the holder of the certificate is. *Cherin v. R. & C. Co.*, 11 Ill. 2d 447, 451-453 (1957). Respondents' misguided argument that "purchaser or assignee" is conjunctive when it is clearly disjunctive is asking the Court to remove the exclusive authority of the circuit court to judicially determine the legal holder in the Order and place that adjudicated Order with the county clerk. Respondents' argument is untenable and contrary to the express provisions and legislative intent of the Property Tax Code as a whole. *In re County Treasurer (MB Financial v. CCPI, LLC)*, 2012 IL App (1st) 101976;



Before the revisions, the decision on whether the statutory requirements have been met for issuance of a tax deed was made administratively by the county clerk. *Young v. Madden*, 20 Ill. 2d 506, 510 (1960). After the revisions, the *issuance of the tax deed became a judicial decision* made upon petitioner's petition for tax deed. *Id.* As a result, when the court has determined that the petitioner satisfied all of the conditions precedent to issuance of the tax deed under the statute, “[t]he issuance of a deed automatically follows.” *Young v. Madden*, 20 Ill. 2d 506, 510 (1960). Furthermore, where the trial court has entered a finding of compliance based on an examination of the evidence presented, it may be presumed that satisfactory evidence of this fact was presented to the court. *Wilder v. Finnegan*, 267 Ill. App. 3d 422, 424 (1994); *People v. O’Keefe*, 18 Ill. 2d 386, 391 (1960).

Section 22-85’s term “take out and record a tax deed” means the holder obtains a circuit court order that directs the county clerk to act per the Order. 35 ILCS 200/22-40; 35 ILCS 200/22-60; 35 ILCS 200/22-65; 35 ILCS 200/22-85. Further, that it is the holder who acquired the Order burden to record the tax deed within one year. (A27-30)

Otherwise, the conclusiveness of the Section 22-40(a) Order would be abrogated in collateral proceedings. *Remer v. Interstate Bond Co.*, 21 Ill. 2d 504 513-514 (1961)(cannot put into issue questions previously adjudicated by valid means).



### III. THE MANDAMUS COURT HAD JURISDICTION TO COMPEL THE COUNTY CLERK TO COMPLY WITH HER MINISTERIAL DUTIES PROVIDED IN THE PROPERTY TAX CODE

The thrust of Respondents' argument is that the Mandamus action was "an attack" on the Order and that the Mandamus court did not have jurisdiction because collateral attacks on orders for tax deed must be filed before the circuit court that entered them and are limited to the grounds in Section 22-45. *Appellee Brief, P. 7-13* Respondents contend that despite the appellate court not addressing the Mandamus action or order, and that despite Respondents' knowledge of the Mandamus order prior to October 2017 and failure to challenge that order, the Court may affirm Section 2-615 dismissal pursuant to Section 22-45. (R83-85)(A2-19)

Respondents' arguments are misguided. The Mandamus action was used to compel the county clerk to act on the Order based on the county clerk's legal duty to issue the tax deed to Castleman pursuant to the Order. *Cherin v. R. & C. Co.*, 11 Ill. 2d 447, 451-453 (1957); (A27-30) Respondents concede they have been aware of the Mandamus action prior to Petitioners' Count I 22-85 motion to void the tax deed was filed, took no action to challenge the Mandamus order, and failed to file any third-party complaint against the county clerk in this proceeding. (R83-85)

Instead, Respondents claim without citation to a single applicable case that the Mandamus court had no jurisdiction to compel the county clerk to comply with the Order. In effort to make this argument, Respondents base their arguments on the mistaken proposition that the Mandamus action was a

“contest” and “attack” on the Order, as thus incorrect procedure. Respondents do not challenge the facts or law that establish the county clerk has clear, purely ministerial legal duty with no exercise of discretion to issue the tax deed per the Order. *Young v. Madden*, 20 Ill. 2d 506, 510 (1960); *Wilder v. Finnegan*, 267 Ill. App. 3d 422, 424 (1994); *People v. O'Keefe*, 18 Ill. 2d 386, 391 (1960).

