

2016 IL App (2d) 151154-U
Nos. 2-15-1154, 2-15-1155, 2-15-1156 cons.
Order filed September 27, 2016

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> APPLICATION OF THE COUNTY COLLECTOR, for Judgment and Order of Sale Against Lands and Lots Returned Delinquent for Nonpayment of General Taxes for the Year 2010)	Appeal from the Circuit Court of De Kalb County.
)	Nos. 14-TX-19 through 14-TX-21
)	
(Vista Securities, Inc., Petitioner-Appellant, v. De Kalb County Collector, Respondent-Appellee).)	Honorable Bradley J. Waller, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court, with opinion.
Justices Burke and Birkett concurred in the judgment and opinion.

ORDER

¶ 1 *Held:* The trial court properly denied petitioner’s request to declare tax sales in error, since petitioner failed to prove ownership of properties, and failed to prove that there were any bonds issued or liens recorded in connection with tax debts for those properties.

¶ 2 In three separate cases, petitioner, Vista Securities, Inc. (Vista), filed motions for declaration of sale in error, seeking the refund of amounts paid for certain tax-sale certificates. The motions, although dealing with different parcels of real estate, were based on identical arguments. After a hearing, the trial court denied the motions, and Vista filed three separate appeals. In each appeal, Vista argues that the trial court erred in denying its motions, because (1)

the real estate had been acquired by De Kalb County; (2) the real estate was encumbered by a municipal lien; and (3) an error was made on the tax-sale certificates. Because the arguments raised in each appeal are identical, we consolidate the appeals. For the reasons that follow, we affirm.

¶ 3 On November 4, 2011, Vista purchased four parcels of real estate for delinquent taxes for the year 2010 and received four tax-sale certificates. (Appeal No. 2-15-1154, designated below as case No. 14-TX-19, involves parcels 09-20-200-010 & 09-21-100-001. Appeal No. 2-15-1155, designated below as case No. 14-TX-20, involves parcel 09-28-100-008. Appeal No. 2-15-1156, designated below as case No. 14-TX-21, involves parcel 09-33-100-009.)

¶ 4 On June 3, 2014, in each case, Vista filed a petition for tax deed. Vista averred that it was the holder of a tax-sale certificate of purchase with respect to each parcel and that the time for redemption was set to expire on November 3, 2014. Vista requested the following: (a) that the trial court enter an order directing the county clerk to issue Vista a tax deed; (b) that the court enter an order placing Vista in possession of each parcel; and (c) that the court declare a sale in error. Proper notice was given to all interested parties (which included the county clerk) in each case, and the matter was set for hearing on December 9, 2014.

¶ 5 On December 9, 2014, the trial court found that no appearance or pleading had been filed by any interested party and thus defaulted them. On Vista's request, the trial court continued the matter until further order of court.

¶ 6 On September 10, 2015, in each case, Vista filed a motion for declaration of sale in error, pursuant to various provisions of the Property Tax Code (Code) (35 ILCS 200/1-1 *et seq.* (West 2014)), arguing that it was entitled to a refund, because: (1) “[o]wnership of the [property] has been conveyed to the County of DeKalb, a governmental unit in the State of Illinois”; (2) “[a]

lien in favor of the City of Cortland, a municipality in the State of Illinois, was recorded encumbering [the property]”; and (3) “[t]he Assessor, Chief County Assessment Officer, Board of Review, or Board of Appeals or other County Official has made an error (other than an error of judgement [*sic*] as to the value of the parcel).”

¶ 7 On September 28, 2015, respondent, the De Kalb County Collector (the County), filed a demand for a bill of particulars. The record does not contain Vista’s response to the demand; however, according to the County’s response to Vista’s motion, Vista made the following clarifications in its bill of particulars. First, with respect to its allegation concerning the conveyance of the real estate to the County, Vista clarified that, on June 22, 2015, the period of redemption for the property expired and, on July 10, 2015, the County obtained an order (in case No. 14-TX-39) directing the county clerk to issue it a tax deed. With respect to its allegation concerning the lien, Vista clarified that “[t]he bond which was created by the municipality, which forms the basis of the Special Assessment is the lien upon the real estate which cannot be terminated by a Tax Deed.” Finally, with respect to its allegation that an error was made, Vista clarified that the county assessor listed the tax as a drainage tax when it was instead a special assessment tax. The County denied each of these allegations.

