

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.	)	

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

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## NATURE OF ACTION

This appeal arises from a September 24, 2018 court order dismissing Cadijah Brown and SI Resources, LLC's (Petitioners) Count I Motion to Void Tax Deed Pursuant to 35 ILCS 200/22-85 and request for other relief. The trial court treated Petitioners' Count Motion to Void Tax Deed as a Section 2-1401 petition and dismissed the claim pursuant to Section 2-615 of the Code of Civil Procedure. (A20-21) On June 2, 2020, the Fifth District Appellate Court affirmed, finding that procedural technicality barred Petitioners Section 22-85 claim based on the incorrect conclusion that Section 22-45 barred Section 22-85 claims that a tax deed is void pursuant to Section 22-85.

The appellate court ignored the circuit court's treatment of the Count I motion to void the tax deed as a Section 2-1401 petition. (C479-480) The appellate court went so far as to hold that even if the circuit court treated the Count I motion to void as a Section 2-1401 petition to void the tax deed pursuant to Section 22-85, Section 2-1401 of the Code of Civil Procedure and Section 22-45 of the Property Tax Code barred the Count I claim that the tax deed is void pursuant to 22-85 of the Property Tax Code for failure of the holder to take out, and record a tax deed within one year of the October 10, 2015 redemption expiration. (A8-14, ¶¶20-21) The appellate court's opinion invalidates Section 22-85 and renders the specific statutory provision inoperative and meaningless.



## ISSUES PRESENTED FOR REVIEW

What is the procedural vehicle to set forth a Section 22-85 claim, that the certificate or deed, and the sale upon which it is based, is absolutely void with no right to reimbursement based on the holder of the certificate failing to take out and record a tax deed within one year after redemption expiration.

Where the certificate or deed, and the sale upon which it is based is declared void under Section 22-85, whether the circuit court's Section 22-40(a) order directing the tax deed to issue may be declared void under Section 22-85.

Whether Section 22-45 bars Section 22-85 claims.

Whether Section 22-85's language "purchaser or assignee" means the holder of the certificate only.

## JURISDICTION

Illinois Supreme Court Rules 303 and 315 confer jurisdiction upon this Court. On June 2, 2020, the Fifth District Appellate Court issued its opinion, and no petition for rehearing was filed. On July 8, 2020, a timely petition for leave to appeal was filed. On September 30, 2020, the Court allowed the petition for leave to appeal. Thus, this Court has jurisdiction pursuant to Rule 315.

## STATUTES INVOLVED

### 735 ILCS 5/2-615

Sec. 2-615. Motions with respect to pleadings.

(a) All objections to pleadings shall be raised by motion. The motion shall point out specifically the defects complained of, and shall ask for appropriate relief, such as: that a pleading or portion thereof be stricken because substantially insufficient in law, or that the action be dismissed, or that a pleading be made more definite and certain in a specified particular, or that designated immaterial matter be stricken out, or that necessary parties be added, or that designated misjoined parties be dismissed, and so forth.

(b) If a pleading or a division thereof is objected to by a motion to dismiss or for judgment or to strike out the pleading, because it is substantially insufficient in law, the motion must specify wherein the pleading or division thereof is insufficient...

(d) After rulings on motions, the court may enter appropriate orders either to permit or require pleading over or amending or to terminate the litigation in whole or in part.

### 735 ILCS 200/2-701

Sec. 2-701. Declaratory judgments. (a) No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby. The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested. The foregoing enumeration does not exclude other cases of actual controversy. The court shall refuse to enter a declaratory judgment or order, if it appears that the judgment or order, would not terminate the controversy or some part thereof, giving rise to the proceeding. In no event shall the court entertain any action or proceeding for a declaratory judgment or order involving any political question where the defendant is a State officer whose election is provided for by the Constitution; however, nothing herein shall prevent the court from entertaining any such action or proceeding for a declaratory judgment or order if such question also involves a constitutional convention or the construction of a statute involving a constitutional convention.

(b) Declarations of rights, as herein provided for, may be obtained by means of a pleading seeking that relief alone, or as incident to or part of a complaint, counterclaim or other pleading seeking other relief as well, and if a declaration of rights is the only relief asked, the case may be set for early hearing as in the case of a motion....



**735 ILCS 5/2-1401**

Sec. 2-1401. Relief from judgments.

(a) Relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section. Writs of error coram nobis and coram vobis, bills of review and bills in the nature of bills of review are abolished. All relief heretofore obtainable and the grounds for such relief heretofore available, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder, regardless of the nature of the order or judgment from which relief is sought or of the proceedings in which it was entered. Except as provided in the Illinois Parentage Act of 2015,<sup>1</sup> there shall be no distinction between actions and other proceedings, statutory or otherwise, as to availability of relief, grounds for relief or the relief obtainable.

(b) The petition must be filed in the same proceeding in which the order or judgment was entered but is not a continuation thereof. The petition must be supported by affidavit or other appropriate showing as to matters not of record...All parties to the petition shall be notified as provided by rule...

(c) ...the petition must be filed not later than 2 years after the entry of the order or judgment....

(d) The filing of a petition under this Section does not affect the order or judgment, or suspend its operation...

(f) Nothing contained in this Section affects any existing right to relief from a void order or judgment, or to employ any existing method to procure that relief.

**35 ILCS 200/22-45**

Sec. 22-45. Tax deed incontestable unless order appealed or relief petitioned. Tax deeds issued under Section 22-40 are incontestable except by appeal from the order of the court directing the county clerk to issue the tax deed. However, relief from such order may be had under Sections 2-1203 or 2-1401 of the Code of Civil Procedure<sup>1</sup> in the same manner and to the same extent as may be had under those Sections with respect to final orders and judgments in other proceedings. The grounds for relief under Section 2-1401 shall be limited to:

- (1) proof that the taxes were paid prior to sale;
- (2) proof that the property was exempt from taxation;
- (3) proof by clear and convincing evidence that the tax deed had been procured by fraud or deception by the tax purchaser or his or her assignee; or
- (4) proof by a person or party holding a recorded ownership or other recorded interest in the property that he or she was not named as a party in the publication notice as set forth in Section 22-20, and that the tax purchaser or his or her assignee did not make a diligent inquiry and effort to serve that person or party with the notices required by Sections 22-10 through 22-30....



**35 ILCS 200/22-80**

Sec. 22-80. Order of court setting aside tax deed; payments to holder of deed.

(a) Any order of court vacating an order directing the county clerk to issue a tax deed based upon a finding that the property was not subject to taxation or special assessment, or that the taxes or special assessments had been paid prior to the sale of the property, or that the tax sale was otherwise void, shall declare the tax sale to be a sale in error pursuant to Section 21-310...The order shall direct the county collector to refund to the tax deed grantee or his or her successors and assigns (or, if a tax deed has not yet issued, the holder of the certificate) the following amounts:

(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;

(2) all costs paid and posted to the judgment record and not included in paragraph (1) of this subsection (a); and

(3) court reporter fees for the hearing on the application for tax deed and transcript thereof, cost of certification of tax deed order, cost of issuance of tax deed, and cost of recording of tax deed.

(b) Except in those cases described in subsection (a) of this Section, and unless the court on motion of the tax deed petitioner extends the redemption period to a date not later than 3 years from the date of sale, any order of court finding that an order directing the county clerk to issue a tax deed should be vacated shall direct the party who successfully contested the entry of the order to pay to the tax deed grantee or his or her successors and assigns (or, if a tax deed has not yet issued, the holder of the certificate) within 90 days after the date of the finding:

(1) the amount necessary to redeem the property from the sale as of the last day of the period of redemption, except that, if the sale is a scavenger sale pursuant to Section 21-260 of this Act, the redemption amount shall not include an amount equal to all delinquent taxes on such property which taxes were delinquent at the time of sale; and

(2) amounts in satisfaction of municipal liens paid by the tax purchaser or his or her assignee, and the amounts specified in paragraphs (1) and (3) of subsection (a) of this Section, to the extent the amounts are not included in paragraph (1) of this subsection (b).

If the payment is not made within the 90-day period, the petition to vacate the order directing the county clerk to issue a tax deed shall be denied with prejudice, and the order directing the county clerk to issue a tax deed shall remain in full force and effect. No final order vacating any order directing the county clerk to issue a tax deed shall be entered pursuant to this subsection

(b) until the payment has been made.



**35 ILCS 200/22-85**

Sec. 22-85. Failure to timely take out and record deed; deed is void. Unless the holder of the certificate purchased at any tax sale under this Code takes out the deed in the time provided by law, and records the same within one year from and after the time for redemption expires, the certificate or deed, and the sale on which it is based, shall, after the expiration of the one year period, be absolutely void with no right to reimbursement. If the holder of the certificate is prevented from obtaining a deed by injunction or order of any court, or by the refusal or inability of any court to act upon the application for a tax deed, or by the refusal of the clerk to execute the same deed, the time he or she is so prevented shall be excluded from computation of the one year period. Certificates of purchase and deeds executed by the clerk shall recite the qualifications required in this Section.

**35 ILCS 200/22-40**

Sec. 22-40. Issuance of deed; possession.

(a) If the redemption period expires and the property has not been redeemed and all taxes and special assessments which became due and payable subsequent to the sale have been paid and all forfeitures and sales which occur subsequent to the sale have been redeemed and the notices required by law have been given and all advancements of public funds under the police power made by a county, city, village or town under Section 22-35 have been paid and the petitioner has complied with all the provisions of law entitling him or her to a deed, the court shall so find and shall enter an order directing the county clerk on the production of the certificate of purchase and a certified copy of the order, to issue to the purchaser or his or her assignee a tax deed. The court shall insist on strict compliance with Section 22-10 through 22-25. Prior to the entry of an order directing the issuance of a tax deed, the petitioner shall furnish the court with a report of proceedings of the evidence received on the application for tax deed and the report of proceedings shall be filed and made a part of the court record.

(b) If taxes for years prior to the year or years sold are or become delinquent subsequent to the date of sale, the court shall find that the lien of those delinquent taxes has been or will be merged into the tax deed grantee's title if the court determines that the tax deed grantee or any prior holder of the certificate of purchase, or any person or entity under common ownership or control with any such grantee or prior holder of the certificate of purchase, was at no time the holder of any certificate of purchase for the years sought to be merged. If delinquent taxes are merged into the tax deed pursuant to this subsection, the court shall enter an order declaring which specific taxes have been or will be merged into the tax deed title and directing the county treasurer and county clerk to reflect that declaration in the warrant and judgment records; provided, that no such order shall be effective until a tax deed has been issued and timely recorded. Nothing contained in this Section

shall relieve any owner liable for delinquent property taxes under this Code from the payment of the taxes that have been merged into the title upon issuance of the tax deed.

(c) ...Upon application the court shall, enter an order to place the tax deed grantee or the grantee's successor in interest in possession of the property and may enter orders and grant relief as may be necessary or desirable to maintain the grantee or the grantee's successor in interest in possession.

(d) The court shall retain jurisdiction to enter orders pursuant to subsections (b) and (c) of this Section. This amendatory Act of the 92nd General Assembly and this amendatory Act of the 95th General Assembly shall be construed as being declarative of existing law and not as a new enactment.

### **35 ILCS 200/22-60**

Sec. 22-60. Contents of deed; recording. Every tax deed shall contain the full names and the true post office address and residence of grantee. It shall not be of any force or effect until after it has been recorded in the office of the recorder.

### **35 ILCS 200/22-65**

Sec. 22-65. Form of deed. A tax deed executed by the county clerk under the official seal of the county shall be recorded in the same manner as other conveyances of property, and vests in the grantee, his or her heirs and assigns, the title of the property therein described without further acknowledgment or evidence of the conveyance. The conveyance shall be substantially in the following form...

At a public sale of property for the nonpayment of taxes, held in the county above stated, on (insert date), the following described property was sold: (here place description of property conveyed). The property not having been redeemed from the sale, and it appearing that the holder of the certificate of purchase of the property has complied with the laws of the State of Illinois necessary to entitle (insert him, her or them) to a deed of the property: I ..., county clerk of the county of ..., in consideration of the property and by virtue of the statutes of the State of Illinois in such cases provided, grant and convey to ..., his or her heirs and assigns forever, the property described above.

Dated (insert date).

Signature of ..... County Clerk

Seal of County of ..., Illinois



## STATEMENT OF FACTS

On January 28, 2013, the Hamilton County Collector sold the delinquent 2011 taxes on the mineral rights to the property, identified by property index number 08-702-100-004. (C12) Kathy Riley (Riley) was issued certificate of purchase number 001569 (certificate). (C12) On June 1, 2015, Riley assigned the certificate to Respondents Stephen and Opal Castleman. (C30) On June 10, 2015, Castleman extended the redemption date to October 10, 2015. (C13) On June 22, 2015, Castleman filed a petition for tax deed. (C10-14) On October 19, 2015, the circuit court entered an order directing the county clerk to issue a tax deed to Castleman (Section 22-40(a) order). (C48-49)

Within 30 days of the Section 22-40(a) order, Petitioner SI Resources, LLC, and thereafter Petitioner Cadijah Brown, filed a Section 2-1203 motion seeking to vacate the October 19, 2015 Order. (C40-65)(C107-131) Respondent Castleman appeared and filed a motion to dismiss. (C66-105) The circuit court dismissed the postjudgment motion pursuant to Castleman's motion to dismiss. (C165) SI Resources and Cadijah Brown appealed. (C195-196) While that appeal was pending, on February 29, 2016, William Groome recorded a tax deed with an undated assignment of the certificate attached, evidencing the certificate was assigned to William and Vicki Groome on or before February 29, 2016. (C546-548) On appeal from dismissal of the Section 2-1203 motion, the appellate panel speculated whether a Writ of *Mandamus* was the only way

to compel a public official to act when the clerk had made a mistake. *See Archived Appellate Court Oral Audio dated March 2, 2017, available online.*

After oral arguments, on June 26, 2017, SI Resources, LLC filed a Writ of *Mandamus* against the Hamilton County Clerk in 2017MR9. (C365-366) The county clerk confessed that the February 29, 2016 tax deed the clerk issued to Groome was not issued pursuant to the circuit court's October 19, 2015 Section 22-40(a) order, and confessed that the Groome tax deed void. (C365-366) In 2017MR9, on October 26, 2017, the circuit court entered an order voiding the February 29, 2016 tax deed. (C365-366)

Respondent Castleman and non-party Groome failed to challenge the 2017MR9 *mandamus* proceeding or the void February 29, 2016 tax deed, but admitted they had knowledge of both. (R83-85) On August 10, 2017, the Appellate Court dismissed SI Resources and Cadijah Brown's Section 2-1203 appeal on a procedural technicality holding neither were not "parties" as provided by Section 2-1203, and that both failed to intervene prior to filing the postjudgment motions. *In re Application for a Tax Deed*, 2016 IL App (5th) 150517 On October 27, 2017, the county clerk issued a tax deed to Castleman pursuant to the Section 22-40(a) order. (C536-537)

On October 19, 2017, Petitioners mailed a two-count petition to the Hamilton County Circuit Court Clerk seeking to void the tax deed pursuant to Section 22-85 in Count I, and alternatively vacate the Section 22-40(a) order pursuant to Section 22-45 in Count II. (C198-199) (C237-276) (C346) (C237-



276) Thereafter, Respondent Castleman had no objection, and the trial court granted SI Resources and Cadijah Brown's (Petitioners) motion leave to amend and motion to join Groome as a necessary party. (C198-199) (C237-276) (C346) (C237-276) On March 20, 2018, with leave of court, Petitioners filed an amended petition with separate claims, Count I Section 22-85 motion to void the October 27, 2017 tax deed that issued to Castleman pursuant to Section 22-85, and Count II petition to vacate the October 19, 2015 Order pursuant to Section 2-1401 and Section 22-45. (C347-392)

Respondents Castleman and Groome filed a combined motion to dismiss and thereafter an amended motion to dismiss the Count I motion to void the tax deed pursuant to Section 2-615 and to dismiss the Count II petition to vacate the Section 22-40(a) order pursuant to Section 2-619. (C393-401) (C450-458) The Section 2-615 motion sought to dismiss Count I for failure to state a claim, arguing that either the purchaser or assignee (Groome or Castleman) of a certificate could take out and record tax deed and that the time to record the tax deed was tolled pursuant to Section 22-85. (C450-458) Respondents did not challenge any procedure related to Petitioners' two-count petition. (C450-458)

On September 24, 2018, the circuit court treated Petitioners' amended two-count petition as a Section 2-1401 petition and dismissed "Count I of the 2-1401 petition per 2-615. (C479-480) On October 24, 2018, Petitioners filed a motion to reconsider dismissal of their Count I amended 2-1401 petition that alleged the October 27, 2017 tax deed to Castleman was void pursuant to

Section 22-85 of the Property Tax Code for failure of the certificate holder (Groome) to take out and record a tax deed within one year after the October 10, 2015 redemption expiration. (C514) (C509-554) On March 21, 2019, the circuit court entered a docket order that denied Petitioners' motion to reconsider. (C8) Petitioners timely appealed. (C569-574)

On appeal, Petitioners contended Castleman assigned the certificate to Groome on or prior to February 29, 2016 and that the October 27, 2017, the corrective tax deed that the county clerk issued to Castleman was void for failure of the holder to take out and record a tax deed within one year of redemption expiration. Petitioners claimed the October 27, 2017 tax deed to Castleman was filed more than two years after redemption expired on October 10, 2015, that Castleman was not the holder of the certificate as of February 29, 2016 based on Castleman assigning all of their interest to Groome, and that the county clerk confessed judgment in 2017MR9 voiding the February 29, 2016 tax deed to Groome.