Respondents incorrect “attack” on the Order argument, belies their misguided claim that the Mandamus court did not have jurisdiction to enter the order. *In re Application of Anderson*, 313 Ill.App.3d 578, 584 (2nd Dist. 2000)(where county clerk submitted form to state department of revenue without filling in any value for farm property in county, mandamus was an appropriate cause of action to compel department of revenue to perform its ministerial duty of obtaining information it deemed necessary to perform assessment ratio study).

Respondents cite no legal authority to dispute the power of the lower court to enter mandamus orders to compel the county clerk under the clerk’s clear, purely ministerial, legal duty with no exercise of discretion to issue the tax deed per the Order. *Cherin v. R. & C. Co.*, 11 Ill. 2d 447, 451-453 (1957).

Instead, Respondents misstate the law and facts of several precedential cases and level unprofessional and *ad hominem* remarks at Petitioners and their counsel. *Appellee Brief*, P. 10-12 Petitioners will not respond to the various improper *ad hominem* remarks by Respondents and

their counsel such as “Appellants’ procedural gymnastics,” “Appellants’ backdoor attempt,” “Rochman is related to the owners of Appellant SI Resources,” or “Counsel for Rochman are the same counsel for Appellants in the [Excalibur] case,” for it not only represents fallacious argument, it also qualifies as an inappropriate and even sanctionable discussion before this judicial body. *Appellee Brief, P.11-12*

Although Respondents do not rely on the appellate court decision, which too included remarks regarding the *MB Financial* case and instant counsels’ appearance in that case. Albeit the decision incorrectly attempted to pin instant counsels to be the same counsels who represented the respondent *MB Financial Bank* with the appellate court specifically noting “...respondent filed a pleading similar to that which was filed in this case...a motion to declare the tax deed void pursuant to section 22-85 and a section 2-1401 petition to vacate the order....” (A12, ¶25); 735 ILCS 5/2-1401; 35 ILCS 200/22-45; 35 ILCS 200/22-85 In fact, instant counsels represented the tax deed grantee CCPI in the *MB Financial* case, and CCPI argued Section 22-45 precluded the respondent MB Financial’s Count I Section 22-85 motion to void the tax deed, which was rejected by the First District appellate court. *In re County Treasurer (MB Financial v. CCPI, LLC)*, 2012 IL App (1st) 101976

Regardless, to the point of Respondents’ mistaken facts and reliance on *Excalibur Energy Company v. Rochman (Excalibur I)*, 2014 IL App (5th) 130524, the appellate court did not dismiss Excalibur’s ejectment claim, that



was filed more than 12 years after the order issuing the tax deed was entered, with prejudice. *Excalibur Energy Company v. Rochman (Excalibur II)*, 2016 IL App (5th) 150196-U. Excalibur was allowed to replead a Section 2-1401 petition which limited Excalibur's attack on the more than 12-year-old order directing the tax deed to issue. *Id.* at ¶¶13-14

Respondents misstate *Excalibur I* likely to bolster their quest to have the appellate court affirmed, and to unnecessarily discredit Petitioners' and their counsels. Implicit in Respondents' reference to Petitioner SI Resources being "related" to "Rochman" and instant counsels' being the same counsels as in the *Excalibur* case and multiple appellate decisions, is that Petitioner SI Resources and its instant counsels are misstating law. Respondents appeal to prejudices rather than to accurate legal analysis, and seemingly would rather attack their opponents and counsels' character than answer the contentions of law and fact in this case.

