

No. 126929

**IN THE
SUPREME COURT OF ILLINOIS**

<i>In re</i> 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) 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
---	--

**REPLY BRIEF OF
RESPONDENT-APPELLANT DEVONSHIRE, LLC**

Eric H. Wudtke #6310535
Terry J. Carter
Jamie L. Schmidtke
Attorneys for Respondent-Appellant Devonshire, LLC
Carter Legal Group, P.C.
225 W. Washington St., Ste. 1130
Chicago, IL 60606
(312) 346-5555
service@carterlegallgroup.com

E-FILED
6/30/2021 11:03 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

ARGUMENT

I. Properties, not taxes, are sold pursuant to the Property Tax Code and the Section 22-5 Take Notice failed to strictly comply with the Code.

Since properties are sold at Illinois tax sales, any taxes paid to purchase tax delinquent property must necessarily be listed on the Section 22-5 Take Notice [35 ILCS 200/22-5]. While a certificate of purchase is issued to memorialize the sale of the property, the law is clear that properties, not taxes, are sold at Illinois tax sales.

A. Case law is not necessary to interpret the Illinois Constitution and statutes that are clear on their face – tax delinquent properties are sold at Illinois tax sales.

The distinction between the sale of the property for delinquent taxes and the sale of taxes themselves is vital to the outcome of this case. In fact, Tax Sales have their own Section in the Constitution, which provides that “[r]eal property shall not be sold for the nonpayment of taxes or special assessments without judicial proceedings,” and that “[t]he right of redemption from all sales of real estate for the nonpayment of taxes . . . shall exist in favor of owners and persons interested in such real estate for not less than 2 years following such sales.” Illinois Const., Art. IX, § 8 (emphasis added). The Constitution is clear on its face – real property is sold for the nonpayment of taxes.

The sale itself is then governed by the Property Tax Code, which is replete with references to the property, not the taxes, being sold. Section 21-190 provides that, following judgment against property for delinquent taxes, the county collector shall publish a notice of sale and “proceed to offer the property for sale pursuant to the judgment.” 35 ILCS 200/21-190. Thereafter, the county holds “the sale of property for taxes . . . until all property in the delinquent list has been offered for sale.” 35 ILCS 200/21-205. After tax delinquent properties are sold, “the person purchasing any property” 35 ILCS 200/21-240

must make payment for the amount due on the tax delinquent property. In Cook County, payment for tax delinquent properties is made in two parts – first, the delinquent taxes that were advertised in the notice of sale and second, any additional delinquent taxes. 35 ILCS 200/21-240. If the purchaser completes its purchase, the lien for delinquent taxes is extinguished. 35 ILCS 200/21-75 (providing that property taxes are a first lien until the taxes are paid or until the property is sold under this Code).

Critically, if any purchaser at a Cook County tax sale fails to pay all delinquent taxes, “the purchase shall become void, and be of no effect.” 35 ILCS 200/21-240. Thus, a sale of property for delinquent taxes in Cook County – even at an annual tax sale – may require the payment of more than one year of delinquent taxes. If the purchaser fails to pay all delinquent taxes, the purchaser retains a lien on the property for the amount of delinquent taxes paid. 35 ILCS 200/21-240. The interaction of Section 21-240 with Section 21-75 of the Code is instructive. When a purchaser does not complete its purchase under Section 21-240, the lien for taxes that attached under Section 21-75 is not extinguished but remains in favor of the purchaser who failed to complete its purchase of the property at the sale. 35 ILCS 200/21-75, 35 ILCS 200/21-240. Simply put: if the purchaser at a sale of property for delinquent taxes fails to pay all delinquent taxes due at the time of the sale, the property was not sold as a matter of law and the purchaser simply retains a lien on the property.

Following the successful (and complete) sale of the property under Section 21-240, a certificate of purchase is issued to the successful purchaser. 35 ILCS 200/21-250. The county clerk delivers to “the purchaser of any property sold” a certificate of purchase that memorializes the “the property sold, the date of sale, the amount of taxes, special

assessments, interest and cost for which [the property was] sold and that payment of the sale price has been made.” 35 ILCS 200/21-250. However, this does not change the fact that the certificate of purchase is issued to memorialize the sale of the property which occurred at the tax sale. Certificates of purchase are not sold at tax sales any more than taxes are sold – the efforts spent distinguishing this in the Appellee’s brief are of no consequence.

B. Tax years 2014 and 2013 were both to be listed on the Section 22-5 Take Notice and if both years of tax were not paid by the purchaser, the property would not have been sold.

Section 21-240 requires payment of all delinquent tax years before the sale of property is complete, and when Blossom63 paid both the 2014 and 2013 taxes to complete the sale it was required to include both years of tax on its Section 22-5 Take Notice. Its failure to do so is a failure of strict compliance with the notice serving requirements of the Property Tax Code.

Blossom63 discusses the purpose of listing the tax years paid to purchase tax delinquent properties on the Section 22-5 Take Notice. There can be only one purpose: to inform the recipient of the notice of the years of tax paid to purchase the property at the tax sale. Section 22-5 is clear on its face, listing that the “premises” were sold, that “THIS PROPERTY HAS BEEN SOLD FOR DELINQUENT TAXES,” that “This notice is to advise you that the above property has been sold for delinquent taxes,” and so forth. 35 ILCS 200/22-5. Despite the plain language of the statute, Blossom63 attempts to obscure the facts and continually argue that the taxes, not the property, are sold at Illinois tax sales. Certainly, if this were a “distinction without a difference,” the argument would not be so forcefully presented by Blossom63. Appellee Br., p. 15.