On appeal, Respondents argued that Section 22-40 provided that either the purchaser or assignee (Castleman or Groome) could take and record the tax deed regardless of the Section 22-40(a) order directing the county clerk to issue a tax deed to Castleman, or Castleman's transfer of the certificate to Groome. Also, Respondents argued that the 2017MR9 *mandamus* court lacked subject matter jurisdiction to void the February 29, 2016 tax deed, but admitted they were aware of that proceeding.

On June 2, 2020, the Fifth District Appellate Court entered its opinion affirming Section 2-615 dismissal of Petitioners' amended Section 2-1401 petition Count I motion to void the tax deed pursuant to Section 22-85 for procedural deficiency, based on Petitioners' insistence they were not challenging the Section 22-40(a) order. (A20-21) (A8-14, ¶¶16-28) The appellate court held Petitioners failed to raise their Section 22-85 complaint in a Section 2-1401 petition that challenged the October 19, 2015 Section 22-40(a) order, and that if even if the circuit court treated the Count I motion to void as a Section 2-1401 petition to void the tax deed pursuant to Section 22-85, Section 2-1401 of the Code of Civil Procedure and Section 22-45 of the Property Tax Code barred the Count I claim that the tax deed is void pursuant to 22-85 of the Property Tax Code for failure of the holder to take out, and record a tax deed within one year of the October 10, 2015 redemption expiration. (A8-14, ¶¶20-21)



## ARGUMENT

### STANDARD OF REVIEW

Review of an order granting a Section 2-615 motion to dismiss is reviewed *de novo*. *Cochran v. Securitas Security Services USA, Inc.*, 2017 IL 121200, ¶11 Whether the appellate court properly affirmed the trial court's grant of Section 2-615 dismissal in this case turns on statutory construction of Section 22-85 of the Property Tax Code. Statutory construction is reviewed *de novo*. *Solon v. Midwest Medical Records Association, Inc.*, 236 Ill.2d 433, 439-440 (2010).

#### **I. SECTION 22-85 PROVIDES A CLAIM TO DECLARE A CERTIFICATE OR TAX DEED AND THE SALE UPON WHICH IT IS BASED VOID FOR FAILURE OF THE HOLDER OF THE CERTIFICATE TO RECORD PRIOR TO ONE-YEAR AFTER REDEMPTION EXPIRATION**

Petitioners respectfully ask this Court to resolve the issue of what is the procedural vehicle to challenge a void tax deed pursuant to Section 22-85 so that no portion is rendered inoperable. 35 ILCS 200/22-85 Petitioners established the tax deed to Respondent Castleman was void, being recorded more than one year after redemption expired. 35 ILCS 200/22-85 (A29-30)

In its opinion, the Fifth District Appellate Court held there is no legally recognized claim to declare a tax deed void pursuant to Section 22-85, and misconstrued Section 2-1401 of the Code of Civil Procedure, as further limited by Section 22-45 of the Property Tax Code, to preclude a claim under Section 22-85. (A7-14, ¶¶14-28) The appellate court found Petitioners' Count I motion to declare the Tax Deed void constituted a collateral attack against the trial

court's order directing the issuance of a tax deed, and thus, dismissed the Section 22-85 claim as being procedurally deficient for failing to challenge the order pursuant to Section 2-1401 and Section 22-45. (A7-14, ¶¶14-28) The appellate court also held that Section 2-1401(f) precluded the Section 22-85 claim because only lack of jurisdiction (subject matter or personal) renders an order void, citing *Sarkissian v. Chicago Board of Education (Sarkissian)*, 201 Ill.2d 95, 103 (2002) and *Vulcan Materials Co. v. Bee Construction*, 96 Ill.2d 159, 165 (1983). (A13-14, ¶¶27-28)

The effect of the opinion invalidates Section 22-85's specific time limitation to record a tax deed and rendered Section 22-85 inoperative. The legislature intended Section 22-85 to limit the time a tax deed grantee or certificate holder has to record a tax deed, and unconditionally provides self-executing consequences when a tax deed is not taken out and recorded on or before one-year of redemption expiration.

The cardinal rule in interpreting statutes, to which all other canons and rules are subordinate, is to ascertain and give effect to the true intent of the legislature. *Bayer v. Panduit Corp.*, 2016 IL 119553, ¶18. Traditional rules of statutory interpretation are merely aids in determining legislative intent, and those rules must yield to such intent. *Collins v. Board of Trustees of the Firemen's Annuity & Benefit Fund*, 155 Ill.2d 103, 111 (1993). The most reliable indicator of that intent is the plain and ordinary meaning of the statutory language itself. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361

(2009). The Court has held that “[a] Court presumes that the legislature intended that two or more statutes which related to the same subject are to be read harmoniously so that no provisions are rendered inoperative. Statutes relating to the same subject matter are compared and construed with reference to each other so that effect may be given to all of the provisions of each if possible....” *Knolls Condominium Ass’n v. Harms*, 202 Ill.2d 450, 458-459

(2002). Section 22-85 of the Property Tax Code provides:

Unless the holder of the certificate purchased at any tax sale under this Code takes out the deed in the time provided by law, and records the same within one year from and after the time for redemption expires, the certificate or deed, and the sale on which it is based, shall, after the expiration of the one year period, be absolutely void with no right to reimbursement. If the holder of the certificate is prevented from obtaining a deed by injunction or order of any court, or by the refusal or inability of any court to act upon the application for a tax deed, or by the refusal of the clerk to execute the same deed, the time he or she is so prevented shall be excluded from computation of the one year period....35 ILCS 200/22-85

The two self-executing provisions concerning tax deeds are: (1) the certificate or tax deed, and the sale on which it is based, is void without right to reimbursement if the holder of the certificate fails to record at tax deed within one-year of redemption expiration, and (2) a tolling provision that applies to extend the one-year deadline only when: (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



**A. THE LEGISLATURE INTENDED SECTION 22-85 TO VOID THE CERTIFICATE OR TAX DEED WITHOUT REIMBURSEMENT**

A statute is viewed as a whole, construing words and phrases in context to other relevant statutory provisions and not in isolation. *Oswald v. Hamer*, 2018 IL 122203, ¶10. Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous. *Id.* The court may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another. *Id.* As such, the Property Tax Code provisions relevant to the certificate, sale, and tax deed must be read in concert. *Id.*

The county collector advances its *in rem* lien on property in its application for judgment and sale of delinquent taxes that contemplate notice by mail and publication only. 35 ILCS 200/21-110; 35 ILCS 200/21-115; 35 ILCS 200/21-135; 35 ILCS 200/21-165; 35 ILCS 200/21-190; *Application of Rosewell*, 127 Ill. 2d 404, 406-408 (1989). A collector's judgment for order and sale which establishes *in rem* jurisdiction may only be challenged within 30 days of entry. *Id.* The collector's tax lien is extinguished when the county clerk issues the certificate to a tax purchaser who is listed as the holder on the certificate. *Application of Rosewell*, 127 Ill. 2d 404, 406-408 (1989).

The holder then advances its certificate in a supplemental tax deed proceeding under the *in rem* jurisdiction conferred in the original order for

judgment and sale. 35 ILCS 200/22-5 through 22-40(a). Once acquired, the court retains its jurisdiction to make all necessary findings and enter all necessary orders supplemental to the original tax sale. *Smith v. D.R.G., Inc.*, 63 Ill. 2d 21, 35 (1976). However, the certificate could become void pursuant to Section 22-85 prior to any Section 22-40(a) order, directing the county clerk to issue a tax deed to the party listed in the Section 22-40(a) order, being entered, if the holder fails to obtain and record a tax deed and fails to bring a petition to have the sale vacated under Section 21-310 prior to Section 22-85's one-year deadline. 35 ILCS 200/22-85; 35 ILCS 200/21-310; *Application of County Treasurer*, 292 Ill. App. 3d 1017, 1019-1020 (1st Dist., 1997); *In re Petition for Declaration of Sale in Error*, 256 Ill. App. 3d 159, 162-164 (1st Dist. 1994).

If the certificate remains viable under Section 22-85, then the holder may advance its certificate upon petition and application for an order directing the county clerk to issue a tax deed. 35 ILCS 200/22-10 through 22-40(a) Section 22-40 provides for the trial court to enter an order directing the county clerk to issue a tax deed after the certificate holder proves it caused the notices required under Sections 22-10 through 22-30 to be given in the time provided under those sections. 35 ILCS 200/22-40(a) Section 22-60 provides that tax deeds shall not be of any force or effect until after the tax deed has been recorded. 35 ILCS 200/22-60 Section 22-65 provides the tax deeds executed by the county clerk shall be recorded in the same manner as other conveyances of property, and vest title to the property in the grantee without further notice of

the conveyance. 35 ILCS 200/22-65 After an order directing the county clerk is entered, the court order, along with a prepared tax deed, is tendered to the county clerk and the certificate surrendered in exchange for a tax deed. 35 ILCS 22-40(a)

Section 22-45 of the Property Tax Code provides for challenges to the Section 22-40(a) order by either Section 2-1203 or Section 2-1401 procedure. 35 ILCS 200/22-45; *In re Application of the County Treasurer (Forus Mortgage Corp. v. Dwyer)*, 214 Ill. 2d 253 (2005) (legislature limited collateral attacks but not direct attacks on the Section 22-40(a) order). The legislature intended the tax deed be recorded to establish merchantable title to the tax deed grantee. 35 ILCS 200/22-55; 35 ILCS 200/22-85 Establishing title and the legal owner of the property, and by setting the deadline for title to be recorded in the public record resolves litigation disputes between parties with competing claims. 35 ILCS 200/22-55; 35 ILCS 200/22-40, 22-45; 35 ILCS 200/22-60, 65

In contrast, Section 22-85 contains specific language that prohibits merchantable title if the tax deed is not recorded within one year after redemption expiration without right to reimbursement. 35 ILCS 200/22-85 The recording divests the property owner of title and establishes priority. 35 ILCS 200/22-55, 35 ILCS 200/22-60; 35 ILCS 200/22-65; 35 ILCS 200/22-85

Section 22-80 applies to either Section 2-1401 collateral or Section 2-1203 direct attack seeking to vacate the Section 22-40(a) order. 35 ILCS 200/22-45; 35 ILCS 200/22-80 Section 2-1203 and Section 2-1401 of the Code of



Civil Procedure are not ambiguous and both expressly procedure the procedure for direct or collateral relief from Section 22-40(a) orders. 735 ILCS 5/2-1203; 735 ILCS 5/2-1401 Section 2-1401 petitions seeking to challenge Section 22-40(a) orders are further limited by Section 22-45 as follows:

Tax deed incontestable unless order appealed or relief petitioned. Tax deeds issued under Section 22-40 are incontestable except by appeal from the order of the court directing the county clerk to issue the tax deed. However, relief from such order may be had under Sections 2-1203 or 2-1401 of the Code of Civil Procedure in the same manner and to the same extent as may be had under those Sections with respect to final orders and judgments in other proceedings. The grounds for relief under Section 2-1401 shall be limited to:

- (1) proof that the taxes were paid prior to the sale;
- (2) proof that the property was exempt from taxation;
- (3) proof by clear and convincing evidence that the tax deed had been procured by fraud or deception by the tax purchaser or his or her assignee; or
- (4) proof by a person or party holding a recorded ownership or other recorded interest in the property that he or she was not named as a party in the publication notice as set forth in Section 22-20... to serve that person or party with the notices required by Sections 22-10 through 22-30. 35 ILCS 200/22-45

The trial court lacks jurisdiction to enter a Section 22-40(a) order directing the county clerk to issue a tax deed in only two scenarios: under Section 22-45(1) on proof the taxes were paid prior to the tax sale, or under Section 22-45(2) on proof the property was exempt from the year(s) sold. *Application of Dickey et al v. Walsh*, 72 Ill. 2d 317, 325 (1978); 35 ILCS 200/22-45(1) and (2); 35 ILCS 200/22-75(b); 35 ILCS 200/22-80(a); In either case, it is the *in rem* jurisdiction that is divested that makes the order void. *Vulcan Materials Co. v. Bee Construction*, 96 Ill. 2d 159, 165 (1983). If the Section 22-

40(a) order is declared void under Section 22-45 (1) or (2), the court shall enter an order for sale in error and the county collector reimburses the tax deed grantee, or the holder if no tax deed has been recorded, the amounts provided in Section 22-80(a). 35 ILCS 200/22-45; 35 ILCS 200/22-75; 35 ILCS 200/22-80(a) In either case, the *in rem* jurisdiction is divested making the order void.

If the order is declared void by proof of Section 22-45 (1) and (2) above, or the tax sale was otherwise void, Section 22-80(a) provides that the tax sale is declared a sale in error under Section 21-310 and the county collector reimburses the tax deed grantee, or the holder if no tax deed has been recorded, all taxes purchased under the certificate, all subsequent taxes paid and posted to the sale, and all costs posted to the sale. 35 ILCS 200/22-80(a)

Conversely, if a valid Section 22-40(a) order is vacated directly, or collaterally on a Section 22-45(3) or (4) petition, Section 22-80(b) provides that the petitioner who was successful in vacating the Section 22-40(a) order reimburses the tax deed grantee, or the holder if no tax deed has been recorded, all taxes purchased under the certificate, all subsequent taxes paid and posted to the sale, all costs posted to the sale (and other costs). 35 ILCS 200/22-80(b)

In contrast, Section 22-85 unconditionally denies the tax deed grantee, or holder if no tax deed has been recorded, reimbursement of all taxes paid under the certificate or any tax or cost paid and posted to the sale, for failure to timely record the tax deed within one year of redemption expiration. 35 ILCS 200/22-85 It is clear the legislature intended Section 22-85 to apply to the



certificate or deed, and not to the Section 22-40(a) order. It is also abundantly clear the legislature language “certificate or deed and the sale on which it is based” was intended to exclude Section 22-80 reimbursement from Section 22-85’s void doctrine. 35 ILCS 200/22-40(a); 35 ILCS 200/22-45; 35 ILCS 200/22-75; 35 ILCS 200/22-80; 35 ILCS 200/22-85

Nowhere in Section 22-85 does the legislature reference a Section 22-40(a) order or judgment. 35 ILCS 200/22-85 The inference that all omissions should be understood as exclusions stands despite the lack of negative words expressly excluding the Section 22-40(a) order. *Bridgestone/Firestone, Inc. Aldridge*, 179 Ill. 2d 141, 152 (1997). Worth repeating here, the statutory language itself gives the best indication of the legislative intent. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). Where Section 22-85 lists the certificate or tax deed and no right to reimbursement for the sale, there is an inference that all omissions should be understood as exclusions. *Burke v. 12 Rothschild’s Liquor Mart, Inc.*, 148 Ill. 2d 429 (1992).

