2019 IL App (5th) 160530-U

NO. 5-16-0530

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JP MORGAN CHASE BANK, NATIONAL ASSOCIATION, Plaintiff-Appellee, v. REGIONS BANK; UNKNOWN OWNERS AND NONRECORD CLAIMANTS; JUDITH TRENTMAN WILSON, Special Representative of the Deceased Mortgagor, Christopher Smith a/k/a Christopher C. Smith; CAYA AUFIERO; and UNKNOWN HEIRS AND LEGATEES OF CHRISTOPHER SMITH A/K/A CHRISTOPHER C. SMITH, IF ANY, Defendants-Appellees (Jean Molina, Intervenor-Appellant; and Homefront Properties, Intervenor-Appellee).	)	Appeal from the Circuit Court of St. Clair County. No. 14-CH-482 Honorable Heinz M. Rudolf, Judge, presiding.

PRESIDING JUSTICE OVERSTREET delivered the judgment of the court.
Justice Chapman concurred in the judgment.
Justice Cates dissented.

ORDER

¶ 1 *Held*: The circuit court rightfully denied the appellant's request that the orders and judgments entered on the plaintiff's amended complaint for foreclosure be vacated.

¶ 2 After Homefront Properties (Homefront) purchased a property that the plaintiff, JP Morgan Chase Bank, National Association (Chase Bank), had recently foreclosed, the appellant, Jean Molina, moved to have the foreclosure and sale set aside as void, claiming lack of personal jurisdiction. Molina also contended that Homefront was not a *bona fide* purchaser and thus took title to the property subject to his rights and interests. After allowing the parties to extensively litigate the merits of his claims, the circuit court denied Molina's requested relief, and the present appeal ensued. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 The legal description of the property at issue (the Property) is as follows:

> "LOT NUMBERED TWO (2) IN BLOCK NUMBERED ONE (1) OF 'LINCOLN HEIGHTS, A SUBDIVISION OF LOT 2 AND PART OF LOT 14 AND PART OF BLOCK "E" BEING A PART OF THE SOUTHWEST QUARTER SECTION 29, TOWNSHIP 2 NORTH RANGE 7 WEST AND OF O'FALLON STATION, ST. CLAIR COUNTY, ILLINOIS'; REFERENCE BEING HAD TO THE PLAT THEREOF RECORDED IN THE RECORDER'S OFFICE OF ST. CLAIR COUNTY, ILLINOIS, IN BOOK OF PLATS '27' ON PAGE 6. EXCEPT COAL, GAS[,] AND OTHER MINERAL RIGHTS EXCEPTED OR RESERVED IN PRIOR CONVEYANCES. SITUATED IN THE COUNTY OF ST. CLAIR, STATE OF ILLINOIS."

The Property's commonly known address is 503 South Vine Street, O'Fallon, Illinois, and its parcel identification number is 04-29.0-320-022. The record indicates that in addition to the lot itself, the Property consists of a single-family home with a recorded address of 503 South Vine Street (503) and a significantly smaller second home with an unrecorded address of 501 South

Vine Street (501). The record further indicates that both structures have independent utility lines and mail service and that the smaller house is situated next to a driveway with a carport. During the proceedings below, Molina's counsel indicated that the number "501" is "clearly on the front of the [smaller] house."

¶ 5 In August 2002, Molina and Christopher C. Smith entered into the following contract:

> "This agreement is between Christopher C. Smith and Jean Molina.
>
> Jean Molina agrees to purchase the resident [*sic*] located at 501 S. Vine[,] O'Fallon ***.
>
> Christopher Smith agrees to sell Jean Molina the property located at 501 S. Vine ***.
>
> Jean agrees to pay $15000.00 (fifteen thousand dollars and no/cents) for said property.
>
> Make check payable to Christopher Smith ***.
>
> September 6, 2002[,] is the closing date of the loan[,] and the money will be applied in full to the mortgage at that time.
>
> * * *
>
> In the event that something should happen to Chris or in the event that the property is sold or transferred to another, Jean will receive his money of $15000.00 (fifteen thousand dollars) upon the sale of the house.
>
> In the event of Jean's demise, Chris retains ownership of said house. The contents of the home will be distributed to remaining members of Jean's family as prescribed in his own will.

However, Jean has the opportunity to have the property surveyed and separated from

Chris'[.]

It is highly recommended that Jean has [*sic*] the property, gas, power, [and] sewer put in his name as soon as possible.

This agreement will also be put in Chris' will, which Tom Benedict is in the process of writing.