In *Excalibur I*, an alleged owner in an "MR" ejectment action contested a very old order for tax deed on the theory that the circuit court's order for tax deed was void for lack of personal jurisdiction. *Excalibur Energy Company v. Rochman (Excalibur I)*, 2014 IL App (5th) 130524, ¶21-25 Since Excalibur was claiming the order issuing the tax deed was void for lack of personal jurisdiction, the appellate court agreed with Rochman that any attack on circuit court orders issuing the tax deed (supplemental to the Collector's order



for judgment and sale) are required to be filed in the same proceeding in which the order or judgment was entered. *Id.* at ¶25

*Excalibur I* was not dismissed with prejudice, did not involve an attack on a “tax deed,” and instead only involved an attack on the order issuing the tax deed, which was not filed in the same proceedings that the circuit court entered the order for tax deed. *Excalibur Energy Company v. Rochman (Excalibur I)*, 2014 IL App (5th) 130524 The attack on the order in *Excalibur* is not similar or pertinent to compelling the county clerk to comply with the Order in a mandamus action. *In re Application of Anderson*, 313 Ill.App.3d 578, 584 (2nd Dist. 2000).

Respondents’ Section 22-45, exclusive jurisdiction, direct appeal from orders for tax deed is futile and inapplicable to the fact that the Mandamus action expressly compelled the county clerk to comply with the circuit court’s Order. *Id.*; *In re County Treasurer (MB Financial v. CCPI, LLC)*, 2012 IL App (1st) 101976; (A22-23)(A27-28)

The very Mandamus action Respondents have been aware of and that was pending because of Groome’s actions at the time *In Re Application for Tax Deed*, 2017 IL App 5th 160230-U was pending, did not seek to challenge the Order or the circuit court’s jurisdiction to enter the Order like *Excalibur* claimed. *Excalibur Energy Company v. Rochman (Excalibur I)*, 2014 IL App (5th) 130524 The Mandamus action sought to enforce the Order which Respondents do not dispute ordered the county clerk to issue the tax deed

to Castleman. In no way do Respondents unsupported arguments change the fact that the Mandamus action compelled the county clerk to obey the Order which the county clerk was never given when Groome sought the invalid and void tax deed. (A27-28)

The historic function of mandamus is to confine officials within boundaries of their authorized powers. *In re United States*, 345 F.3d 450 (7th Cir. 2003). Where a public official has failed to comply with the requirements imposed by statute the circuit court may compel the official to comply by means of a writ of mandamus. *Noyola v. Board of Educ. of the City of Chicago*, 179 Ill.2d 121, 132 (1997).

Sections 22-40(a) and 22-65 impose a statutory duty on the county clerk to issue the tax deed pursuant to the Order. 35 ILCS 200/22-40; 35 ILCS 200/22-65 Where the county clerk failed to comply with the requirements imposed on her by statute, the Mandamus court had jurisdiction and authority over the county clerk to compel the county clerk by a writ of mandamus. *Id.* The Mandamus action compelled the county clerk to perform a purely ministerial duty where no exercise of discretion is involved. *In re Application of Anderson*, 313 Ill.App.3d 578, 584 (2nd Dist. 2000). Contrary to Respondents' waived claims, the county clerk's unequivocal violation of the Order that imposed a clear legal duty on the county clerk to act under Order of the circuit court can be rectified by mandamus. *Id.*

Allowing county clerks to contravene the clear intent of the legislature would be wholly inconsistent with the purpose of the Property Tax Code. *Cherin v. R. & C. Co.*, 11 Ill. 2d 447, 451-453 (1957). The legislature amended the Property Tax Code to remove the county clerk's authority to determine who was entitled to a tax deed and placed the authority solely with the circuit courts. *Id.* The assistant state's attorney agreed. (A27-28)

#### IV. THE MANDAMUS ORDER WAS NOT A *NUNC PRO TUNC* ORDER THAT CORRECTED A DEED

Respondents' claim that the Mandamus order was a *nunc pro tunc* order to correct the tax deed is without merit. The purpose of a *nunc pro tunc* order is to correct the *record of judgment*, not to alter the actual judgment of the court. *First Bank of Oak Park v. Rezek*, 179 Ill. App. 3d 956, 959 (1st Dist. 1989). Again, the Mandamus order did not alter the Order for tax deed, it enforced the Order. Moreover, *nunc pro tunc* orders cannot be entered unless they are based upon definite and precise evidence in the underlying record in Castleman's petition for tax deed proceeding that led to the circuit court making judicial determinations and entering the Order. *Id.* The Mandamus order carried out the circuit court's Order. The circuit court's Order has never been corrected or changed in anyway. Respondents cite no authority for their contention that the Mandamus order that enforced the Order should be characterized as a request for *nunc pro tunc* relief from the Order.