¶ 8 A hearing on the motions took place on October 30, 2015. At the outset, Vista asked the trial court to take judicial notice of an order that it had entered on July 10, 2015, in case No. 14-TX-39, directing issuance of a tax deed to “DeKalb County as trustee for taxing districts.” Vista tendered a certified copy of the order to the court. (The record does not contain a copy of the order; nevertheless, the parties do not dispute that the court directed the issuance of a tax deed as set forth above.)

¶ 9 Thereafter, Michael John Ballinger, president of Vista, testified that on November 4, 2011, he attended the annual sale of lands and lots returned delinquent for the nonpayment of general taxes in De Kalb County and purchased four tax-sale certificates. He testified that prior to purchase he reviewed the tax-sale list. He identified exhibit No. 1 as the tax-sale list. He stated that there were no identifying marks on the list that would lead one to believe that the tax he paid was a special service tax, but he later discovered that it was a special service tax for a sanitary and sewer upgrade for the Village of Cortland. He conceded that the tax amount listed was correct. Ballinger identified exhibit No. 2 as “an ordinance establishing town of Cortland special service area No. 8 town of Cortland.” He testified that it was recorded in De Kalb County. He stated that he believed that it created a lien on each property.

¶ 10 During closing argument, counsel for Vista stated that, with respect to case No. 14-TX-21, he was withdrawing any argument related to conveyance of that property to the County and proceeding on the arguments related to the municipal lien and to the assessor’s error.

¶ 11 Following closing arguments, the trial court denied the motions, ruling as follows. First, with regard to Vista’s claim that ownership of the property had been conveyed to the County, the trial court found that “De Kalb County as trustee for taxing districts” did not qualify as a governmental unit for purposes of section 21-105 of the Code (35 ILCS 200/21-105 (West 2014)). The court reasoned that “the use of the word ‘trustee’ contemplates a fiduciary relationship only.”

¶ 12 Second, with regard to Vista’s claim that a lien was recorded encumbering the properties, the trial court found that Vista failed to present any evidence that a bond was created. Further, even if a bond had been created, Vista failed to provide statutory authority showing that the bond was a lien for purposes of section 22-35 of the Code (35 ILCS 200/22-35 (West 2014)).

¶ 13 Finally, with regard to the allegation that an error was made, the court found that Vista failed to provide sufficient evidence of an error under section 21-310(a)(5) of the Code (35 ILCS 200/21-310(a)(5) (West 2014)). The court stated that there was no proof that the assessor listed the tax as a drainage tax. The court also rejected Vista’s claim (which was not argued in the motions) that the certificates failed to itemize the amounts of taxes, special assessments, interest, and costs, finding that no such itemization was required. Vista timely appealed.

¶ 14 Vista contends that the trial court erred in denying its motions for declaration of sale in error because, according to Vista, the County acquired ownership of the property. (Although Vista raises this argument in each appeal, we consider it only as to appeal Nos. 2-15-1154 and 2-15-1155, given that Vista withdrew the argument in appeal No. 2-15-1156 at the hearing below.) In response, the County maintains that the trial court properly concluded that “De Kalb County as trustee for taxing districts” did not qualify as a governmental unit for purposes of section 21-105 of the Code (35 ILCS 200/21-105 (West 2014)). We need not determine whether “De Kalb County as trustee for taxing districts” qualifies as a governmental unit, because Vista has not established that the County acquired the property.

¶ 15 Section 21-105 of the Code provides that, “upon acquisition of property by a governmental unit as set forth in Section 21-95, the rights and interests of the holder of any bona fide certificate of purchase of the property for delinquent taxes shall be limited to a sale in error and a refund as provided under Section 21-310.” 35 ILCS 200/21-105 (West 2014). Section 21-310 of the Code provides, in relevant part, as follows:

“Sales in error.