Martha Ferendzo has POA for Chris and will make sure these demands are fulfilled."

¶ 6 In September 2002, Smith purchased the Property from Herbert and Donna Dettmer. The Dettmers' warranty deed transferring title to Smith included the Property's legal description, parcel identification number, and 503 South Vine address, with no references to 501. The deed was recorded in St. Clair County's recorder's office with a notation indicating that a copy had been sent to First American Title Insurance Company in Swansea.

¶ 7 The record indicates that in the years that followed, Smith resided at 503 and Molina resided at 501. The record indicates that at some point, the utility services for 501 were put in Molina's name. Molina never exercised his contractual option to have 501 "surveyed and separated" from the Property, however, thus ignoring the contract's recommendation that he have 501 "put in his name." The record indicates that as the sole owner of record, Smith paid the Property's real estate taxes. The record further indicates that in August 2008, Smith mortgaged the Property to Regions Bank for $25,000.

¶ 8 In October 2011, Smith mortgaged the Property to Chase Bank for $78,518. The mortgage documents included the Property's legal description, parcel identification number, and

503 South Vine Street address, with no references to 501. The security instrument noted, however, that the Property included all appurtenances, improvements, and fixtures located thereon. Smith covenanted that the Property was "unencumbered, except for encumbrances of record."

¶ 9 On January 4, 2014, Smith died of natural causes at St. Elizabeth's Hospital in Belleville. On Smith's death certificate, Martha Ferendzo of Lebanon, Illinois, was the named informant and was also identified as having power of attorney for Smith.

¶ 10 On January 27, 2014, a last will and testament that Smith executed in September 2005 was filed with the circuit clerk's probate and tax division. See 755 ILCS 5/6-1 (West 2014). The will purported to devise the "[r]eal estate and improvements at 503 South Vine unto Martha Ferendzo" and the "[r]eal estate and improvements at 501 South Vine unto Jean Molina." The will named Ferendzo executor of Smith's estate and further awarded her any residue or remainder of the estate. Notably, no petition for letters of office was subsequently filed with respect to Smith's will, and the will was never admitted to probate. See *id.* §§ 6-2, 6-3.

¶ 11 In July 2014, having not received an installment payment since January, Chase Bank filed a complaint to foreclose its mortgage with Smith pursuant to the judicial foreclosure provisions of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1101 *et seq*. (West 2014)). The complaint alleged, among other things, that the balance due on the mortgage was nearly $69,000. The complaint identified Smith as the mortgagor and owner of the Property and Regions Bank as a prior mortgagee joined as a permissible-party defendant. See *id.* §§ 15-1501(b), 15-1504(a)(3). As additional defendants, the complaint named "UNKNOWN OWNERS AND NON RECORD CLAIMANTS." See *id.* §§ 15-1501(b), (c), 15-1504(a)(3). In conjunction with the complaint for foreclosure, Chase Bank's counsel filed an affidavit stating

that, upon information and belief, the names of the unknown owners and nonrecord claimants who may have or claim an interest in the Property were unknown. See *id.* § 15-1502(c)(1).

¶ 12 When Chase Bank subsequently attempted to serve Smith with its complaint for foreclosure, a female occupant of 503 advised that he had passed away. Chase Bank later learned that Ferendzo was the executor of Smith's estate, that the estate had not been probated, and that Smith had been survived by a sister, Caya Aufiero. In October 2014, Chase Bank filed a motion to amend its complaint for foreclosure and to appoint a special representative to represent Smith's interest in the action. See 735 ILCS 5/13-209 (West 2014).

¶ 13 On December 11, 2014, the circuit court appointed attorney Judith Trentman Wilson as Smith's special representative and granted Chase Bank leave to amend its complaint. On December 26, 2014, Chase Bank filed an amended complaint naming Wilson, Aufiero, and "UNKNOWN HEIRS AND LEGATEES OF CHRISTOPHER SMITH A/K/A CHRISTOPHER C. SMITH, IF ANY," as additional defendants. See 735 ILCS 5/15-1501(c) (West 2014).

¶ 14 In January 2015, Wilson filed a report with the circuit court stating that Smith's will had been filed in January 2014, that a probate estate had not been opened on the will, and that a copy of the will had been mailed to Chase Bank's attorney in December 2014. Wilson further stated that she had mailed Aufiero and Ferendzo notice of the pending foreclosure action and that neither had claimed an interest in the Property. Wilson identified Aufiero and Ferendzo as Smith's "ascertainable heirs, devisees, or legatees." Wilson opined that there were no viable defenses to the action and that the cause should proceed as a default matter. Chase Bank was mailed a copy of Wilson's report, and Aufiero was subsequently served with a copy of Chase Bank's amended complaint.