More perplexing, under Respondents' theory that the October 27, 2017 tax deed to Castleman should relate back to the February 29, 2016 tax deed, the October 27, 2017 tax deed is still void under Section 22-85. This is because Respondents admit Groome was the holder of the certificate when the county clerk took possession of the certificate when the clerk issued the now void February 29, 2016 tax deed. (A24-26) As such, that certificate was surrendered and cannot now be assigned to Castleman to "relate back" to the void tax deed. In addition to the circuit court cannot be revested with jurisdiction more than 30 days after the October 19, 2017 Order to modify its Order. 735 ILCS 5/2-1401; 35 ILCS 200/22-45

Respondents' reliance on *Landis v. Miles Homes, Inc.*, 1 Ill. App. 3d 331 (2nd Dist. 1971) is misplaced. *Landis* concerned a direct challenge to a tax deed because an order for tax deed was not certified when given to the county clerk. Distinguished from this case, *Landis* did not involve Section 22-85 and the holder failing to take out and record a tax deed within Section 22-85's one-year time limit. 35 ILCS 200/22-85; *Landis v. Miles Homes, Inc.*, 1 Ill. App. 3d 331 (2nd Dist. 1971).

Respondents' tolling argument also fails. Under Section 22-85, it is not the pendency of any litigation that tolls the time for recording a tax deed. 35 ILCS 200/22-85 Section 22-85 applies three situations that apply to toll the time limit to record a tax deed: (1) an injunction or order of a court prevented the tax purchaser from obtaining a tax deed: (2) a court was unable to act upon



the application for a tax deed or refused to do so, or (3) the county clerk refused to execute a tax deed. 35 ILCS 200/22-85

Here, there was no refusal or inability of the circuit court to act upon the petitioner Castleman's application for a tax deed. There was no injunction or refusal of the county clerk to issue a tax deed to Castleman as ordered by the Court on October 19, 2015. (A22-23) Groome never gave the county clerk the Order. (A27-28) There was no refusal of the county clerk to execute the tax deed. (A27-28) Groome made no attempt to substitute as the party petitioner or to intervene in the underlying tax deed proceeding, or in the 2-1203 proceeding (C10-197) Groome was not a party to this proceeding until March 5, 2018. (C346) Castleman failed to seek an amendment the October 19, 2015 Order or to move in any way to modify the October 19, 2015 Order.

#### **V. ESTOPPEL IS NOT APPLICABLE AND DOES NOT CIRCUMVENT SECTION 22-85 OR THE VOID TAX DEED**

The county clerk only acts pursuant to the Order. 35 ILCS 200/22-40; 35 ILCS 200/22-60; 35 ILCS 200/22-65; *Cherin v. R. & C. Co.*, 11 Ill. 2d 447, 451-453 (1957). Compelling the county clerk to act pursuant to the Order is not seeking the issuance of a tax deed as defined by Section 22-40(a). 35 ILCS 200/22-40 Castleman's caused the October 27, 2017 corrective tax deed to exist by seeking the issuance of a tax deed to Castleman and to no other. (A22-23)(A27-30) Petitioners did not seek the issuance of a tax deed in the underlying tax deed proceeding. Brown did not participate in the Mandamus action.