Further, the legislature did not intend that a Section 22-40(a) order and certificate or deed to be interchangeable terms. 35 ILCS 200/22-40; 35 ILCS 200/22-45; 35 ILCS 200/22-50; 35 ILCS 200/22-60; 35 ILCS 200/22-80; 35 ILCS 200/22-85 Here, the legislature explicitly spelled out its intent in the Property Tax Code that a “certificate or tax deed” is void without right to Section 22-80 reimbursement if the tax deed is not recorded by the holder of the certificate within one year of redemption. 35 ILCS 200/22-85



The appellate court misapprehended and read a portion of Section 22-45, “*Tax deed* is incontestable...” in isolation, ignoring the entire provision’s context and application, which provides “Tax deed incontestable *unless order appealed from relief petitioned*...relief from such *order* may be had under Sections 2-1203 or 2-1401 of the Code of Civil Procedure with respect to final orders and judgments in other proceedings. The grounds for relief under Section 2-1401 shall be limited to...the four grounds provided in Section 22-45 of the Property Tax Code.” 35 ILCS 200/22-45 Emphasis Added; (A11, ¶24) Section 22-45’s provision clearly provides the tax deed may be set aside as the consequence to the Section 22-40(a) order being vacated. *Id.* The legislature’s use of the word “Tax Deed” in Section 22-45 does not obviate Section 22-85’s self-executing statute that renders the certificate or tax deed void automatically for failure of the holder to timely record. 35 ILCS 200/22-85; 735 ILCS 5/2-1401; 35 ILCS 200/22-45

The distinction between a Section 22-45 collateral challenge to a Section 22-40(a) order and a certificate or tax deed being void under Section 22-85 is illustrated in this Court’s *DG Enterprises*, 2015 IL 118975 decision. In *DG Enterprises*, the Court reviewed a collateral challenge to a Section 22-40(a) order on a Section 2-1401 petitioner’s allegations that the order was void based on the holders’ failure to include an address and phone number of the county clerk on take notices, and that the property owner was denied due process. *DG Enterprises*, 2015 IL 118975 On the former, the Court held that Section 22-45

did not include a legal ground to collaterally challenge a Section 22-40(a) order based on strict compliance defects on the face of the take notices, and that “Section 22-45 evinces an intent on part of the General Assembly ‘to protect tax deed orders’ from collateral attack ‘on questions relating to notice’ *unless* the challenge fits squarely within the language of section 22-45.” *Id.* ¶29 On the latter, the Court evaluated whether the due process Section 22-10 through 22-25 notices were at least attempted as required by procedural due process before a valid tax deed could issue. *Id.*

Here, Fifth District Appellate Court, and trial court, wrongfully abrogated the legislature’s prerogative to set the time limit for the holder of the certificate to take out and record the tax deed within one year of redemption expiration. (A14) By eliminating enforcement of Section 22-85, the statute is inoperable. As discussed above, the fundamental provisions of the Property Tax Code scheme provide Section 22-85 is not ancillary, vague or subordinate to Section 22-45. 35 ILCS 200/22-85 The appellate court and trial court’s holdings are erroneous and must be reversed.

**B. SECTION 22-85 OF THE PROPERTY TAX CODE IS MORE SPECIFIC AND CONTROLS**

The Fifth District Appellate Court read limitations on Section 22-85 into Section 22-45 that do not exist and that the legislature did not intend to exist, in finding that a tax deed can only be contested by challenging the Section 22-40(a) order (A8-14, ¶14-28) This is not what Section 22-45 states and not what the Property Tax Code provisions provide. When read as whole,

the Property Tax Code differentiates between collateral challenges to the Section 22-40(a) order, and the automatic voiding of the certificate or tax deed. 35 ILCS 200/22-40; 35 ILCS 200/22-45; 35 ILCS 200/22-60; 35 ILCS 200/22-80; 35 ILCS 200/22-85

When there are two statutory provisions where one is applied generally (Section 22-45) to challenges to Section 22-40(a) orders and the other is particular and relates to only one subject (Section 22-85 consequence for failing to timely record tax deed), the particular provision must prevail. *Henron v. E.W. Corrigan Construction Company*, 149 Ill. 2d 190, 197 (1992). Section 22-85 applies to only one specific instance, and that is a situation such as here, that the holder of the certificate did not record the tax deed within one year from the redemption date. (C347-91)(A22-23)(A29-30) When that occurs, the certificate or tax deed and the sale on which it is based are automatically void. 35 ILCS 200/22-85; *In re Application of the County Treasurer (Sirt)*, 333 Ill. App. 3d 355 (2002); *In re County Treasurer (MB Financial v. CCPI, LLC)*, 2012 IL App (1st) 101976; *In re App, Zajicek*, 2014 IL App (2d) 130995

Even if the two Sections were construed to conflict, which we believe they do not, the terms of the more specific statute must prevail. *Bowes v. City of Chicago*, 3 Ill.2d 175, 205 (1954). In this context, 22-85 is the more specific statute because it expressly provides the tax deed is void based on failure to record within one year of redemption. 35 ILCS 200/22-85 Versus, Section 22-45, which provides four grounds to collaterally challenge the Section 22-40(a)



order directing the issuance of a tax deed. 35 ILCS 200/22-45; *DG Enterprises*, 2015 IL 118975 The differences between Section 22-85 motion to void and a Section 2-1401/22-45 petition show the depth of the appellate court and trial court's erroneous construction of the two distinct provisions.

Section 22-85 is a self-executing provision which makes clear that inaction by the tax deed grantee voids the certificate or tax deed without right to reimbursement. 35 ILCS 200/22-85 Since Section 22-85 is mandatory, and automatically takes effect after the one-year redemption expiration, there is nothing hypothetical or abstract about a void certificate or tax deed. Section 22-85 does not make any other provision on the question of whether a certificate or tax deed is void except to provide that the failure of the tax deed grantee, or holder of the certificate if no tax deed is recorded, to record within one year of redemption expiration unconditionally voids the certificate or tax deed. Section 22-85 does not reference the Section 22-40(a) order. Section 22-85 is clear and unequivocal, self-executing, and needs no procedure to be put it into force. *In re County Treasurer (Bryant v. Bowman)*, 309 Ill. App.3d 181, 188 (1st Dist. 1999). The provision cannot be limited or conditioned by a traditional Section 2-1401 pleading requirements or any other statutory or procedural provision. 35 ILCS 200/22-85

Conversely, Section 22-40(a) orders directing the county clerk to issue a tax deed are not self-executing and are merely judgments subject to normal procedural challenges provided in Section 22-30 of the Property Tax Code, in

Section 2-1203 and Section 2-1401 of the Code of Civil Procedure, and in Supreme Court Rules e.g. Rule 303, 304 etc.

Section 22-85 of the Property Tax Code automatically voids a certificate or tax deed and the sale on which it was based if not recorded within one year after redemption expiration. 35 ILCS 200/22-85 Once the violation occurs, the only determination left to decide is the parties' rights as to ownership of the property and construction of the tax deed, if one exists. Either the certificate or tax deed, and the sale upon which it is based, is void under Section 22-85, or it is not. The liability only exists by force of Section 22-85's statutory provision, and the person incurring liability, the certificate holder or tax deed grantee, is presumed to do so subject to Section 22-85's enforcement by the special provision the legislature made for that purpose. Section 22-85's provision is immediately effective, in which case there is no indication that a procedure must make it operative. 35 ILCS 200/ 22-85

Section 22-85 unconditionally provides the certificate or tax deed is void at a specified time, no other action being needed for enforcement. 35 ILCS 200/22-85 No judicial action against the Section 22-40(a) order is required. Section 22-85 does not reference Section 22-40(a) order. The legislature did not hide an elephant in a mousehole. Thus, the fundamental details of the Property Tax Code scheme provide 22-85 is not ancillary, vague or subordinate to 2-1401/22-45. 35 ILCS 200/22-85

**II. A SECTION 22-85 CLAIM THAT A CERTIFICATE OR TAX DEED IS VOID IS DECLARATORY**

**A. SECTION 22-85 AUTOMATICALLY VOIDS THE CERTIFICATE OR TAX DEED IRRESPECTIVE OF ANY JURISDICTIONAL ISSUE**

Throughout the proceeding, Petitioners have continuously argued the tax deed is void that issued to Castleman, after the trial court entered its Section 22-80(a) order directing the county clerk to issue a tax deed, and more than one year after redemption expired under Section 22-85. (C347-391) Nowhere do Petitioners contend the tax deed is void because the court lacked jurisdiction to enter the Section 22-40(a) order that directed the county clerk to issue a tax deed to Castleman. (A22-23) Petitioners do not make any jurisdictional argument regarding the circuit court's power to enter the order and they need not because the certificate or tax deed may be declared void irrespective of any jurisdictional issue. 35 ILCS 200/22-85

The threshold question on any Section 22-85 claim is when did redemption expire in order to make the determination whether the certificate or deed is void under Section 22-85. However, the various appellate court cases on which Section 22-85 claims turn have varied concerning one important fact—the timing of when the certificate or deed is void under Section 22-85. The procedural confusion in the application of Section 22-85 centers on whether the certificate became void under Section 22-85 before or after the Section 22-40(a) order issued. The theory is that if both the certificate or tax deed, and the sale on which it is based are void, the Section 22-40(a) order



entered *after* the voidness applies, deems the Section 22-40 order void pursuant to Section 22-85. If the Section 22-40(a) order was entered *prior to* voidness applying, the Section 22-40(a) order is not void.

Section 22-85, however, provides that either the certificate or the tax deed is void, not both. Section 22-85 states that the "...certificate or tax deed and the sale on which it is based, shall be absolutely void with no right to reimbursement." 35 ILCS 200/22-85 Reading the Property Tax Code provisions as a whole indicates the legislature intended Section 22-85's language referencing "the sale on which it is based" to mean the amounts paid on the sale are not reimbursed.

Others have claimed that Section 22-85's language implicates voiding the Section 22-40(a) order in the event that the "certificate" becomes void under Section 22-85 *prior to* the Section 22-80(a) order being entered. The problem is that the tax deed issued in those cases. This means the certificate was surrendered to the county clerk in exchange for the tax deed. Therefore, the certificate and the tax deed cannot both be void. 35 ILCS 200/ 22-85 It is one or the other.

The potential problem with reading the Section 22-40(a) order into Section 22-85's language is that Section 22-80, which applies in either a direct or collateral attack on a Section 22-40(a) order, provides that the county collector reimburses the certificate holder or tax deed grantee on any court order vacating the Section 22-40(a) as void for being paid or exempt, or based

on the tax sale being otherwise void. 35 ILCS 200/22-80(a) At the same instance, Section 22-85 provides that the “certificate or tax deed and the sale on which it is based, shall be absolutely void with no right to reimbursement.” 35 ILCS 200/22-85 Petitioners read Section 22-85’s reference to voiding the sale on which the certificate or tax deed is based to be the legislature’s reference to stripping reimbursement of all taxes purchased and paid from the holder or tax deed grantee and not implicating that the Section 22-40(a) order is void.

Courts have characterized Section 22-85’s tolling provisions as a motion for a declaratory judgment, declaratory in nature, and as not seeking to vacate, amend, or modify the trial court’s earlier final order granting issuance of a tax deed. *In re County Treasurer (Bryant v. Bowman)*, 309 Ill. App.3d 181, 188 (1st Dist. 1999). In *Bryant*, the court had jurisdiction over the petition as a declaratory judgment action even though it was filed more than 30 days after the final order. *Id.* at 187. See also, *In re Application of the County Treasurer (Sirt)*, 333 Ill.App.3d 355, 360 (2002) (the issue was not whether the order and the tax deed were void for lack of jurisdiction—the trial court had jurisdiction but the deed and the sale on which it was based were void under Section 22-85).

Section 2-701 of the Code of Civil Procedure provides in pertinent part that the court may make binding declarations of rights having the force of final judgments including the determination at the instance of anyone interested in

the controversy of the construction of any statute or of any deed. 735 ILCS 5/2-701(a). Declaratory judgments are designed to settle and fix the rights of the parties before there has been an irrevocable change in their positions in disregard of their respective claims of right, and the procedure should be used to afford security and relief against uncertainty with a view to avoiding litigation, not toward aiding it. *Saline Branch Drainage Dist. v. Urbana-Champaign Sanitary Dist.*, 399 Ill. 189, 192-193, (1948). The scope of declaratory judgment remedy should be kept wide and liberal and not restricted by technicalities; and the important concept is the right and duty of courts to grant declaratory relief where it ought to be granted regardless of how particular action in which declaratory relief sought may be classified. *Illinois Gamefowl Breeders Ass'n. v. Block*, 75 Ill.2d 443, 468 (1979).

As discussed in *In re Application of the County Treasurer (Sirt)*, 333 Ill.App.3d 355 (2002), the order directing the county clerk to issue a tax deed has no application to an analysis under Section 22-85. *Id.* at 360. In *Sirt*, the court concluded that a property owner could seek declaratory relief and *sua sponte* found that the tax deed, and the sale on which it was based, were void under Section 22-85 of the Property Tax Code.

In this case, the trial court treated Petitioners' Section 22-85 motion to void as a Section 2-1401 petition to void the tax deed. (A20-21) The Appellate Court labeled Petitioners' insistence they were not attacking the order as resisting its motion to void from being classified as a Section 2-1401(f). (A14)



However, Petitioners had no opportunity to respond to the appellate court's technical stance because it was first set forth in the June 2, 2020 opinion, and Section 2-1401 was not presented in briefing or argument, and was not present in Respondents' 2-615 motion, in the trial court's 2-615 dismissal order, or otherwise on appeal. (C1-574) Further, Section 2-1401 plainly applies to relief from Section 22-40(a) orders which are not self-executing.

Applying the liberal rules of construction to Section 22-85, a motion to void a tax deed pursuant to Section 22-85 should be characterized as a motion for declaratory judgment just the same as a Section 22-85 motion to toll. *In re County Treasurer (Bryant v. Bowman)*, 309 Ill. App.3d 181, 188 (1st Dist. 1999); *In re Application of the County Treasurer (Sirt)*, 333 Ill.App.3d 355 (2002). As set forth above, Section 22-85 does not void the Section 22-40(a) order or contemplate any jurisdictional challenge to the order.

**B. IF THE COURT INTERPRETS SECTION 22-85 TO PROVIDE FOR VOIDING OF THE SECTION 22-40(a) ORDER, THEN EITHER SECTION 2-1401(f) PROCEDURE OR DECLARATORY PROCEDURE ARE AVAILABLE**

If the Section 22-40(a) order has not been entered, then clearly Section 2-1401(f) procedure is not applicable or available to a Section 22-85 movant seeking to void the certificate, or claim that the holder is not entitled to a sale in error. *Application of County Treasurer*, 292 Ill. App. 3d 1017, 1019-1020 (1st Dist., 1997); *In re Petition for Declaration of Sale in Error*, 256 Ill.App.3d 159, 162-164 (1st Dist. 1994).

Extending Section 22-85's provision to encompass voiding Section 22-80(a) orders would undoubtedly invoke Section 2-1401(f) procedure. Section 2-1401 provides for collateral relief from judgments/orders. 735 ILCS 5/2-1401(a) A traditional 2-1401 petition is a new compliant filed in the same proceeding, is subject to due diligence pleading requirements and other procedural hurdles. 735 ILCS 5/2-1401 Section 22-45 limits a traditional Section 2-1401 petition that challenges a Section 22-40(a) order as void under Sections 22-45(1) and (2), or that should be vacated under Section 22-45(3) and (4). 35 ILCS 200/22-45 According to the Property Tax Code, there is no other avenue to void the Section 22-40(a) order. 35 ILCS 200/22-75.