¶ 15 In May 2015, Chase Bank's counsel filed an affidavit for service by publication. See 735 ILCS 5/2-206(a) (West 2014); 735 ILCS 5/15-1502(c)(2) (West 2014). The affidavit stated that, upon information and belief, the defendants named in the complaint as unknown owners, nonrecord claimants, and unknown heirs and legatees could not be found on diligent inquiry. See 735 ILCS 5/2-206(a) (West 2014). The affidavit requested that the circuit clerk publish notice of the pending foreclosure action (see 735 ILCS 5/2-206(a) (West 2014); 735 ILCS 5/15-1502(c)(2) (West 2014)), and notice of the action was thereafter published for three successive weeks (see 735 ILCS 5/2-207 (West 2014); 735 ILCS 5/15-1502(c)(2) (West 2014)).

¶ 16 In July 2015, Chase Bank filed a motion for summary judgment, a motion for an order of default, and a motion for a judgment for foreclosure and sale. See 735 ILCS 5/15-1506 (West 2014). The circuit court subsequently granted all three motions and authorized Chase Bank's sale of the Property. See *id.* § 15-1507(a). In October 2015, Chase Bank filed proof that a notice of sale of the Property had been mailed to the defendants of record and published for three consecutive weeks. See *id.* § 15-1507(c).

¶ 17 In November 2015, Homefront was issued a certificate and receipt of sale after purchasing the Property for $40,200 at a public auction held at the St. Clair County Courthouse. See *id.* § 15-1507(e), (f). In December 2015, on Chase Bank's motion, the circuit court entered an order confirming the sale and approving the issuance of a deed. See *id.* § 15-1508. The order granted Homefront the right to possess the Property as of 30 days following the entry of the order. See *id.* § 15-1701(d). The order also granted the sheriff the authority to evict and dispossess "from the premises commonly known as 503 SOUTH VINE STREET."

¶ 18 The record indicates that while inspecting the Property in January 2016, Homefront's agent, Darin Mathis, spoke with Molina and learned that 501 was part of the Property. Mathis

did not disclose that he worked for Homefront or that Homefront had recently purchased the Property. Homefront did not subsequently give Molina notice that the Property had been sold. See *id.* § 15-1508.5.

¶ 19 On March 8, 2016, Mathis obtained a writ to enforce the circuit court's order granting Homefront the right to possess the Property. The record indicates that after the sheriff's department advised Mathis that it would not serve Molina without a separate order specifically directed at 501, Mathis crossed out "503" on a copy of the order and wrote in "501" so that Homefront's possession could be accomplished without having to obtain a separate order from the court. Although Mathis's indiscretion was ultimately inconsequential, during the proceedings below, the circuit court understandably expressed its displeasure that its order had been "altered."

¶ 20 On March 10, 2016, after the sheriff's department served him with notice that he had 48 hours to vacate 501, Molina filed a motion requesting that the circuit court find that 501 was "separate from" 503. Molina's motion stated that 501 had been left to him in a will and that he had just received notice that he was being evicted. The circuit court subsequently continued the cause and terminated "all eviction proceedings" with respect to 501 until further order.

¶ 21 In April 2016, Molina filed a combined motion to set aside sale, vacate order confirming sale, vacate default judgment, and vacate judgment of foreclosure and sale. Referencing an attached copy of his contract with Smith, the motion alleged, among other things, that in August 2002, Molina had purchased 501 for $15,000, unaware that it was part of the Property. The motion further alleged that Smith had later mortgaged the property without Molina's knowledge. The motion stated that Chase Bank should have "observed" that 501 was part of the Property and thus served him with summons and notice of the foreclosure and sale proceedings. The motion

complained that Molina had "not been given an opportunity to protect his property interest" in 501.

¶ 22 In May 2016, the circuit court directed Molina and Homefront to file petitions to intervene (see 735 ILCS 5/2-408 (West 2014)) and directed Chase Bank to file responses to the petitions. In its response to Molina's petition, Chase Bank maintained, among other things, that Molina had "no interest in the subject mortgage and no interest in title to the subject property." Chase Bank further asserted that Molina's petition was untimely filed, "as the instant foreclosure case ha[d] concluded." See 735 ILCS 5/15-1501(e) (West 2014).