(a) When, upon application of the county collector, the owner of the certificate of purchase, or a municipality which owns or has owned the property ordered sold, it

appears to the satisfaction of the court which ordered the property sold that any of the following subsections are applicable, the court shall declare the sale to be a sale in error:

* * *

(7) the property is owned by the United States, the State of Illinois, a municipality, or a taxing district[.]” 35 ILCS 21-310(a)(7) (West 2014).

¶ 16 In support of its argument that it is entitled to a declaration of sale in error based on the above statutory provisions, Vista notes that the trial court “took Judicial Notice of De Kalb County Case No. 14-TX-39 and further was provided a Certified Copy of the Order Directing Issuance of a Tax Deed entered July 10th, 2015 wherein the De Kalb County Trustee acquired ownership of the subject property.” However, Vista did not provide evidence that the tax deed was ever issued, and, accordingly, Vista failed to show that the County acquired the property. Therefore its argument fails. Although the trial court did not reject Vista’s argument on this basis, we may affirm the trial court on any basis discernible from the record, regardless of the reason cited by the trial court. *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 387 (1983). Accordingly, with respect to the trial court’s ruling on this issue, we affirm.

¶ 17 We next consider Vista’s argument that its motions should have been granted because the real estate was encumbered by a municipal lien. Section 22-35 of the Code provides that, if a lien is found, the tax purchaser may request and “the court shall order that the tax purchase be set aside as a sale in error.” 35 ILCS 200/22-35 (West 2014). According to Vista, Ballinger’s testimony established there “was an ordinance established by the City of Cortland which created Special Service Area #8,” that the ordinance was recorded in the recorder’s office, and that “the ordinance as well as the bond established therefrom amounted to a municipal lien.” The court found that Vista failed to present any evidence “that a bond was created in the first instance” and

further that, even if there was a bond, Vista failed to present any authority that the bond was a lien.

¶ 18 As the trial court noted, Vista has not provided any evidence that a bond was issued. When questioned during oral argument about whether Vista had proof that a bond was issued, counsel for Vista indicated that there was proof by “solid inference.” According to counsel, this inference was derived from both the ordinance and section 11-111-3 of the Illinois Municipal Code (65 ILCS 5/11-111-3 (West 2014)), entitled “Bonds to pay special assessment; lien; endorsement,” which provides in pertinent part as follows:

“When specified improvement districts have been laid out, the cost of the improvement has been estimated and ascertained by a competent engineer, and the benefits to the lots, blocks, or parts thereof, have been assessed, the municipality may issue a series of bonds sufficient to pay the special assessments or special tax so ascertained for each district. When so issued and endorsed as provided for in this section, these bonds shall be a lien upon the respective lots, blocks, or parts thereof, which are designated in the bonds. *** The style of the bonds shall be fixed and designated by ordinance. But before any bond is issued or put into circulation, the owner of any lot charged with such a special assessment or special tax shall endorse upon the back of the bond his consent thereto[.] ***

The bond, when prepared and executed by the municipality, and endorsed by the owners of the property charged with the special assessments or special tax, shall be recorded in the recorder’s office of the county in which the municipality is located. When so recorded the record is notice of the lien thereby created, to the same extent that records of mortgages are notices of the mortgage lien, and has the same force and effect.”

This section does not support Vista's argument. Indeed, although the municipality may issue bonds, it does not have to. In addition, any such bond requires the consent of the property owner. Thus, contrary to Vista's argument, this provision does not allow for a "solid inference" that bonds were issued in this case, thereby creating a lien. Accordingly, we have no reason to conclude that the trial court erred in denying Vista's motion on this basis.

¶ 19 Vista's final argument is that the assessor made an error other than an error of judgment as to the value of the parcel. See 35 ILCS 200/21-310(a)(5) (West 2014). According to Vista, the assessor erred in failing to identify on the tax-sale certificates that the taxes were special service area taxes. Vista has failed to cite any authority to support this argument and thus has forfeited it. See *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, ¶ 19.

¶ 20 For the reasons stated, we affirm the judgment of the circuit court of De Kalb County denying Vista's motions for declaration of sale in error.

¶ 21 Affirmed.