As explained above, the property would not have been sold if Blossom63 had not paid both the 2014 and 2013 taxes that were delinquent at the time of the sale. 35 ILCS 200/21-240. Had Blossom63 only paid the 2014 delinquent taxes but failed to pay the 2013 delinquent taxes, it would be left with a lien on the property for the taxes that it paid and its attempted purchase of the property would “become void, and be of no effect.” 35 ILCS 200/21-240. Here, Blossom63 did in fact pay the 2014 and 2013 delinquent taxes to purchase the property at the tax sale (a fact which is memorialized on the certificate of purchase) and so it is axiomatic that both years of tax were required to be listed on the Section 22-5 Take Notice.

II. The majority incorrectly found the appellate court’s opinion in *DG Enterprises* instructive and its focus on due process is misplaced.

Blossom63 argues that the opinion in *DG Enterprises* is instructive as cited by the majority opinion below. When discussing this, Blossom63 writes:

The majority cited to *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. Appellee Br., p.16.

Both Blossom63 and the majority opinion misstate the fundamental issue in the case. The Property Tax Code and precedent from this First District provide for strict compliance with the notice serving provisions of the Property Tax Code – this includes Section 22-5. *See, e.g.*, 35 ILCS 200/22-40; *In re Application of the County Treasurer*, 2013 IL App (1st) 130103 (2013), *Glohry, LLC v. OneWest Bank*, 955 N.E.2d 669 (1st Dist. 2011). The issue to be decided by the appellate court was whether Blossom’s notice strictly complied with the Code, not whether the notice was constitutionally sound or whether the notice denied Devonshire a right to redeem. *In Re Application of the County Collector*, 2020 IL App (1st)

191464 ¶ 27. Prejudice is presumed without regard as to whether the notice was received or relied on in any way. *Glohry, LLC v. OneWest Bank*, 2011 IL App (1st) 101966. The appellate court used language from *DG Enterprises* to validate an otherwise defective notice and the appellate court's decision must be reversed.

III. The Appellate Court's opinion frustrates the primary purpose of the Property Tax Code, which is to encourage tax delinquent property owners to pay their taxes.

Blossom63 discusses the importance of the "enforcement provisions" of the Property Tax Code and cites case law that discusses the importance of 'protecting the rights of purchasers of real estate sold for delinquent and forfeited taxes.' Appellee Br., p. 21 (citation omitted). In citing case law regarding the protection of the "rights of purchasers of real estate sold for delinquent taxes," Blossom63 ignores the primary purpose of the Property Tax Code which is to coerce tax delinquent property owners to pay their taxes, not to assist others in depriving the owners of their property. Appellee Br., p. 21 (citation omitted); see *In re Application of the County Treasurer & ex officio County Collector*, 2013 IL App (1st) 130463, ¶ 10. Additionally, each quote above from Blossom63's brief correctly states that properties, not taxes, are sold at Illinois tax sales. "The right of a holder of a tax certificate is subservient to the right of a person interested in the property to redeem." *Monreal v. Sciortino*, 238 Ill. App. 3d 475, 479 (1st Dist. 1992).

If tax purchasers are allowed to list whatever information *they* deem relevant on the Section 22-5 take notice – relying on tenuous arguments that misstate the plain language of the Illinois Constitution and statute to support their position that taxes, not properties, are sold at tax sales – surely there is other relevant and required information that will be left off notices in the future. This court must enforce the strict compliance standard required in tax deed proceedings which in turn furthers the primary purpose of the Property Tax

Code. Just as tax delinquent owners must pay their taxes so too must tax purchasers be held to the strict compliance standard to ensure the fairness of the tax deed process.

CONCLUSION

For the reasons stated herein and in the Appellant's Brief, the majority decision of the appellate court must be reversed, and this Court should affirm the decision of the trial court.

Respectfully submitted,

Devonshire LLC

By: /s/ Eric H. Wudtke
Eric H. Wudtke

Eric H. Wudtke #6310535
Terry J. Carter
Jamie L. Schmidtke
Attorneys for Respondent-Appellant Devonshire, LLC
Carter Legal Group. P.C.
225 W. Washington St. Ste. 1130
Chicago, IL 60606
(312) 346-5555
service@carterlegallgroup.com

RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this reply 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 6 pages.

Dated: June 30, 2021

/s/ Eric H. Wudtke
Signature of Attorney

Eric H. Wudtke (#6310535)
Carter Legal Group. P.C.
Attorneys for Respondent-Appellant Devonshire, LLC
225 W Washington St Ste 1130
Chicago, IL 60606
(312) 346-5555
service@carterlegalgroup.com

CERTIFICATE OF FILING AND SERVICE

I, Eric H. Wudtke, an attorney, do hereby certify that I electronically filed the foregoing REPLY BRIEF OF RESPONDENT-APPELLANT DEVONSHIRE, LLC 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 30, 2021, to Steven Friedman (sfriedmanattorney@gmail.com), Richard Glickman (rdglaw@yahoo.com), and David R. Gray, Jr. (David@davidgrayjr.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.

/s/ Eric H. Wudtke
Eric H. Wudtke

Eric H. Wudtke
Carter Legal Group. P.C.
Attorneys for Respondent-Appellant Devonshire LLC
225 W. Washington St. Ste. 1130
Chicago, IL 60606
(312) 346-5555
service@carterlegalgroup.com