

¶ 3

FACTS

¶ 4 The facts necessary to our disposition of this appeal are as follows. Based upon inspections conducted on May 8, 2009, and July 10, 2009, Donald Barkony, the code enforcement officer for the plaintiff, concluded that a burned-out and abandoned house located at 1611 7th Street, within the city limits of the plaintiff municipality, was open and vacant and constituted an immediate and continuing hazard to the public. Agents of the plaintiff posted a notice on the property in question and sent a notice to remediate, via certified mail, return receipt requested, to Vista, which, according to a title search procured by the plaintiff, was the sole owner of record of the property. Alyssa Cartee signed the return receipt form as an agent of Vista. The notice to remediate was also published in the local newspaper and recorded in the county recorder's office. The foregoing steps were taken pursuant to the "fast track" provisions of section 11-31-1(e) of the Illinois Municipal Code (Code) (65 ILCS 5/11-31-1(e) (West 2008)), which governs the expedited demolition of unsafe buildings and structures. In September 2009, Barkony again inspected the property, and having determined that no actions to remediate had been taken, he recommended that the plaintiff demolish the house. The house was demolished between September 9, 2009, and September 11, 2009, and on October 8, 2009, the plaintiff filed a notice of lien in the county recorder's office in an attempt to recover the costs of demolition and related costs. On February 11, 2010, the plaintiff filed the instant action to foreclose that lien, naming Vista as a defendant because Vista was the sole owner of record of the property. A judgment to foreclose the lien was subsequently entered in favor of the plaintiff, and this timely appeal followed. Additional facts will be provided as necessary throughout the remainder of this order.

¶ 5

ANALYSIS

¶ 6 On appeal, Vista contends the trial court's order was in error because Vista "had

surrendered the ownership, use, occupation and control of the property" prior to the plaintiff's demolition action and because "service" of the notice to remediate was "defective." In its opening brief, Vista also contended that "the 'fast track' provisions of the [Code] are unconstitutional." However, at oral argument, counsel for Vista did not argue this point, and counsel acknowledged, when questioned, that he was abandoning the constitutional argument because he agreed that Vista had not complied with Illinois Supreme Court Rule 19 in the case at hand. See Ill. S. Ct. R. 19 (eff. Sept. 1, 2006). Pursuant to Rule 19, "a party challenging the constitutionality of a state statute must notify the Attorney General of the challenge so that the Attorney General may enter an appearance and represent the interests of the state in the action." *In re Marriage of Vailas*, 406 Ill. App. 3d 32, 42 (2010). Although failure to comply with Rule 19 may result in waiver of the right to raise the constitutional issue, the Illinois Supreme Court has held that "a circuit court or the appellate court has the discretion to permit late compliance with Rule 19 and thereafter to address the constitutional issue if the purpose of the rule has been served." *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 119 (2004). In *Stokovich*, the purpose of the rule was deemed served because "the Attorney General was offered and declined an opportunity to participate." *Id.* However, in the case at bar, the Attorney General was never offered the opportunity to participate, and we agree with our colleagues in the First District that although we have discretion under *Stokovich* to excuse late compliance with Rule 19, "we will not excuse noncompliance." *In re Marriage of Vailas*, 406 Ill. App. 3d 32, 42 (2010). Accordingly, even if counsel had not abandoned his constitutional argument, we would find it to be forfeited.

¶ 7 We turn now to Vista's remaining two arguments. Vista first contends that the trial court's order was in error because Vista "had surrendered the ownership, use, occupation and control of the property" prior to the plaintiff's demolition action. Specifically, Vista contends

that it had sold the property in question to a Lester A. Deweese on July 1, 2008, one year and three months prior to the demolition. Although it is undisputed that the purported agreement for deed between Vista and Deweese was never recorded, Vista nevertheless contends that Deweese "should have been named as a defendant because of his ownership interest" in the property in question and that judgment in this case should have been entered against Deweese, not Vista. As the plaintiff points out, however, section 11-31-1(e) of the Code requires that a notice to remediate be sent only to all "owners of record" of the property in question (65 ILCS 5/11-31-1(e) (West 2008)), and it is undisputed that the title search conducted by the plaintiff disclosed one, and only one, owner of record of the property: Vista. No deed, contract, memorandum of contract, or other instrument of record giving public notice of the purported transfer of the property to Deweese was ever recorded. These facts are of dispositive significance because it has long been the law of this state that a contract purchaser rises to the status of "owner of record" only where there is evidence not only of possession and right of control passing to the purchaser under the contract, but also evidence that a memorandum or other notice of the existence of the contract was timely filed in the county recorder's office. *Ciacco v. City of Elgin*, 85 Ill. App. 3d 507, 515-16 (1980). As noted above, that did not happen in this case, and we cannot agree that Deweese was an owner of record who should have been named as a defendant in this case.

¶ 8 The last argument raised by Vista is that the trial court's order was in error because "service" of the notice to remediate was "defective." Specifically, Vista contends that the plaintiff should have been required to "serve" Vista's registered agent with the notice to remediate. As the plaintiff points out, however, there is no requirement in the Code that any type of service of process occur, nor is there a requirement that said service, were it required, would have to be on a corporation's registered agent. The General Assembly, in crafting the Code, set forth four forms of notice that must issue before a municipality such as the plaintiff

may demolish a building pursuant to the "fast track" provisions: (1) a posted notice on the subject property, (2) a mailed notice to all owners of record, beneficial owners of an Illinois land trust, and all lienholders of record, by certified mail, return receipt requested, (3) published notice in a newspaper in the municipality, and (4) a recorded notice in the county recorder's office. 65 ILCS 5/11-31-1(e)(1), (e)(2), (e)(3) (West 2008). It is undisputed that in the case at bar, the plaintiff complied with these four requirements, including mailing notice, by certified mail, return receipt requested, to the last known mailing address of the sole owner of record, Vista, and that Alyssa Cartee, an employee of a company owned by the owner of Vista, received the notice and signed for it as an agent of Vista. Although Vista contends the better practice would be for the Code to require the notice to be served upon the registered agent of a corporation, it is axiomatic that it is the role of the General Assembly, not this court, to determine the public policy of this state (see, e.g., *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 55-56 (2011)), and we decline Vista's invitation to usurp that role by judicially recrafting the Code to add the requirement Vista desires.

¶ 9

CONCLUSION

¶ 10 For the foregoing reasons, we affirm the order of the circuit court of Lawrence County.

¶ 11 Affirmed.