Section 2-1401(f) provides that nothing contained in Section 2-1401 affects any existing right to relief from a void order or judgment, or to employ any existing method to procure that relief. 735 ILCS 5/2-1401(f) A Section 2-1401(f) is the procedure is utilized a vehicle to challenge void orders entered without jurisdiction. *Sarkissian v. Chicago Board of Education*, 201 Ill.2d 95, 103 (2002). A violation of the U.S. Bankruptcy Court's automatic stay provision would be an example of a cause of action requiring Section 2-1401(f) procedure. 11 U.S.C. §362

What procedure is used if Section 22-85's intervening event and automatic voiding of the certificate occurs after the Section 22-40(a) order is entered. Is the *in rem* jurisdiction conferred upon entry of the collector's order for application, judgment and sale of delinquent taxes jurisdiction retroactively

divested. It is clear that Section 22-85 is not limited to 2-1401(f) procedure, nor could it be because the certificate could become void and the Section 22-40(a) order may never be entered. If the tax deed is void in any collateral Section 22-85 relief, reading the Section 22-85 to provide for the voiding of the Section 22-40(a) order is a distinction without a difference. If the tax deed is void, title is deemed to never have passed, reimbursement is barred, and extending Section 22-85 to void the Section 22-40(a) order provides no other effect. The tax deed, or certificate, is already void without right to reimbursement.

### **C. THE APPELLATE COURT HOLDINGS REGARDING SECTION 22-85 ARE INCONSISTENT AND IN CONFLICT**

Since at least 1896, the Property Tax Code (former Revenue Act) has required that for a tax deed to be valid, the holder of the certificate must take out and record a tax deed within one year of redemption expiration. *Fuller v. Shedd*, 161 Ill. 462, 496 (1896). Thereafter, in *Kelle v. Egan*, 256 Ill. 45 (1912); accord *Snow v. Glos*, 258 Ill. 275 (1913). The Court has already held that a more specific statute, such as a statute dealing with a specific ground for voiding a tax deed, is treated as an exception to the general provisions, such as Section 22-45 and Section 22-80. *Bowes v. City of Chicago*, 3 Ill. 2d 175 (1954).

The Fifth District Appellate Court disagreed and found Section 22-45 to be more specific than Section 22-85 and controlling in any claim to void the tax deed. (A9-14) The appellate court questioned the holdings in the First and Third Districts as deeming the Section 22-40(a) order void for the purposes of Section 2-1401(f), citing *Sarkissian v. Chicago Board of Education*, 201 Ill.2d



95, 103 (2002) and *Vulcan Materials Co. v. Bee Construction*, 96 Ill.2d 159, 165 (1983). (A13)

In the First District Appellate Court *In re Application of the County Treasurer (Sirt v. GB Property Management, Inc.)*, 333 Ill.App.3d 355 (2002). the issue is whether the tax deed itself and the order issuing the deed were void under Section 22-85 of the Code. Redemption expired October 30, 1998. On August 8, 2000, more than one-year after redemption expired, the court entered the Section 22-40(a) order. On October 10, 2000, Sirt recorded a tax deed. *Id.* at 362. Within 30 days of the order, GB Property Management, Inc. (GB) filed a Section 2-1203 post-judgment motion alleging the court had jurisdiction but the tax deed and Section 22-40(a) order were void pursuant to Section 22-85. *Id.* at 358-359. The court voided the tax deed, declared the Section 22-40(a) order void, and found the general Section 22-80 provision allowing reimbursement of the purchase price did not apply because the language in Section 22-85 was more specific than the language in Section 22-80. *Id.* at 363, citing *In re Application of Rosewell*, 209 Ill. App. 3d 187, 190-192 (1991).

In the First District Appellate Court's *In re County Treasurer (MB Financial v. CCPI, LLC)*, 2012 IL App (1st) 101976, MB Financial filed a Count I motion to declare the tax deed void pursuant to Section 22-85, and a Count II

Section 2-1401/22-45(3) petition to vacate the Section 22-40(a) order.<sup>1,2</sup> *Id.* at ¶1 *MB Financial* alleged that because of an invalid extension of redemption by the holder, redemption expired on June 12, 2008. *Id.* at ¶32. On February 11, 2009, the court entered the Section 22-40(a) order that was entered prior to one-year after redemption expiration, June 12, 2009. *Id.* On November 4, 2009, CCPI recorded a tax deed. *Id.*

The First District Appellate Court made a factual finding that redemption expired on June 12, 2008 based on an invalid extension, despite the Section 22-40(a) order finding that redemption expired on November 26, 2008. *Id.* at ¶41 CCPI argued that MB Financial forfeited any right to challenge the Section 22-40(a) order findings because MB Financial waived filing a Section 2-1203 postjudgment motion after receiving notice of the tax

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<sup>1</sup> The First District Appellate Court entered an unpublished Rule 23 order in *In re Application of the County Collector (Bank of America, N.A. v. Ybanc)*, 2017 IL (1st) 162417-U finding that there was a conflict between Section 22-45 and Section 22-85 concerning Section 22-40(a) *orders* for tax deed but not as to a void tax deed, holding Section 22-85 is inoperable to challenge Section 22-40(a) orders. *Id.*

<sup>2</sup> The Fourth District Appellate Court entered an unpublished Rule 23 order *In re County Treasurer*, 2016 IL App (4th) 150566-U finding that the certificate was void without right to reimbursement because the holder failed to take out and record a tax deed within one year of redemption (no tax deed issued). The property owner and bank filed Section 2-1401 petitions. The appellate court held the mere filing of a Section 2-1401 petition had no effect on the validity or force of the Section 22-40(a) order and interpreted Section 22-45 to contemplate tax deeds that already issued and applied Section 22-85 to void the certificate without mention or reference to Section 2-1401(f) procedure. *Id.* The appellate court found that if the time to take out and record a tax deed had not expired, the Section 22-45 would have limited the petitioners' challenge to the order. *Id.* at ¶22.

sale and redemption rights, and that MB Financial was limited to Section 22-45 in attacking the Section 22-40(a) order. *Id.* at ¶30-31

The First District Appellate Court found that CCPT's argument that MB Financial was limited to Section 22-45 in collaterally attacking the tax deed lacked merit, holding a void judgment may be attacked at any time, either directly or collaterally, citing Section 22-85 and treating MB Financial's Count I motion to void the tax deed as a Section 2-1401 petition. *Id.* at ¶31 The First District Appellate Court found the tax deed and sale on which it was based were void with no right to reimbursement pursuant to Section 22-85 and reversed the trial court with directions to void the tax deed under Section 2-1401(f) of the Code. *Id.* at ¶45.

In the Second District Appellate Court's *In re App, Zajicek*, 2014 IL App (2d) 130995, the property owner redeemed the property from sale under protest pursuant to Section 21-380. *Id.* at ¶6 Redemption expired November 6, 2011 without a valid extension by the holder of the certificate. *Id.* at ¶¶17-19 The Second District Appellate Court found that the property owner's redemption under protest was sustained but that Section 22-85's bar to reimbursement did not apply because the property owner filed his redemption under protest before the time period set forth in Section 22-85 expired, *e.g.* redemption expired November 6, 2011, property owner filed redemption under protest on October 2, 2012, and the certificate expired on November 6, 2012 after the property was redeemed from sale. *Id.* at ¶20 A Section 22-40(a) order was never entered. *Id.*



In the Third District Appellate Court's *In re Application of the Will County Collector (Citimortgage, Inc. v. Sass Muni V)*, 2018 IL App (3d) 160659, Citimortgage filed a Section 2-1401 petition beyond the traditional Section 2-1401 two-year deadline, pursuant to Section 22-85. *Citimortgage*, 2018 IL App (3d) 160659, ¶20 Redemption expired on May 6, 2011 based on a finding that the holder of the certificate failed to file a valid extension. *Id.* at ¶18. The Section 22-40(a) order was entered on July 19, 2012, more than one year after Section 22-85's deadline, May 6, 2012. On September 7, 2012, Sass recorded a tax deed. *Id.* at ¶4

The Third District Appellate Court found that because the tax deed was not recorded within one year of redemption expiration, "the certificate or deed, and the sale on which it was based" rendered the tax deed and the order that issued the deed void under 22-85. *Id.* at ¶18, 21 The Third District Appellate Court found that "the issue is not whether the court's order was void for lack of jurisdiction. (It was not.) Rather, the issue is whether the tax deed itself and the order issuing the deed were void under Section 22-85 of the Code. (citing) *Sirt*, 333 Ill. App. 3d at 360." *Id.* at ¶21.

Just like the arguments that the First District Appellate Court rejected in *MB Financial*, the Third District Appellate Court rejected the tax deed grantee's arguments that Section 2-1401 and Section 22-45 limited *Citimortgage's* challenge to the Section 22-40(a) order and tax deed more than two years after its entry. *Id.* at ¶21

*Sirt* and *Citimortgage* provide that the Section 22-40(a) order is void under Section 22-85. 35 ILCS 200/22-85 *MB Financial* did not void the Section 22-40(a) order and only voided the tax deed. *MB Financial*, 2012 IL App (1st) 101976. *Zajicek* provided Section 22-85 was not applicable on the property owner's redemption under protest because the owner redeemed prior to Section 22-85's one year expiration to take out and record a tax deed. *Zajicek*, 2014 IL App (2d) 130995.

The Fifth District Appellate Court opinion on review found Section 22-85 is limited to Section 2-1203 and Section 2-1401 procedure, similar to the arguments rejected as meritless in *MB Financial* and *Citimortgage*. *Citimortgage*, 2018 IL App (3d) 160659

The appellate court's finding that a Section 22-85 claim may be set forth "during the pendency of a tax proceeding" fails to state what procedure is being referenced, but seems to imply there is no specific procedure for bringing a Section 22-85 claim prior to entry of the Section 22-40(a) order. (A8-14) (A11-13)

Just as the First District Appellate Court did in *MB Financial*, the trial court in this case treated Petitioners' Count I motion to void the tax deed pursuant to Section 22-85 as a Section 2-1401 petition. *Sarkissian v. Chicago Board of Education*, 201 Ill.2d 95, 103 (2002); *In re County Treasurer (MB Financial v. CCPI, LLC)*, 2012 IL App (1st) 101976. (A20-21)

The Fifth District Appellate Court ignored the trial court's treatment of the motion to void as a Section 2-1401 petition, and Respondents failure to make any argument regarding procedure whatsoever. (A2-14) The appellate court labeled Petitioners' insistence they were not attacking the Section 22-40(a) order, similar to the movant and petitioner in *MB Financial*, as resisting that the motion to void be classified as a 2-1401(f) petition.<sup>3</sup> (A12-13) However, Petitioners had no opportunity to respond to the appellate court's technical stance because it was first set forth in the June 2, 2020 opinion, and Respondents' 2-615 motion did not make any procedural argument or objection against the trial court's treatment of the motion to void as Section 2-1401 petition. (C1-574)

The facts in this case are most similar to the facts in *MB Financial* because in both this case and *MB Financial*, the Section 22-40(a) order was entered *prior to* Section 22-85's one year deadline to record. In *MB Financial* and in this case, the tax deeds were recorded *after* the deadline expired. The First District Appellate Court did not void the Section 22-40(a) order and only voided the tax deed.

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<sup>3</sup>The Appellate Court incorrectly stated that Petitioners instant counsels represented MB Financial. They did not. That case discloses instant counsels represented CCPI, and that CCPI's arguments that 2-1401/22-45 precluded application of 22-85 to void the tax deed were rejected and the more specific 22-85 was applied. *MB Financial*, 2012 IL App (1st) 101976.



As stated above, other cases, such as *Citimorgage* and *Sirt*, voided both the tax deed and Section 22-40(a) order pursuant to Section 22-85 where the Section 22-40(a) order was entered *after* the certificate became void under Section 22-85.

The appellate court holdings in *Sirt*, *MB Financial*, and *Citimortgage* apply Section 22-85 to Section 22-40(a) orders only when the certificate is void under Section 22-85 prior to the Section 22-40(a) order being entered. If the case, then Section 2-1401(f) procedure could apply where the Section 22-40(a) order is void.

However, if the Section 22-40(a) order is entered before the certificate becomes void under Section 22-85, similar to *MB Financial* and the facts in this case, then the tax deed is void, but not the Section 22-40(a) order. As such, Section 2-1401(f) procedure would not be appropriate because no order/judgment is being challenged. 35 ILCS 200/22-85

The Fifth District Appellate Court's reasoning and holding are in error, should be reversed, and the tax deed to Castleman should be declared void under Section 22-85.

**III. THE APPELLATE COURT'S 2-615 DISMISSAL OF PETITIONERS' COUNT I MOTION TO VOID THE TAX DEED PURSUANT TO SECTION 22-85 WAS IN ERROR BECAUSE RESPONDENTS WAIVED ANY PROCEDURAL DEFECT AND PETITIONERS REASONABLY INFORMED RESPONDENTS OF A VALID CAUSE OF ACTION**

A 2-615 motion may be made to attack any defect of form or substance apparent on the face of any pleading. 735 ILCS 5/2-615; 735 ILCS 5/2-612 Here, Respondents did not challenge Petitioners' Count I motion to void the tax deed pursuant to Section 22-85 for any procedural defect precluding the cause of action. (C450-458) A cause of action should not be dismissed for defective pleading unless it is clearly apparent that no set of facts can be provided that would entitle Petitioners to recovery. *People ex rel. Scott v. College Hills Corp.*, 91 Ill.2d 138, 145 (1982).

Petitioners pleaded and established the tax deed was void pursuant to Section 22-85. (C347-391)(A20-30) Respondents, Castleman and Groome, challenged the legal sufficiency of Count I, taking the facts the as true, that (1) Castleman was not a holder of the certificate when the October 27, 2017 tax deed issued to Castleman, (2) redemption expired October 10, 2015, and (3) the tax deed was recorded more than one year after the October 10, 2015 redemption expiration. (C450-458) Respondents argued the Property Tax Code provided that either both a purchaser or assignee could record the tax deed and that Section 22-85 tolled the time to record the tax deed in this case. (C450-458) 35 ILCS 200/22-85

Pleadings are not intended to create obstacles of a technical nature to prevent reaching the merits of a case at trial and are intended to facilitate the resolution of real and substantial controversies. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 307-308 (1981). In determining whether the complaint is adequate, pleadings are liberally construed. *First National Bank v. City of Aurora*, 71 Ill.2d 1, 8 (1978). The aim is to see substantial justice done between the parties. *Id.*

Section 22-85 of the Property Tax Code must be read in concert with the other sections of the Property Tax Code. When the sections are read together, it also becomes undoubtedly clear that the true intention of the legislature is that only the true owner and holder of the tax lien may take out and record a tax deed, not both. This intention is expressed throughout the Property Tax Code.

Using the phrase “purchaser or his or her assignee” throughout the Property Tax Code, the legislature clearly means owner and holder of the certificate. No other logical conclusion can be drawn especially in light of the language used in Sections 21-350 and 21-260(e) of the Property Tax Code. Section 21-350 of the Property Tax Code is the statute which establishes the period of redemption for certain types of property sold at tax sales. 35 ILCS 200/21-350. As a general rule, the period of redemption is 2 years from the date of sale. However, certain exceptions apply which may either shorten or lengthen the period of redemption. Once such exceptions is located in



subsection (c) of Section 21-350 of the Property Tax Code. 35 ILCS 200/21-350(c). It states in pertinent part:

Period of redemption. Property sold under this Code may be redeemed at any time before the expiration of 2 years from the date of sale, except that...