The elements of judicial estoppel are not present. Two positions were not taken by the same party. SI Resources made no statements under oath in the Mandamus action. The only statements under oath made in the tax deed case were made by Castleman when they acquired the October 19, 2015 Order. Writs of Mandamus actions compelling government officials to perform their ministerial acts do not include any argument or pleading outside of the required ministerial act, and are not equivalent to Section 22-85 claims.

**VI. SECTION 22-85 ACTIONS MAY BE BROUGHT IN ANY COURT AT ANY TIME BECAUSE THE VOIDING OF THE TAX DEED IS AUTOMATIC**

Respondents fail to address the central issue in this appeal: what is the procedure to set forth a Section 22-85 motion to void a tax deed. Rather, Respondents resort to incomplete and untrue arguments regarding Petitioners' pleadings, complaining about an introductory clause and the prayer for relief, and misstating the facts regarding Petitioners' pleading. The appellate court found "...the petitioners did not raise their section 22-85 complaint in a section 2-1401 petition...*we find that petitioners count I section 22-85 motion to void the tax deed* is not a recognized procedural motion that can be used to contest a tax deed or the order directing the issuance of the tax deed." (A14, ¶28) the appellate court decision makes it evident Petitioners' pleading sought to void the October 27, 2017 tax deed under Section 22-85. (A29) There is no merit in the mendacious arguments.

Respondents affirmatively assert they do not believe an order for tax deed should be voided under Section 22-85, and thus, Section 2-1401 does not

apply. On the other hand, Respondents concede the appellate court's decision was based on not treating the Count I 22-85 motion as a 2-1401 petition despite the circuit court and Respondents treating the Count I 22-85 motion as a Section 2-1401 petition. *Appellee Brief, P.7* (A20-21)((A14, ¶28) *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104-105 (2002). Instead, the appellate court questioned other appellate court holdings that relied on Section 2-1401 to apply Section 22-85, relying on *DG Enterprises, LLC-Will County Tax Sale v. Cornelius*, 2015 IL 118975, ¶¶25-32, to invalidate Section 22-85. (A12-13, ¶¶25-27)

What is clear is that the appellate court confused Petitioners argument that they were not attacking the Order (35 ILCS 200/22-45), to strictly construe dismissal of Petitioners' pleading for failure to state 2-1401 as the procedural vehicle to void the Tax Deed, and held that even if they had, the statutory provisions and this Court's holdings in *DG Enterprises* and *Sarkissian* precluded a 22-85 claim. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95 (2002); *DG Enterprises, LLC-Will County Tax Sale v. Cornelius*, 2015 IL 118975

Now in response, Respondents misstate Petitioners' Appellant brief and the arguments and law regarding procedure applicable to a Section 22-85 motion. *Appellee Brief, P. 17* Petitioners set forth legal analysis regarding what vehicle may be used to bring a Section 22-85 claim because the legislature did not intend Section 22-85 to be inoperable. No counter argument was made.



Respondents fail to distinguish any of the cases applicable to Section 22-85, in particular *In re Application of the County Treasurer (Sirt)*, 333 Ill. App. 3d 355 (2002) which holds a Section 22-85 claim can be brought in any court at any time. Or, acknowledge the distinction between the certificate becoming void prior to the order, or after the order. *In re Application of the Will County Collector (Citimortgage, Inc. v. Sass Muni V)*, 2018 IL App (3d) 160659.

The procedural distinction between collaterally voiding an order based on the taxes being proven to be paid or exempt (35 ILCS 200/22-45(1)(2)), vacating an order for tax deed (35 ILCS 200/22-45(3)(4)), and voiding the tax deed under 35 ILCS 200/22-85 are important matters concerning collateral tax deed relief. Section 22-80 payment is paid by the county if Section 22-45(1) or (2) are applicable, Section 22-80 payment is paid by the 2-1401 petitioner if Section 22-45(3) or (4) are applicable, and never applies to Section 22-85. 35 ILCS 200/22-80 This is because when the court has jurisdiction, whether a limited ground to challenge the exists, or whether, as seen here, the holder did not take out (obtain the Order) and record a tax deed within one year of redemption expiration.