(c) if the period of redemption has been extended by the certificate holder as provided in Section 21-385, the property may be redeemed on or before the extended redemption date. 35 ILCS 200/21-350

When referring to who may extend the period of redemption pursuant to Section 21-385 of the Property Tax Code, the legislature's use of the term "certificate holder" in Section 21-350 of the Property Tax Code establishes clear legislative intent that only the owner and holder of the certificate may extend the redemption date. 35 ILCS 200/21-350

Section 21-385 provides that the "purchaser or his or her assignee" may extend the period of redemption, file written notice with the county clerk, apply to the court to allow an extension of redemption if prior to expiration of redemption or expiration extended redemption a petition for tax deed has been filed, provides the court shall allow the purchaser or assignee to extend the redemption after expiration of the original redemption provided any extension does not expire later than 3 years from the date of sale. 35 ILCS 200/21-385 If the period of redemption is extended, the purchaser or his or her assignee must give the notices provided for in Section 22-10 through 22-20. 35 ILCS 200/22-10 through 22-30; 35 ILCS 200/21-385

Other sections of the Property Tax Code also establish that only the current certificate holder/owner may extend a redemption. For example,

Section 21-260(e) of the Property Tax Code regarding Scavenger Sales also references the exact same legislative intent as to who may extend the redemption period:

...(e) Proceeding to tax deed. The owner of the certificate of purchase shall give notice as required by Sections 22-5 through 22-30, and may extend the period of redemption as provided by Section 21-385. At any time within 6 months prior to expiration of the period of redemption from a sale under this Code, the owner of a certificate of purchase may file a petition and may obtain a tax deed under Sections 22-30 through 22-55.... 35 ILCS 200/21-260(e).

The legislature clearly means the owner and holder of the certificate of the purchase when using the phrase “purchaser or his or her assignee.” No other logical conclusions can be drawn especially in light of the language used in Sections 21-350 and 21-260(e). Only the owner and holder of the certificate of purchase may extend the period of redemption. 35 ILCS 200/21-350; 35 ILCS 200/21-260

The legislature’s choice of the disjunctive word “or” between the terms purchaser and assignee evidences its intent that the terms be viewed in the alternative. *Elementary Sch. Dist. 159 v. Schiller*, 221 Ill. 2d 130, 145 (2006). Disjunctive words connote two different alternatives. *Id.* By wording the terms “purchaser or assignee” in the disjunctive, the legislature intended that one or the other—not both—could obtain a tax deed. Additionally, *Blacks’ Law Dictionary, 6th Edition*, defines the word “or” as follows:

A disjunctive particle used to express an alternative or to give a choice of one among two or more things.... *Blacks’ Law Dictionary*, 1095 (6th ed. 1990).

The Property Tax Code is emphatically clear—only the owner and holder of the certificate of purchase may take out and record a tax deed. No other interpretation is reasonable. The trial court’s dismissal allowing the former holder Castleman’s October 27, 2017 tax deed to stand applies the Property Tax Code phrase “purchaser or his or her assignee” in the conjunctive rather than the disjunctive, and incongruently allows prior and subsequent tax lien owners and holders concurrent rights to obtain a tax deed. Such an interpretation cannot be followed or upheld.

Castleman could have tendered the October 19, 2015 Section 22-40(a) order to the county clerk without assigning their rights to Groome, and obtained a valid tax deed if recorded on or before October 10, 2016. However, Castleman instead transferred their rights, title, and interest in the certificate to Groome. This left Groome with the Section 22-40(a) order that directed the county clerk to issue a tax deed to Castleman. No action was taken by Groome or Castleman to correct the Section 22-40(a) order which only directs a tax deed to issue to Castleman. Castleman did not seek to substitute Groome as the petitioner in the tax deed proceeding prior to the Section 22-40(a) order being entered. (C1-36) The record establishes that on or before February 29, 2016, Castleman assigned all right, title, and interest to Groome. (A24-26) As such, Groome was the holder of the certificate when the October 27, 2017 tax deed issued to Castleman and was recorded. (A29-30) As a matter of law, the tax deed is void. 35 ILCS 200/22-85



The county clerk may only act pursuant to the Section 22-40(a) order's direction and has no authority to interpret the court's order or change the order. As such, the October 27, 2017 tax deed to Castleman is invalid, and not recorded within one year of expiration by the current owner and holder of the tax deed. Since tax deed was not recorded until October 27, 2017, over two years after the October 10, 2016 deadline, the tax deed became void after the Section 22-40(a) order was entered. 35 ILCS 200/22-85 Thus, the Section 22-40(a) order is not void. *In re County Treasurer (MB Financial v. CCPI, LLC)*, 2012 IL App (1st) 101976

The Fifth District Appellate Court erred in strictly construing Petitioners Count I motion to void the tax deed to find it was procedurally inadequate where, as here, Respondents waived any objection to technical procedural defect and Petitioners reasonably informed Respondents of the cause of action. The appellate court, however, found a perceived procedural obstacle of a technical nature prevented reaching the merits of the motion to void the tax deed. (A8-14, ¶¶16-28) The appellate court improperly classified the motion to void the tax deed by its label and not its substance. *Landers-Scelfo v. Corporate Office Systems, Inc.*, 356 Ill.App.3d 1060 (2nd Dist. 2005); 735 ILCS 5/2-612; 735 ILCS 5/2-615

Applying liberal rules of construction to the circumstances of this case, the Court could characterize Petitioner's Count I motion to void the tax deed pursuant to Section 22-85 as a motion for declaratory judgment., similar to

other courts' treatment of a Section 22-85 motion to toll as declaratory in nature, or, in the alternative treat the Count I motion to void as Section 2-1401 petition just as the trial court did, in determination that the tax deed is void pursuant to Section 22-85 of the Property Tax Code.

A consequence of the opinion on review is that there is no consequence to a certificate holder or tax deed grantee's failure to record a tax deed within one year of redemption expiration. Does this opinion affect a holder's right to accrue interest on sale in error refunds paid by the county over the course of five years if the one year time limit to take out and record is not applicable? Could a tax deed grantee hold on to its tax deed and not record until Section 2-1401's two year statute of limitation expires?

For these reasons, the Court should reverse and vacate the appellate court's June 2, 2020 opinion and trial court's September 24, 2018 order. (A02-21)

### CONCLUSION

For the reasons argued above, this Court should overrule the appellate court's decision, make clear that Section 22-85 of the Property Tax Code is a specific, self-executing statute declaratory in nature and not subordinate to the more general statutory provisions in Section 22-45 and Section 22-80 of the Property Tax Code. The Court should reverse the appellate court's June 2, 2020 opinion and the trial court's September 24, 2018 order with direction to the

appellate court to void the October 27, 2017 tax deed issued to Castleman and reverse the trial court's Section 2-615 dismissal.

In the alternative, should the court find that Section 22-85 provides for the voiding of a Section 22-40(a) order, the Court should overrule the appellate court's technical procedural holdings with direction to treat Petitioners' Count I motion to void the tax deed as a Section 2-1401 as the trial court did, make clear that Petitioners may challenge the October 27, 2017 tax deed as void under Section 22-85 of the Property Tax Code, and remand the matter to the appellate court with direction to void the October 27, 2017 tax deed issued to Castleman and reverse the trial court's Section 2-615 dismissal of Petitioners' Count I motion to void the tax deed pursuant to Section 22-85 of the Property Tax Code.

Respectfully submitted,

Cadijah Brown and SI Resources, LLC

/s/ Mindy S. Salyer

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No. 126150

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**IN THE SUPREME COURT  
OF ILLINOIS**

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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.	)	

**CERTIFICATE OF COMPLIANCE**

I, Mindy S. Salyer, certify that this brief 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 48 pages.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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**A01**

**NOTICE**

Decision filed 06/02/20. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2020 IL App (5th) 190168

NO. 5-19-0168

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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<i>In re</i> APPLICATION FOR A TAX DEED	)	Appeal from the
	)	Circuit Court of
(SI Resources, LLC, and Cadijah Brown,	)	Hamilton County.
	)	
Petitioners-Appellants,	)	
	)	
v.	)	No. 15-TX-10
	)	
Opal Castleman, Stephen R. Castleman,	)	
William Groome, and Vicki Groome,	)	Honorable
	)	Barry L. Vaughan,
Respondents-Appellees).	)	Judge, presiding.

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JUSTICE CATES delivered the judgment of the court, with opinion.  
Justices Overstreet and Boie concurred in the judgment and opinion.

**OPINION**

¶ 1 After the circuit court entered an order directing the issuance of a tax deed to Stephen R. Castleman and Opal Castleman, SI Resources, LLC (SI Resources) and Cadijah Brown (Brown) (collectively, petitioners) filed a two-count pleading against the Castlemans and the Castlemans' successors in interest, William Groome and Vicki Groome, seeking to declare the tax deed void pursuant to section 22-85 of the Property Tax Code (35 ILCS 200/22-85 (West 2016)) (count I) and to vacate the order directing the issuance of the tax deed pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2016)). The circuit court granted the Castlemans' and the Groomes' (collectively, respondents) motion to dismiss the petitioners' filing, pursuant to sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2016)).



Petitioners appeal from the circuit court's order dismissing their filing. For the following reasons, we affirm the circuit court's order.

¶ 2

#### BACKGROUND

¶ 3 On January 28, 2013, the Hamilton County treasurer sold the delinquent 2011 real estate taxes on the mineral rights of the subject property, identified as parcel number 08-702-100-04 (property), to Kathy Riley for \$79.64, including penalties and costs. The last known person to be assessed taxes for the property, according to the Hamilton County treasurer's records, was "Brown L I Jr." On June 1, 2015, Riley assigned the certificate of purchase for the property to the Castlemans. The original redemption expiration date from the tax sale was September 28, 2015. On June 10, 2015, the Castlemans filed a notice to extend the period of redemption to October 10, 2015.

¶ 4 On June 22, 2015, the Castlemans filed a *pro se* petition for tax deed in the circuit court of Hamilton County, naming the following respondents: L.I. Brown Jr.; Sunrise Exploration, Inc.; the Hamilton County Clerk; unknown owners or interested parties; and nonrecord claimants. On October 19, 2015, the trial court entered an order directing issuance of a tax deed to the Castlemans as the petitioners for the deed.

¶ 5 L.I. Brown Jr. died in March 1981 without a last will and testament, and Brown and her two siblings, Ross Brown (Ross) and Kevin Brown (Kevin), were his only surviving blood relatives. On October 28, 2015, SI Resources purchased the mineral rights to the property from Brown, Ross, and Kevin, via a quitclaim deed. Pursuant to the terms of the quitclaim deed, Brown and her siblings conveyed to SI Resources:

“All (100%) of their interest that they may own or be entitled to from the estate of Lee Isaac Brown Jr., including all rights, titles, and royalties, as well as, thirty percent (30%) of all impounded proceeds, and unclaimed suspense, in the [property].”

¶ 6 On November 12, 2015, SI Resources filed a motion, pursuant to section 2-1203 of the Code (735 ILCS 5/2-1203 (West 2014)), to vacate the October 19, 2015, circuit court order issuing the tax deed to the Castlemans. In the section 2-1203 motion, SI Resources alleged that the order must be vacated because the Castlemans failed to strictly comply with the mandatory notice and diligence requirements set forth in sections 22-5 through 22-40 of the Property Tax Code (35 ILCS 200/22-5 to 22-40 (West 2014)). On December 15, 2015, SI Resources filed an amended section 2-1203 motion to vacate, adding Brown as a petitioner. On December 21, 2015, the Castlemans filed a motion to dismiss the amended section 2-1203 motion, asserting the petitioners lacked standing. On February 29, 2016, the trial court granted the Castlemans’ motion to dismiss. SI Resources and Brown appealed.

¶ 7 On August 10, 2017, this court dismissed the appeal for lack of jurisdiction for failing to file a timely notice of appeal. *In re Application for a Tax Deed*, 2017 IL App (5th) 160230-U, ¶ 14. This court held that SI Resources did not have standing to file a section 2-1203 motion because it was not a party to the original action and, thus, its section 2-1203 petition did not extend the time for filing a notice of appeal from a final judgment. *In re Application for a Tax Deed*, 2017 IL App (5th) 160230-U, ¶¶ 13-14.

¶ 8 At some point during the proceedings, the Castlemans assigned the certificate of purchase on the property to the Groomes.<sup>1</sup> On February 29, 2016, the same day that the trial court dismissed the section 2-1203 motion, the Groomes prepared and presented a tax deed for the subject property

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<sup>1</sup>The date of the transfer is not included on the certificate of purchase, and there is no evidence in the record as to when this transfer occurred.

to the Hamilton County Clerk. The clerk issued the tax deed to the Groomes, and it was recorded with the Hamilton County Recorder of Deeds on that date.

¶ 9 On June 26, 2017, while the first appeal was pending, the petitioners filed a complaint for a writ of *mandamus* against the Hamilton County Clerk arguing the clerk erred in issuing a tax deed to the Groomes in the absence of a circuit court order directing the clerk to do so. The petitioners asserted the clerk “must reform the tax deed” to conform to the circuit court’s October 19, 2015, order and issue a tax deed to the Castlemans. In her answer, the clerk confessed error, and agreed to “revert” the tax deed “back to [the Castlemans].” The clerk requested that the court “enter an order directing the county clerk[,] on the production of the certificate of purchase and a certified copy of the order, to issue to the purchaser or his or her assignee a tax deed.” On October 26, 2017, the *mandamus* court issued an agreed order granting the complaint for writ of *mandamus*. On October 27, 2017, the clerk issued a “Corrective Tax Deed” for the subject property to the Castlemans. The corrective tax deed stated that it “corrects” the tax deed recorded on February 29, 2016.<sup>2</sup>

¶ 10 On October 23, 2017, the petitioners filed a two-count pleading in the underlying tax proceeding. Count I of the pleading was a “Section 22-85 Motion to Void Tax Deed,” and count II of the pleading was a “[Section] 2-1401/22-45 Petition to Vacate the October 19, 2015 Order

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<sup>2</sup>The October 27, 2017, tax deed stated that it “corrects” the tax deeds issued on February 29, 2016, and on August 16, 2017. The record includes a copy of an August 16, 2017, tax deed for the subject property that was issued to the Castlemans. The circumstances that led to the issuance of this tax deed are wholly unexplained by the record or the parties. The existence of, and potential legal effect of, the August 16, 2017, tax deed have not been raised on appeal.



Directing Issuance of Tax Deed.”<sup>3</sup> The petitioners subsequently filed several amended pleadings. Count I of their amended pleading was a “Section 22-85 Motion to Void Tax Deed” requesting the circuit court enter an order voiding the October 27, 2017, tax deed issued to the Castlemans. The petitioners alleged that the tax deed was void because the Castlemans failed to take out and record the deed within one year of October 10, 2015, the redemption period expiration date, as required by section 22-85 of the Property Tax Code. Count II of the pleading was a section 2-1401 petition seeking an order from the circuit court vacating the October 19, 2015, order directing issuance of a tax deed to the Castlemans.<sup>4</sup> In count II, the petitioners alleged the October 19, 2015, order should be vacated (a) pursuant to section 22-45(3) of the Property Tax Code (35 ILCS 200/22-45(3) (West 2016)) because the Castlemans procured the tax deed by fraud through a pattern of deception and concealment regarding notice in violation of sections 22-10, 22-25, and 22-20 of the Property Tax Code (35 ILCS 200/22-10, 22-25, 22-20 (West 2016)) and (b) pursuant to 22-45(4) of the Property Tax Code (35 ILCS 200/22-45(4) (West 2016)) because the Castlemans violated the notice and diligent inquiry requirements of section 22-20 of the Property Tax Code.

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<sup>3</sup>Adding to the list of unexplained phenomena, the petitioners’ October 23, 2017, pleading seeking to void the tax deed issued to the Castlemans predates the *mandamus* court’s October 26, 2017, order directing the issuance of the tax deed and the October 27, 2017, issuance of and recording of the deed. In their original filing, the petitioners indicate the tax deed they are seeking to void was recorded on September 26, 2017. There is no evidence in the record that such a deed exists. The petitioners subsequently amended their filing to state that they were seeking to void the October 27, 2017, tax deed issued to the Castlemans as a result of the *mandamus* action.

<sup>4</sup>Section 2-1401(c) requires the petition to be filed within two years of the entry of the order or judgment from which the petitioner is seeking relief. 735 ILCS 5/2-1401(c) (West 2016). The petitioners maintain that their section 2-1401 petition was timely filed on October 19, 2017, within two years of the October 19, 2015, order directing the issuance of the tax deed. This is incorrect. The section 2-1401 petition was file stamped by the circuit clerk on October 23, 2017, and, thus, was untimely. See *Wilkins v. Dellenback*, 149 Ill. App. 3d 549, 553 (1986) (the “filing” date of a section 2-1401 petition is the date that the petition is received by the circuit clerk, as evidenced by the file stamp). The timeliness of the petition is not an issue on appeal, however, as the statute of limitations is an affirmative defense, which was waived by respondents’ failure to raise the issue on appeal results in a waiver of the defense. See *People v. Pinkonsky*, 207 Ill. 2d 555, 562 (2003) (failure to raise the limitations period as a defense, waives the defense).