## CONCLUSION

Accordingly, Respondents' argument that Petitioners' Section 22-85 Count I motion to declare the tax deed void is a collateral attack on the Order fails. Section 22-85 applies in only one instance and that is when the tax deed is not recorded within one year of redemption expiration. It applies in no other scenario.

In this case, redemption expired on October 10, 2015. The county clerk complied with the Order resulting in the tax deed to Castleman being recorded on October 27, 2017, outside of the one-year deadline. Castleman could have recorded a valid tax deed and then deeded the property to Groome. Petitioner's Count Section 22-85 motion to declare the tax deed was proper and the appellate court and circuit court erred in dismissing the claim for failure to state a claim. The Court void the tax deed, reverse the appellate court opinion and circuit court order, affirm the application of Section 22-85 and decide whether Section 2-1401 procedure is applicable to such a claim.

Respectively Submitted,

SI Resources, LLC and Cadijah Brown

/s/ Mindy S. Salyer

Mindy S. Salyer ARDC #6288569  
 Amanda L. Moressi ARDC #6285043  
 Salyer Law Offices, LLC  
 Attorneys for Petitioners-Appellants  
 33 N. Dearborn Street – Suite 1505  
 Chicago, Illinois 60602  
 312-609-0900  
[mindy@salyer.law](mailto:mindy@salyer.law) - [amanda@salyer.law](mailto:amanda@salyer.law)



No. 126150

IN THE SUPREME COURT  
OF ILLINOIS

IN RE APPLICATION FOR TAX DEED	)	On Appeal from the Appellate Court
<u>OPAL AND STEPHEN R. CASTLEMAN</u>	)	Fifth Judicial District No. 5-19-0168
	)	
SI RESOURCES, LLC AND	)	There Heard on Appeal from the
CADIJAH BROWN	)	Circuit Court of the Second Judicial
	)	Circuit, Hamilton County, Illinois
Petitioners–Appellants,	)	No. 2015-TX-10, the Honorable
	)	Barry L. Vaughan, Judge Presiding
v.	)	
	)	
OPAL CASTLEMAN, STEPHEN R.	)	
CASTLEMAN, WILLIAM GROOME	)	
AND VICKI GROOME	)	
	)	
Respondents–Appellees.	)	

## NOTICE OF FILING AND CERTIFICATE OF SERVICE

TO: Paul Slocomb  
Hoffman & Slocomb  
Attorney for Respondents-Appellees  
1115 Locust St., 4th Floor  
St. Louis, MO 63101  
[paulslocomb@yahoo.com](mailto:paulslocomb@yahoo.com)

PLEASE TAKE NOTICE that on December 23, 2020, the undersigned served and filed by electronic means the **REPLY BRIEF OF PETITIONERS-APPELLANTS CADIJAH BROWN AND SI RESOURCES, LLC** with the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois.

/s/ Mindy S. Salyer  
Mindy S. Salyer ARDC #6288569  
Amanda L. Moressi ARDC #6285043  
Salyer Law Offices, LLC  
Attorneys for Petitioners-Appellants  
33 N. Dearborn Street – Suite 1505  
Chicago, Illinois 60602  
312-609-0900  
[mindy@salyer.law](mailto:mindy@salyer.law)  
[amanda@salyer.law](mailto:amanda@salyer.law)



Under penalties of perjury as provided by 735 ILCS 5/1-109, I, Mindy S. Salyer, an attorney, certify I caused this Notice of Filing and Petitioners-Appellants Cadijah Brown and SI Resources, LLC's Reply Brief Reply Brief to be served on the parties at the electronic addresses above, by Odyssey Efile, IL, upon acceptance by the court of the submitted Notice of Filing and Petitioners-Appellants Cadijah Brown and SI Resources, LLC's Reply Brief and by electronic mail on December 23, 2020.

/s/ Mindy S. Salyer