¶ 11 The respondents filed a combined section 2-615 and section 2-619 motion to dismiss the petitioners' pleading. The motion sought to dismiss count I, pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)), for failing to state a claim because the Groomes, as the holders of the tax sale certificate of purchase, took out and recorded a tax deed on February 29, 2016, which was within a year from the expiration of the redemption period. Alternatively, the respondents argued that the October 27, 2017, corrective tax deed should be deemed timely recorded because the recording period was tolled under the provisions of section 22-85. The respondents sought to dismiss count II under section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2016)) for lack of standing. The respondents argued the petitioners lacked standing because SI Resources did not acquire its interest in the property until after the deadline for redemption had expired and Brown did not have an interest in the property when the section 2-1401 petition was filed because she had quitclaimed her interest to SI Resources.

¶ 12 On September 24, 2018, the circuit court entered an order dismissing the pleading, in which it treated both counts of the petitioners' pleading as a section 2-1401 petition. Relying on this court's recent decision in *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, the circuit court granted the respondents' motion and dismissed count I pursuant to section 2-615 of the Code and count II pursuant to section 2-619 of the Code. On October 24, 2018, the petitioners filed a motion to reconsider, which the circuit court denied. This appeal follows.

### ¶ 13 ANALYSIS

¶ 14 A section 2-615 motion attacks the legal sufficiency of the complaint and raises the question of whether the complaint states a cause of action upon which relief can be granted. 735 ILCS 5/2-615 (West 2016); *Oldendorf v. General Motors Corp.*, 322 Ill. App. 3d 825, 828 (2001). Section 2-619(a)(9) of the Code provides for the dismissal of an action where the claim "is barred



by other affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9) (West 2016). Lack of standing is one of the affirmative defenses that may be brought in a section 2-619(a)(9) motion. *Cedarhurst of Bethalto Real Estate, LLC v. Village of Bethalto*, 2018 IL App (5th) 170309, ¶ 16.

¶ 15 When ruling on either a section 2-615 or section 2-619 motion to dismiss, all well-pled facts alleged in the complaint, and all reasonable inference therefrom, are accepted as true and are construed in favor of the nonmoving party. *Cedarhurst of Bethalto Real Estate, LLC*, 2018 IL App (5th) 170309, ¶ 10. Our review is *de novo* because the resolution of either motion is a question of law. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶ 13. On appeal, this court can affirm the circuit court’s dismissal on any ground supported by the record. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶ 13.

¶ 16 Section 22-85 Motion

¶ 17 On appeal, the petitioners challenge the circuit court’s dismissal of their count I motion to void the October 27, 2017, tax deed pursuant to section 2-615 of the Code. The petitioners assert their count I motion states a claim to void the tax deed because the Castlemans failed to take out, and record the deed, within one year of the expiration of the redemption period, as required by section 22-85 of the Property Tax Code. Specifically, the petitioners contend that the record demonstrates that the period of redemption expired on October 10, 2015, and the Castlemans did not take out, and record their tax deed, until October 27, 2017.

¶ 18 The respondents present several alternative arguments that the record supports a finding that the petitioners have failed to state a claim by demonstrating a violation of section 22-85, including (1) that the *mandamus* court lacked subject matter jurisdiction to declare the Groomes’ February 29, 2016, tax deed void, (2) that the Groomes, as the holders of the certificate of purchase



on February 29, 2016, complied with section 22-85 by taking out and recording a tax deed within a year of the expiration of the redemption period, (3) that the October 27, 2017, corrective tax deed related back to the February 29, 2016, tax deed because it merely reformed and corrected that deed, and (4) that the tolling provisions of section 22-85 apply. While the parties spar on the question of what constitutes a violation of section 22-85, the ultimate question of whether the circuit court erred in dismissing count I is resolved by a procedural deficiency in the petitioners' pleading.

¶ 19 Section 22-45 of the Property Tax Code (35 ILCS 200/22-45 (West 2016)) provides that:

“Tax deeds issued under Section 22-40 are incontestable except by appeal from the order of the court directing the county clerk to issue the tax deed. However, relief from such order may be had under Sections 2-1203 or 2-1401 of the Code of Civil Procedure in the same manner and to the same extent as may be had under those Sections with respect to final orders and judgments in other proceedings. The grounds for relief under Section 2-1401 shall be limited to:

- (1) proof that the taxes were paid prior to sale;
- (2) proof that the property was exempt from taxation;
- (3) proof by clear and convincing evidence that the tax deed had been procured by fraud or deception by the tax purchaser or his or her assignee; or
- (4) proof by a person or party holding a recorded ownership or other recorded interest in the property that he or she was not named as a party in the publication notice as set forth in Section 22-20, and that the tax purchaser or his or her assignee did not make a diligent inquiry and effort to serve that person or party with the notices required by Sections 22-10 through 22-30.”

¶ 20 Count I of the petitioners' amended pleading is presented as a "Section 22-85 Motion" to void the October 27, 2017, tax deed. Section 22-85 of the Property Tax Code (35 ILCS 200/22-85 (West 2016)) states that:

"Unless the holder of the certificate purchased at any tax sale under this Code takes out the deed in the time provided by law, and records the same within one year from and after the time for redemption expires, the certificate or deed, and the sale on which it is based, shall, after the expiration of the one year period, be absolutely void with no right to reimbursement. If the holder of the certificate is prevented from obtaining a deed by injunction or order of any court, or by the refusal or inability of any court to act upon the application for a tax deed, or by the refusal of the clerk to execute the same deed, the time he or she is so prevented shall be excluded from computation of the one year period. Certificates of purchase and deeds executed by the clerk shall recite the qualifications required in this Section."

¶ 21 The petitioners assert that a section 22-85 motion attacking a tax deed as void is a recognized motion that is legally distinct from a section 22-45 collateral attack on the circuit court's order directing issuance of a tax deed. The petitioners contend that a section 22-85 motion is a proper vehicle to void a recorded tax deed because section 22-85 does not contain any language limiting the grounds for obtaining relief under the provision. While the petitioners are correct that section 22-85 does not contain any language limiting the type of motion or petition where an alleged violation of that section can be raised, they ignore the fact that section 22-85 is completely silent on the question of the procedure to raise an alleged violation of the statute.

¶ 22 While section 22-85 is silent as to procedure, the Property Tax Code, as a whole, is not. Section 22-45 of the Property Tax Code explicitly provides that a tax deed is *incontestable* except

by (1) appeal from the order of the court directing the county clerk to issue the tax deed, (2) a section 2-1203 motion, or (3) a section 2-1401 petition. It is undeniable that the petitioners' count I "Section 22-85 Motion" does not fall into any of these three specifically enumerated categories.

¶ 23 The petitioners have asserted that the courts have recognized that there is a "legal distinction" between a section 22-85 motion attacking the validity of a tax deed versus a motion or petition attacking the circuit court's order directing issuance of the tax deed. In support, the petitioners cite to *In re Application of the County Treasurer*, 333 Ill. App. 3d 355 (2002); *In re Application of the County Treasurer*, 2012 IL App (1st) 101976; *In re Application of the County Treasurer & ex officio County Collector*, 2014 IL App (2d) 130995; and *In re Application of the Will County Collector*, 2018 IL App (3d) 160659.

¶ 24 While each of these cases addressed, to some extent, the application of section 22-85, none of these cases support a finding that the petitioners' count I motion is a recognized motion that can be used to collaterally attack the validity of a recorded tax deed. Instead, these cases support a finding that the validity of the tax deed, or the circuit court's order directing issuance of the tax deed, can be challenged based on a failure of the holder of the certificate of purchase to comply with section 22-85, (1) during the pendency of the tax proceeding, (2) in a timely filed section 2-1203 motion to vacate the circuit court's order directing issuance of the tax deed, or (3) in a section 2-1401 petition for relief from the judgment. See *In re Application of the County Treasurer & ex officio County Collector*, 2014 IL App (2d) 130995, ¶ 6 (property owner who redeemed under protest prior to the entry of an order directing issuance of the tax deed argued he was entitled to a refund based on a section 22-85 violation by the holder of the certificate of purchase); *In re Application of the County Treasurer*, 333 Ill. App. 3d at 358 (compliance with section 22-85 raised in a timely section 2-1203 motion to vacate for rehearing or other relief); *In re Application of the*



*Will County Collector*, 2018 IL App (3d) 160659, ¶ 1 (compliance with section 22-85 raised in a section 2-1401 petition).

¶ 25 The one anomaly appears to be *In re Application of the County Treasurer*, 2012 IL App (1st) 101976. In that case, the respondent filed a pleading similar to that which was filed in this case, including a motion to declare the tax deed void pursuant to section 22-85 and a section 2-1401 petition to vacate the order directing issuance of the tax deed.<sup>5</sup> *In re Application of the County Treasurer*, 2012 IL App (1st) 101976, ¶ 1. In addressing the merits of the respondent's arguments, however, the First District treated the section 22-85 motion to void the tax deed as a section 2-1401(f) petition to void the judgment. *In re Application of the County Treasurer*, 2012 IL App (1st) 101976, ¶¶ 30-31, 45. The petitioners, therefore, have failed to present this court with any authority that would support a finding that their count I, section 22-85 motion, is a recognized motion that can be used to collaterally attack a tax deed. As such, the circuit court did not err in dismissing the petitioners' count I motion for failing to state a claim upon which relief could be granted.

¶ 26 As an aside, while we recognize that both the First District, in *In re Application of the County Treasurer*, 2012 IL App (1st) 101976, and the Third District, in *In re Application of the Will County Collector*, 2018 IL App (3d) 160659, have held that an alleged violation of section 22-85 can be raised in a section 2-1401 petition, it is not clear that these decisions comport with the statutory language or Illinois Supreme Court precedent. As already observed, section 22-45 limits not only the manner in which a tax deed may be contested but also the grounds for relief that can be raised in a section 2-1401 petition challenging the order. Section 22-45 specifically limits the grounds for relief that may be brought under section 2-1401 to allegations that (1) the

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<sup>5</sup>Notably, the petitioners in the case currently before this court are represented by the same law firm that represented the respondent in *In re Application of the County Treasurer*, 2012 IL App (1st) 101976.

taxes were paid prior to sale, (2) the property was exempt from taxation, (3) the tax deed was procured by fraud or deception by the tax purchaser or his assignee, or (4) a person with a recorded interest was not named as party in the section 22-20 publication notice, and the tax purchaser or his assignee did not make a diligent inquiry and effort to serve the interested person with notice as required by sections 22-10 through 22-30 of the Property Tax Code. Section 22-85 and the failure of the holder of the certificate of purchase to take out and record the tax deed within one year from the expiration of the redemption period are not included among the recognized grounds for relief under a section 2-1401 petition. The Illinois Supreme Court has held that a section 2-1401 petitioner is limited to only those grounds listed in section 22-45 when challenging a tax deed or the circuit court's order directing issuance of a tax deed. *DG Enterprises, LLC-Will Tax, LLC v. Cornelius*, 2015 IL 118975, ¶¶ 25-32.

¶ 27 Furthermore, to the extent that the decisions in *In re Application of the County Treasurer*, 2012 IL App (1st) 101976, and in *In re Application of the Will County Collector*, 2018 IL App (3d) 160659, relied upon the belief that the failure to comply with section 22-85 rendered the judgment void for purposes of section 2-1401(f), we question the basis for those holdings. While section 22-85 purports to declare the certificate of sale, tax deed, and the tax sale “void” for the failure to timely take out and record the deed, it seems questionable whether a violation of section 22-85 renders the judgment “void” for purposes of section 2-1401(f). Section 2-1401(f) provides the means for collaterally attacking void judgments. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103-04 (2002). “An order is rendered void not by error or impropriety but by lack of jurisdiction by the issuing court.” *Vulcan Materials Co. v. Bee Construction*, 96 Ill. 2d 159, 165 (1983); see also *Sarkissian*, 201 Ill. 2d at 103; *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶ 25. “[A] tax-sale proceeding is *in rem* and the court acquires jurisdiction over the land

when the county collector makes his application for judgment and order for sale.” *Vulcan Materials Co.*, 96 Ill. 2d at 165. Once the court acquires jurisdiction, it retains jurisdiction “to make all necessary findings and enter all necessary orders supplemental to the original tax sale.” *Vulcan Materials Co.*, 96 Ill. 2d at 165. Thus, while section 22-85 purports to “void” the tax deed, it is not clear that a violation of section 22-85 would divest the court of jurisdiction, rendering the order and tax deed void, subjecting them to collateral attack via a section 2-1401(f) petition.

¶ 28 Ultimately, we need not decide in this case whether a section 2-1401 petition is a proper vehicle to attack a tax deed or the circuit court’s order directing issuance of a tax deed for a violation of section 22-85. Here, the petitioners did not raise their section 22-85 complaint in a section 2-1401 petition, and they have not requested this court to consider it as such. Instead, in the circuit court, the petitioners steadfastly asserted that their motion was not a section 2-1401 petition, going so far as to argue that the circuit court erred in considering it as such. On appeal, we accept the petitioners’ contention that their count I, section 22-85 motion to void the tax deed cannot be considered a section 2-1401 petition seeking to vacate the circuit court’s order directing issuance of the tax deed. As such, we find that the 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 issuance of the tax deed. We find the circuit court did not err in granting the respondents’ motion to dismiss count I of the petitioners’ pleading pursuant to section 2-615 of the Code for failing to state a claim upon which relief could be granted.

¶ 29 Section 2-1401 Petition

¶ 30 Next, the petitioners argue that the circuit court erred in dismissing count II of their pleading pursuant to section 2-619(a)(9) of the Code for lack of standing. In count II, the petitioners brought a section 2-1401 petition to vacate the October 19, 2015, circuit court order directing the



county clerk to issue a tax deed to the Castlemans based on section 22-45(3) and (4) of the Property Tax Code. Relying upon this court's recent decision in *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, the circuit court found that neither petitioner had standing to bring the petition and granted the respondents' motion to dismiss.

¶ 31 This court recently addressed the issue of standing to bring a section 2-1401 petition to attack a tax deed in *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, a case involving some of the same parties currently before this court and a tax deed to the mineral rights in a different parcel of land. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶¶ 1-3, 41-54. In that case, after the redemption period had expired and the circuit court entered an order directing the issuance of a tax deed to the Castlemans, SI Resources purchased the mineral rights to the subject property from Jerry Jean, the delinquent taxpayer, via a quitclaim deed. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶¶ 3-4. Jean and SI Resources each filed a section 2-1401 petition seeking to void or, in the alternative, to vacate, the circuit court's order directing issuance of the tax deed to the Castlemans. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶¶ 6, 9. William Groome, the Castlemans' successor in interest, was granted leave to intervene, and filed motions to dismiss the petitions for lack of standing. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶¶ 7, 9. The circuit court granted Groome's motions. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶ 10.

¶ 32 On appeal, this court held that Jean did not have standing to bring his section 2-1401 petition to vacate the circuit court's order directing issuance of the tax deed to the Castlemans. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶ 44. Having quitclaimed his interest in the property to SI Resources prior to the filing of his section 2-1401 petition, this court held that

Jean did not have an interest in the property when he filed his petition. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶ 44.

¶ 33 The court then addressed the question of SI Resources' standing to determine whether one who acquired an interest in property after a judgment is entered can then step into the shoes of his predecessor and file a section 2-1401 petition to set aside the judgment. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶ 47. The court recognized that there are several narrow exceptions to the general rule that a nonparty to a judgment does not have standing to seek relief from that judgment through a section 2-1401 petition. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶ 48. One of these exceptions includes persons who are "injured by the judgment and will derive benefit from its reversal." *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶ 48. This court held, however, that this exception only applies to those that would have been injured by the judgment at the time of the judgment's entry. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶ 48. This court rejected the conclusion that a nonparty can effectively purchase the standing required to file a petition to set aside a judgment pursuant to section 2-1401 and concluded that SI Resources, as a stranger to the judgment at the time that it was entered, did not have standing to set aside the circuit court's order directing issuance of the tax deed because it did not purchase Jean's interest until after that judgment was entered. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶ 51.

¶ 34 On appeal, the petitioners contend *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, is distinguishable from the case *sub judice* for several reasons. First, they claim that, unlike the property owner in *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, Brown was never divested of title to the property because no valid tax deed was recorded before Brown and her siblings quitclaimed the property to SI Resources. Brown misapprehends this court's

analysis of the delinquent taxpayer's interest in the property. See *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶ 44. Nothing in that case suggests that the original property owner lost standing to challenge the order directing the issuance of a tax deed because title to the property was transferred to the holder of the certificate of purchase when the holder took out and recorded the tax deed. Instead, it was the property owner's act of quitclaiming his interest in the property to another entity, prior to the filing of his section 2-1401 petition, that deprived the first property owner of standing. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶ 44. This court, in fact, went so far as to state that had Jean retained an interest in the property, instead of quitclaiming his entire interest to SI Resources, Jean would have had standing to file the petition. *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, ¶ 44 n.9.

¶ 35 The same is true in this case. Brown did not have an interest in the property when she filed her section 2-1401 petition in October 2017 because she had already quitclaimed her interest to SI Resources in October 2015. Brown had no interest in the property since October 2015, when she quitclaimed her interest to SI Resources, regardless of whether a valid tax deed had been recorded. Therefore, Brown lacks standing to bring a section 2-1401 petition.

¶ 36 Brown also argues that, unlike Jean, Brown has standing because she retained an interest in the property. Under the quitclaim deed, Brown and her siblings conveyed to SI Resources “[a]ll (100%) of their interest \*\*\* including all rights, titles, and royalties, as well as, thirty percent (30%) of all impounded proceeds, and unclaimed suspense.” Brown contends that she retained a 70% interest in the future “suspense” of the property under the quitclaim deed. This claim is incorrect.

¶ 37 In this case, the subject property is a mineral interest, which Brown acknowledges is a “royalty interest.” A “royalty interest” is the landowner's interest in the oil, gas, or minerals



extracted from the land by an “operator,” which is an entity that the landowner contracts with to extract the reserves from the land. *Ramsey Herndon LLC v. Whiteside*, 2017 IL 121668, ¶ 5. Brown’s proposed interpretation of the quitclaim deed seems illogical, as it would result in Brown conveying to SI Resources “all” of her interest in the property plus another 30% of her interest in the same property. In our view, the only reasonable reading of the quitclaim deed is that Brown conveyed *all* of her future interest in the property and 30% of any proceeds or suspense that had already accumulated up to the date of the conveyance but had yet to be disbursed. See *Ramsey Herndon LLC*, 2017 IL 121668, ¶¶ 20-21 (finding deed that conveyed “ ‘all of [their] right, title and interest in and to the oil, gas and mineral leases’ ” was a general grant that included an operator’s override interest in the extracted materials). There is no indication that Brown is entitled to any future interest in the property under the quitclaim deed.

¶ 38 Finally, the petitioners request that this court reconsider its holding in *In re Application for a Tax Deed*, 2018 IL App (5th) 170354, that a nonparty must be injured by the judgment at the time of its entry in order to have standing to file a section 2-1401 petition. After careful consideration, we decline to do so. For the foregoing reasons, we find the circuit court did not err in dismissing the petitioners’ count II, section 2-1401 petition, for lack of standing pursuant to section 2-619 of the Code.

¶ 39 Based on the foregoing, we affirm the order of the circuit court of Hamilton County dismissing the petitioners’ two-count pleading alleging in count I, a “Section 22-85 motion,” and in count II, a section 2-1401 petition.

¶ 40 Affirmed.

2020 IL App (5th) 190168

NO. 5-19-0168

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> APPLICATION FOR A TAX DEED	)	Appeal from the
	)	Circuit Court of
(SI Resources, LLC, and Cadijah Brown,	)	Hamilton County.
	)	
Petitioners-Appellants,	)	
	)	
v.	)	No. 15-TX-10
	)	
Opal Castleman, Stephen R. Castleman,	)	
William Groome, and Vicki Groome,	)	Honorable
	)	Barry L. Vaughan,
Respondents-Appellees).	)	Judge, presiding.

Opinion Filed: June 2, 2020

Justices: Honorable Judy L. Cates, J.  
Honorable David K. Overstreet, J., and  
Honorable Mark M. Boie, J.  
Concur

Attorneys  
for  
Appellants

Attorney  
for  
Appellees

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
HAMILTON COUNTY, ILLINOIS

IN RE APPLICATION FOR A TAX DEED )

PETITION FOR TAX DEED OF: )  
OPAL CASTLEMAN AND/OR STEPHEN R. )  
CASTLEMAN )

VS. )

L. I. BROWN, JR, SUNRISE EXPLORATION, )  
INC., HAMILTON COUNTY CLERK, )  
UNKNOWN OWNERS OR PARTIES )  
INTERESTED, )  
AND NON-RECORD CLAIMANTS. )

2015-TX-10

**FILED**

SEP 24 2018

*Beth Sandusky*  
CLERK OF THE CIRCUIT COURT  
HAMILTON COUNTY, ILLINOIS

ORDER

This cause comes on for hearing on a motion to dismiss a petition filed by S.I. Resources, LLC., and Cadija Brown under 2-1401 to attack a series of events resulting in the issuance of a tax deed in Hamilton County. The chronology of events is accurately set forth in the motion to dismiss filed by CASTLEMAN and GROOME by attorney Slocumb on June 6, 2018 at 10:05 A.M.

In summary, the original tax purchasers, transferred their certificate in question to instant 2-1401 respondents (Castleman and Groome). After the period of redemption had expired on 10-10-15, taxpayer Brown transferred by quitclaim deed any interest he had in the property to S.I. Resources on 10-21-15. On November 12, 2015 and through various pleadings since that time, Brown and S.I. Resources have been attempting to have the tax deed set aside. This 2-1401 petition is the latest attempt to set aside the tax deed. This court originally ruled that Brown, by missing the redemption deadline, and S.I. Resources, by acquiring an interest that had been extinguished by the redemption deadline, lacked standing to challenge the tax deed.

C 479

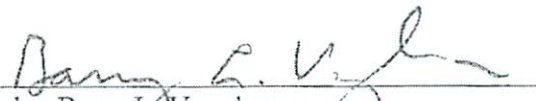
**A20**



Since this matter was taken under advisement, the Illinois Appellate Court for the Fifth District has decided a case from Washington County on very similar facts ( 2018 IL App (5th) 170354 ). In the Washington County case, the trial court dismissed the 2-1401 petition and the Appellate Court affirmed the dismissal. This court has read the Washington County case and finds it is controlling in the instant case in Hamilton County and therefore dismisses Count I of the 2-1401 petition per 2-615 and dismisses Count II of the 2-1401 petition per 2-619.

Accordingly, the 2-1401 Petition filed by Brown and S.I. Resources is DISMISSED.

September 24, 2018

  
\_\_\_\_\_  
Judge Barry L. Vaughan

IN THE CIRCUIT OF THE SECOND JUDICIAL CIRCUIT  
OF HAMILTON COUNTY, ILLINOIS

IN RE THE APPLICATION FOR TAX DEED

STEPHEN R. AND/OR OPAL CASTLEMAN,  
PETITIONER,

VS.

LI BROWN JR, SUNRISE EXPLORATION INC,  
HAMILTON COUNTY CLERK,  
UNKNOWN OWNERS OR PARTIES INTERESTED,  
And NON-RECORD CLAIMANTS  
DEFENDANTS,

**FILED**  
OCT 19 2015  
B. S. Sandusky  
CLERK OF THE CIRCUIT COURT  
HAMILTON COUNTY, ILLINOIS

) NO. 2015-TX-10  
)  
)  
)  
)  
)  
)  
)  
)  
)

ORDER

Now on this 19 day of October, 2015 this cause come on for hearing on the Verified Petition Tax DEED (hereinafter referred to as the "Petition") filed by Stephen R. and/or Opal Castleman, Pro-Se (hereinafter referred to as "Petitioner"), this court having examined the court file in the above captioned cause and the Report of Proceeding filed 10-19- 2015 together with Exhibits therein and being fully advised in the premises finds as follows

1. That it has jurisdiction of the subject matter hereof and the parties hereto.
2. At a sale of land and lots for nonpayment of general taxes levied and assessed for the 2011 taxes due and payable in 2012, Stephen R. and/or Opal Castleman, duly purchased the following described parcel of real estate in said Court herein before described in the Petition herein, and received a Certificate of Purchase therefore.

LEGAL DESCRIPTION and /or PROPERTY INDEX NUMBER : 08-702-100-04

RI 0.0104170 PRESLEY 2-A L# 080990694 SUNRISE EXPLORATION INC OH# SUNRISE INCLUDING SUSPENSE

ADDRESS OF PROPERTY: Hamilton County, IL.

3. The time for redemption from said sale has expired and the above-described real estate has not been redeemed from said sale.
4. All taxes and special assessment, which become due and payable subsequent to said sale, have been paid, and all forfeitures or tax sales if any, which occurred subsequent to said sale have been redeemed

C 362

025

**A22**

5. All notice required by law have been given and that the Petitioner, has complied with all the provisions of law entitling it to a tax deed to said parcel of real estate.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

A. That the County Clerk of Hamilton County is ordered to execute and deliver to Petitioner a Tax Deed vesting in Petitioner the title in fee simple the above described real estate and every part thereof.

B. That this Order is an Order of Possession placing the Grantee of the Tax Deed referred to in the proceeding paragraph in possession of all funds Derived from Subject Parcel

Date this 19 day of October 2015.

ENTER

  
JUDGE

Opal Castieman  
Po Box 843  
Belleville IL 62220

C 363

0210  
**A23**



**TAX DEED**

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF HAMILTON )

Image# 000508570003 Type: TAX DEED  
 Recorded: 02/29/2016 at 10:37:49 AM  
 Receipt#: 2016-00000430  
 Page 1 of 3  
 Fees: \$60.50  
 IL Rental Housing Fund: \$9.00  
 Hamilton County  
 Mary Anne Hopfinger Clerk & Recorder  
 File **2016-00000313**

2015-TX-10  
 Certificate No.  
 1569

WHEREAS, At a public sale of Real Estate for the non-payment of taxes, made in the County aforesaid, on January 28, 2013, the following described Real Estate was sold, to wit:

MINERAL INTEREST: ROYALTY INTEREST: 0.0104170; PRESLEY 2-A LEASE, LEASE #9900694;  
 Southeast Quarter of the Southwest Quarter SECTION 5, and the Northeast Quarter of the Northwest Quarter SECTION 8-  
 TOWNSHIP 6S-RANGE 6E: Twigg Township, Hamilton County, Illinois.

Permanent Index No.: 08-702-100-0-1

AND WHEREAS, the same not having been redeemed from said sale, and it appearing that the holder of the Certificate of Purchase of said Real Estate has complied with the laws of the State of Illinois necessary to entitle WILLIAM E. GROOME and VICKI L. GROOME, Husband and Wife, to a Deed of said Real Estate:

NOW, THEREFORE, Know Ye, That I, MARY ANNE HOPFINGER, County Clerk of said County of HAMILTON in consideration of the property and by virtue of the statutes of the State of Illinois in such cases provided, do hereby grant and convey unto: William E. Groome and Vicki L. Groome, Husband and Wife, as joint tenants with rights of survivorship, not as tenants in common, theirs heirs and assigns forever, the property hereinabove described.

Dated: February 29<sup>th</sup>, 2016

(Seal of the County of HAMILTON)

DOCUMENT TO WHICH THIS CERTIFICATE  
 IS ATTACHED IS A FULL, TRUE AND  
 CORRECT COPY OF THE ORIGINAL ON  
 FILE AND OF RECORD IN MY OFFICE.  
 ATTEST Mary Anne Hopfinger  
BAH

COUNTY CLERK AND RECORDER  
 HAMILTON COUNTY ILLINOIS

Mary Anne Hopfinger  
 MARY ANNE HOPFINGER, CLERK  
 OF THE COUNTY OF HAMILTON  
 STATE OF ILLINOIS

Grantor declares this conveyance is an Exempt Deed as  
 provided by Section 1 of 15 ILCS 200/31-45  
 Dated 02/29/2016

File Number: 2016-00000313 Seq: 1  
 C 367

**A24**

STATE OF ILLINOIS )  
 ) SS:  
 COUNTY OF HAMILTON )

I, the under signed, a Notary Public in and for said County, in the State aforesaid,  
 DO HEREBY CERTIFY that Mary Anne Hopfinger  
 Personally known to me to be the same person(s) whose name is(are) subscribed to the  
 foregoing instrument, appeared before me this day in person, and acknowledged that  
 he/she/they signed, sealed and delivered the said instrument as his/her/their free and  
 voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 29th day of February, 2016.



Sara A Renn  
 Notary Public



(My Commission expires as above sealed)

This instrument was prepared by:  
 WILLIAM E. GROOME  
 149 CO RD 1715N  
 XENIA, IL 62899

Mail recorded instrument:  
 WILLIAM E. & VICKI GROOME  
 149 CO RD 1715N  
 XENIA, IL 62899

Mail future tax bills to:  
 WILLIAM E. & VICKI GROOME  
 149 CO RD 1715N  
 XENIA, IL 62899

DOCUMENT TO WHICH THIS CERTIFICATE  
 IS ATTACHED IS A FULL, TRUE AND  
 CORRECT COPY OF THE ORIGINAL ON  
 FILE AND OF RECORD IN MY OFFICE.  
 ATTEST Mary Anne Hopfinger

COUNTY CLERK AND RECORDER  
 HAMILTON COUNTY ILLINOIS

File Number: 2016-00000313 Seq: 2  
 C 368

**A25**

## TAX SALE CERTIFICATE OF PURCHASE

STATE OF ILLINOIS  
HAMILTON COUNTY

CERTIFICATE NO. D01569

PAGE NO. LINE NO.

I, MARY ANNE HOPFINGER COUNTY CLERK IN AND OR FOR THE COUNTY AND STATE AFORESAID DO HEREBY CERTIFY THAT  
KATHY RILEY OF THE STATE OF ILLINOIS DID, ON THE DAY HEREAFTER SET FORTH, PURCHASE AT PUBLIC AUCTION,  
AT THE COURT HOUSE IN MCLEANSBORO, THE PROPERTY BELOW DESCRIBED, SITUATED IN THE SAID COUNTY FOR THE TAXES,  
INTEREST, PENALTIES AND COSTS DUE AND UNPAID THEREON FOR THE YEAR 2011 AND PRIOR AND PAID AS PURCHASE MONEY ON SAID  
PROPERTY THE TOTAL AMOUNT OF TAXES, INTEREST, PENALTIES AND COSTS THEREON AS STATED HEREIN.

DATE OF SALE PARCEL NUMBER / DESCRIPTION TAX CLASS TAX CODE ACRES  
01/28/13 08-702-100-04 7200 08001

R1 0.0104170  
PRESLEY 2-A L# 0809900694  
SUNRISE EXPLORATION INC OR SUNRISE

AT WHAT RATE OF  
PERCENT SOLD  
.00

TOTAL AMOUNT OF TAXES, INTEREST,  
PENALTIES, AND COSTS  
\$79.64

BROWN L I JR  
P O BOX 752275  
DALLAS TX 75275

RECEIVED THIS 28TH DAY OF JANUARY THE SUM OF \$79.64 THE AMOUNT OF THE PURCHASE MONEY ON THE ABOVE PROPERTY

ASSESSED TO: BROWN L I JR  
MAIL TO: P O BOX 752275  
DALLAS TX 75275-0000

*Linda K. Braden*  
COUNTY COLLECTOR

AT ANY TIME AFTER THE EXPIRATION OF THE TIME OF REDEMPTION, THE ABOVE NAMED PURCHASER, HIS HEIRS OR ASSIGNS, WILL, UPON APPLICATION AND COMPLIANCE WITH THE PROVISIONS OF LAW PERTAINING THERETO, BE ENTITLED TO A DEED OF CONVEYANCE FOR ANY REAL ESTATE HEREIN DESCRIBED WHICH SHALL NOT HAVE BEEN REDEEMED; PROVIDED, THAT UNLESS THE HOLDER OF THIS CERTIFICATE SHALL TAKE OUT SAID DEED AS ENTITLED BY LAW AND FILE THE SAME FOR RECORD WITHIN ONE YEAR FROM AND AFTER THE TIME FOR REDEMPTION EXPIRES, THE SAID CERTIFICATE OR DEED, AND THE SALE UPON WHICH IT IS BASED SHALL, FROM AND AFTER EXPIRATION OF SUCH ONE YEAR, BE ABSOLUTELY NULL.

*Mary Anne Hopfinger*  
COUNTY CLERK  
*Linda K. Braden*  
COUNTERSIGNED BY COUNTY COLLECTOR

IN WITNESS WHEREOF, I HEREBY AFFIX MY NAME ABOVE THIS

IN CONSIDERATION OF THE SUM OF FACE VALUE DOLLARS, TO BE PAID BY STEVE & OPAL CASTLEMAN, I, THE WITHIN NAMED KATHY RILEY DO HEREBY SELL, ASSIGN, TRANSFER AND SET OVER TO SAID STEVE & OPAL CASTLEMAN HIS HEIRS, EXECUTORS, ADMINISTRATORS AND ASSIGNS, THE WITHIN CERTIFICATE OF PURCHASE, TO HAVE AND TO HOLD THE SAME TO SAID STEVE & OPAL CASTLEMAN HIS HEIRS, EXECUTORS, ADMINISTRATORS AND ASSIGNS TO HIS AND THEIR SOLE USE, BENEFIT AND BEHOOF FOREVER.

GIVEN UNDER MY HAND AND SEAL, THIS 1st DAY OF JUNE A.D. 2015.

STEVEN R & OPAL W.E. CASTLEMAN ASSIGN OR DO HEREBY ASSIGN THIS TAX SALE CERTIFICATE FOR THE PURPOSE OF CANCELING SAID TAX SALE TO WILLIAM & VIKKI GROOME

GIVEN UNDER MY HAND AND SEAL, THIS 2nd DAY OF JUNE A.D. 2015.

File Number: 2016-00000313 Seq: 3

C 375

A26



IN THE CIRCUIT OF THE SECOND JUDICIAL CIRCUIT  
OF HAMILTON COUNTY, ILLINOIS

SI RESOURCES, LLC

Plaintiff,

v.

MARY ANNE HOPFINGER, in her official  
capacity as the Hamilton County Clerk

Defendant.

Case No. 2017MR9

**FILED**

OCT 26 2017

*Brian Sandack*  
CLERK OF THE CIRCUIT COURT  
HAMILTON COUNTY, ILLINOIS

**FILED**

OCT 27 2017

*Mary Anne Hopfinger*  
COUNTY CLERK, HAMILTON COUNTY, IL

AGREED JUDGMENT ORDER

THIS CAUSE coming to be heard on Plaintiff, SI Resources, LLC's (Plaintiff) Complaint for a Writ of Mandamus against Defendant, Mary Anne Hopfinger in her official capacity as the Hamilton County Clerk (Defendant), this Court having jurisdiction of the subject matter and the parties, the parties being represented by their respective counsel, and the Court being fully advised in the premises:

THE COURT HEREBY FINDS as follows:

1. On October 19, 2015, in Hamilton County Circuit Court Case Number 2015TX10, the Court entered an Order directing Defendant to issue a tax deed to the 2015TX10 tax deed petitioners, Stephen R. and/or Opal Castleman, for the following described property:

Mineral Interest: Royalty Interest: 0.0104170; Presley 2-A Lease, Lease #9900694: Southeast Quarter of the Southwest Quarter, Section 5, and the Northeast Quarter of the Northwest Quarter Section 8, Township 6S-Range 6E; Twigg Township, Hamilton County Illinois, Hamilton County Property Index Number 08-702-100-04 (hereinafter Subject Property).

2. On February 29, 2016, Defendant erroneously issued a tax deed to persons other than the 2015TX10 tax deed petitioners Stephen R. and/or Opal Castleman, which was recorded by the Hamilton County Recorder of Deeds as document number 2016-00000313.

3. Defendant concedes the tax deed issued on February 29, 2016 to William E. Groome and Vicki L. Groome was in violation of the October 19, 2015 Court Order and is void.

4. Defendant has confessed that on February 29, 2016, Defendant was not given a copy of the October 19, 2015 Court Order directing Defendant to issue a tax deed to the tax deed petitioners, Stephen R. and/or Opal Castleman, and was only given the original Certificate of Purchase No. 001569 which, on or before February 29, 2016, had been assigned to William E. Groome and Vicki L. Groome.

File Number: 2017-00001860 Seq: 3

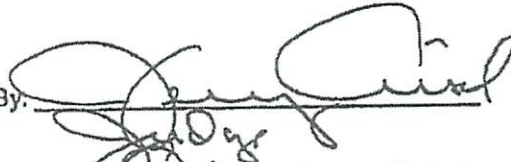
C 365

**A27**

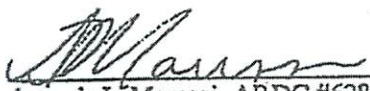
5. Defendant concedes that pursuant to the October 19, 2015 Order, it only had authority to issue a tax deed to 2015TX10 tax deed petitioners, Stephen R. and/or Opal Castleman.

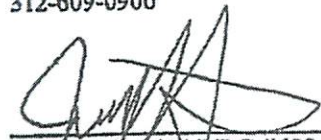
6. There being no dispute between the parties, Plaintiff's Compliant for Writ of *Mandamus* is granted.

7. This case is dismissed.

By:   
Date: Oct 26, 2017

Agreed to by:

  
Amanda L. Moressi, ARDC #6285043  
Salyer Law Offices, LLC  
Attorneys for Plaintiff  
33 N. Dearborn Street - Suite 1505  
Chicago, IL 60602  
312-609-0900

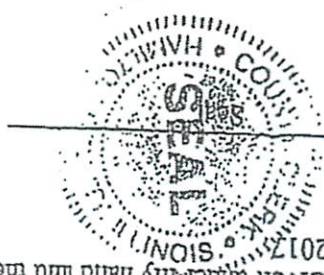
  
Justin E. Hood, ARDC #6284891  
Hamilton County State's Attorney  
100 S. Jackson Street  
McLeansboro, IL 62859  
618-643-3021

File Number: 2017-00001860 Seq: 1

A29

C 370

Mary Anne Hopfinger, Hamilton County Clerk



Given under my hand and the Seal of the County of Hamilton this 27 day of October, A.D.

The real estate not having been redeemed from the sale and it appearing that the holder of the Certificate of Purchase of the real estate has complied with the law of the State of Illinois and it necessary to entitle the holder with a deed of the real estate. I, Mary Anne Hopfinger, County Clerk of the County of Hamilton in consideration of the premises and by virtue of the statutes of the State of Illinois in such cases provided, grant and convey to Stephen and/or Opal Castleman its successors and assigns forever, the property described above.

Unless the holder of the certificate purchased at any tax sale under this Code takes out the deed in the time provided by law, and records the same within one year from and after the time for redemption expires, the certificate or deed, and the sale on which it is based, shall, after the expiration of the one year period, be absolutely void with no right to reimbursement. If the holder of the certificate is prevented from obtaining a deed by injunction or order of any court, or by the refusal or inability of any court to act upon application for a tax deed, or by refusal of the clerk to execute the same deed, the time he or she is so presented shall be excluded from computation of the one year period.

ADDRESS PROPERTY: Hamilton County, IL

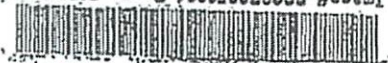
LEGAL DESCRIPTION and/or PROPERTY INDEX NUMBER: 08-702-100-04  
S8 T6 R6 PRESLEY 2-A LEASE #0809900694 RI 0.0104170

At a public sale of real estate for non-payment of taxes in Hamilton County on January 28, 2013 the following real estate was sold.

CORRECTIVE TAX DEED  
(CORRECTS TAX DEED RECORDED 2/29/2016, FILE #2016-00000313  
AND TAX DEED RECORDED 8/16/2017, FILE #2017-00001455)

Hamilton County Clerk & Recorder  
Mary Anne Hopfinger  
XL Rental Housing Fund: \$0.00  
Page 1 of 4

Recorded: 10/27/2017 at 01:58:48 PM  
Record#: 2017-00002180  
Image# 000970350004 Type: OBR DEED





Exempt under provisions of Paragraph F Section 31-45 of the  
Real Estate Transfer Tax Law (35 ILCS 200/31-45)

Mary Anne Hopfinger  
Buyer, Seller or Representative

10-27-2017  
Date

STATE OF ILLINOIS )

) SS:

COUNTY OF HAMILTON )

I, the undersigned, a Notary Public in and for said County, in the State of aforesaid,

DO HEREBY CERTIFY that MARY ANNE HOPFINGER personally known to me to be the same person(s) who name is (are) subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he/she/they signed sealed and delivered the said instrument at his/her/their free and voluntary act. For use and purposes therein set forth.

Signed and sworn to before me this 27 day of October, 2017.

Jeana B. Hughes  
Notary Public



SEND FUTURE TAXES TO:  
Stephen R. and/or Opal Castleman  
P.O. Box 843  
Belleville, IL 62220

PREPARED AND RETURN TO:  
Justin Hood  
Hamilton County State's Attorney  
100 S. Jackson Street  
McLeansboro, IL 62859

C 371

File Number: 2017-00001860 Seq: 2

**A30**

**AMENDED NOTICE OF APPEAL**

APPEAL TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT  
FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
HAMILTON COUNTY, ILLINOIS

ILCS 200/22-85 that issued to Opal Castleman and/or Stephen R. Castleman (Castleman) and Count II petition to vacate the October 19, 2015 order directing the Hamilton County Clerk to issue a tax deed to Opal Castleman and/or Stephen R. Castleman (Castleman) pursuant to 35 ILCS 200/22-45; (2) the March 21, 2019, order that denied Appellants' motion to reconsider; and (3) the October 19, 2015 order that directed the Hamilton County Clerk to issue a tax deed to Appellee Castleman.

On appeal Appellants CADIJAH BROWN and SI RESOURCES, LLC pray that the Court reverse and vacate the Circuit Court's March 21, 2019 order and vacate the September 24, 2018 order granting Respondents/Section 2-1401 Respondents' 735 ILCS 5/2-615 motion to dismiss Appellants' Count I petition to void the 2017 tax deed and Respondents/Section 2-1401 Respondents' 735 ILCS 5/2-619(a)(9) motion to dismiss Count II petition to vacate the October 19, 2015 order directing the Hamilton County Clerk to issue a tax deed to Opal Castleman and/or Stephen R. Castleman (Castleman), declare the 2017 tax deed void, remand the cause for further proceedings and vacate October 19, 2015 order directing the Hamilton County Clerk to issue a tax deed to Opal Castleman and/or Stephen R. Castleman (Castleman).

Respectfully Submitted,

SI Resources, LLC and Cadijah Brown

/s/ Amanda L. Moressi

Mindy S. Salyer ARDC #6288569  
 Amanda L. Moressi ARDC #6285043  
 Salyer Law Offices, LLC  
 Attorneys for Appellants/Movants and 2-1401 Petitioners  
 33 N. Dearborn Street – Suite 1505  
 Chicago, Illinois 60602  
[msalyer@salyerlawoffices.com](mailto:msalyer@salyerlawoffices.com)  
[amoressi@salyerlawoffices.com](mailto:amoressi@salyerlawoffices.com)



APPEAL TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT  
FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
HAMILTON COUNTY, ILLINOIS

In re APPLICATION OF THE COUNTY	)	
COLLECTOR FOR JUDGMENT AND ORDER	)	
OF SALE AGAINST LANDS AND LOTS	)	
RETURNED DELINQUENT FOR NON-	)	
PAYMENT OF GENERAL TAXES FOR THE	)	
2011 GENERAL TAXES	)	
PETITION OF OPAL CASTLEMAN AND	)	Case No. 2015-TX-10
AND STEPHEN R. CASTLEMAN	)	
v.	)	
L.I. BROWN, JR. SUNRISE EXPLORATION	)	
HAMILTON COUNTY CLERK, UNKNOWN	)	
OWNERS OR PARTIES INTERESTED AND	)	
<u>NON-RECORD CLAIMANTS</u>	)	
SI RESOURCES, LLC AND CADIJAH BROWN	)	
	)	
Movants and 2-1401 Petitioners.	)	
v.	)	
	)	
STEPHEN R. CASTLEMAN AND/OR OPAL	)	
CASTLEMAN; WILLIAM GROOME AND	)	
VICKI GROOME	)	
	)	
Respondents and 2-1401 Respondents	)	

NOTICE OF APPEAL

Notice is hereby given that Movants and Section 2-1401 Petitioners-Appellants CADIJAH BROWN and SI RESOURCES, LLC appeal from the Circuit Court for the Second Judicial Circuit, Hamilton County, Illinois (Circuit Court) to the Appellate Court of Illinois, Fifth District (Court) from the following Circuit Court orders: (1) the September 24, 2018 order that dismissed Appellants' Count I 35 ILCS 200/22-85 petition to void the 2017 tax deed that issued to Opal

Castleman and/or Stephen R. Castleman (Castleman) and Count II 735 ILCS 5/2-1401 petition to vacate the October 19, 2015 order directing the Hamilton County Clerk to issue a tax deed to Opal Castleman and/or Stephen R. Castleman (Castleman); (2) the March 21, 2019, order that denied Appellants' motion to reconsider; and (3) the October 19, 2015 order that directed the Hamilton County Clerk to issue a tax deed to Appellee Castleman.

On appeal Appellants CADIJAH BROWN and SI RESOURCES, LLC pray that the Court reverse and vacate the Circuit Court's September 24, 2018 order granting Respondents/Section 2-1401 Respondents' 735 ILCS 5/2-615 motion to dismiss Appellants' Count I 35 ILCS 200/22-85 petition to void the 2017 tax deed and Respondents/Section 2-1401 Respondents' 735 ILCS 5/2-619(a)(9) motion to dismiss Count II 735 ILCS 5/2-1401 petition to vacate the October 19, 2015 order directing the Hamilton County Clerk to issue a tax deed to Opal Castleman and/or Stephen R. Castleman (Castleman), declare the 2017 tax deed void, remand the cause for further proceedings and vacate October 19, 2015 order directing the Hamilton County Clerk to issue a tax deed to Opal Castleman and/or Stephen R. Castleman (Castleman).

Respectfully Submitted,

SI Resources, LLC and Cadijah Brown

/s/ Amanda L. Moressi

Mindy S. Salyer ARDC #6288569  
 Amanda L. Moressi ARDC #6285043  
 Salyer Law Offices, LLC  
 Attorneys for Appellants/Movants and 2-1401 Petitioners  
 33 N. Dearborn Street – Suite 1505  
 Chicago, Illinois 60602  
[msalyer@salyerlawoffices.com](mailto:msalyer@salyerlawoffices.com)  
[amoresi@salyerlawoffices.com](mailto:amoresi@salyerlawoffices.com)

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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 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' Brief and by electronic mail on November 4, 2020.

/s/ Mindy S. Salyer

**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.	)	

## CERTIFICATE OF SERVICE

I, Mindy S. Salyer, an attorney, certify that on November 4, 2020, the foregoing BRIEF was filed by electronic means with the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois. I further certify that the same was served by electronic transmission on:

Paul Slocomb  
Hoffman & Slocomb  
Attorney for Respondents-Appellees  
1115 Locust St., 4th Floor  
St. Louis, MO 63101  
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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Mindy S. Salyer  
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