¶ 23 On June 9, 2016, over Chase Bank's objections, the circuit court granted Molina's and Homefront's petitions to intervene. Molina was also granted leave to amend his pleadings and file a brief in support thereof. The court set a date by which Chase Bank and Homefront could respond, and the cause was continued.

¶ 24 On June 23, 2016, Molina mailed a subpoena for deposition to First American Title Insurance Company in Swansea, seeking "[a]ll documents pertaining to title investigation and closing for the [P]roperty *** from October 1, 2002[,] through the present." On June 27, 2016, Molina mailed Mathis a notice of deposition advising that Mathis would be deposed on July 5, 2016.

¶ 25 On June 28, 2016, Homefront filed a motion to quash Molina's notice of deposition to Mathis. The motion noted, among other things, that Homefront had purchased the Property at a judicial sale and had not participated in the foreclosure proceedings. On June 30, 2016, following a hearing, the circuit court granted Homefront's motion to quash. Noting that Homefront had lawfully purchased the Property, the court determined that subjecting Mathis to a deposition would be inappropriate in the absence of any relevant pleadings. The court also quashed

Molina's deposition directed to First American Title Insurance Company, indicating that the request was also premature. The circuit court granted Molina additional time to file amended pleadings and set the cause for an October 2016 hearing.

¶ 26 In July 2016, Molina filed an amended combined motion to set aside sale, vacate order confirming sale, vacate default judgment, and vacate judgment of foreclosure and sale. Molina generally argued that pursuant to section 2-1401 of the Code of Civil Procedure (section 2-1401) (735 ILCS 5/2-1401 (West 2014)) all of the judgments and orders entered pursuant to the foreclosure proceedings and sale of the Property were void for lack of personal jurisdiction over him. Molina further contended that Homefront was not a *bona fide* purchaser and that pursuant to section 15-1508(b)(iv) of the Foreclosure Law (735 ILCS 5/15-1508(b)(iv) (West 2014)), the sale of the Property should be set aside because justice had not been done.

¶ 27 In August 2016, Chase Bank and Homefront filed responses to Molina's amended combined motion. Homefront also provided an affidavit from Mathis stating that "prior to bidding on the [P]roperty[,] [he had] conducted an examination of the title for the [P]roperty at the St. Clair County Recorder of Deeds" and had seen "no documents indicating any interest of Jean Molina." Mathis further asserted that he had not spoken "to anyone living at 503 S. Vine St, O'Fallon, Illinois, nor at 501 S. Vine St., O'Fallon, Illinois, prior to bidding on the [P]roperty." In its response, Homefront noted, among other things, that because the Property had never been divided into "two separate parcels," 501 had remained part of the Property that Homefront had purchased. In its response, Chase Bank maintained that because Molina had not been a party to the mortgage, he was not a necessary party to the foreclosure proceedings, and the orders and judgments entered pursuant to the proceedings were therefore not void. Noting that Molina held no title interest in the Property, Chase Bank further contended that the orders and judgments that

had been entered "were done so subject solely to [Molina's] purported possessory interest." Chase Bank noted that Molina had failed to ever advance a valid defense to the foreclosure proceeding "beyond his claim that he was not personally served." Chase Bank suggested that Molina's claims to title were illusory.

¶ 28 In September 2016, Molina filed replies to the responses filed by Chase Bank and Homefront, again arguing that the orders and judgments entered pursuant to the foreclosure proceedings were void for lack of personal jurisdiction. Molina also argued that the "failure to provide notice to him result[ed] in his interest not being foreclosed." Stating that "after believing that he had purchased [501] from Mr. Smith," he had lived there ever since, Molina maintained, among other things, that his "open and visible possession" of the premises constituted chargeable notice of his rights and interest. Molina also suggested that his defense to the foreclosure action was that he owned 501 by virtue of Smith's will and the "equitable conversion" that had resulted from their 2002 contract. Molina further claimed that if he had not "become owner by virtue of the contract," then legal title to 501 had "automatically vested in him upon Mr. Smith's death."

¶ 29 In October 2016, the circuit court held a hearing on Molina's amended combined motion to set aside sale, vacate order confirming sale, vacate default judgment, and vacate judgment of foreclosure and sale. In support of his motion, Molina argued, among other things, that his uninterrupted occupancy of 501 was equivalent to recording his contract with Smith, that Chase Bank should have discovered his presence at 501 prior to entering into its mortgage agreement with Smith, and that Homefront should have discovered his presence at 501 before purchasing the Property from Chase Bank. See *US Bank National Ass'n v. Villasenor*, 2012 IL App (1st) 120061, ¶ 58 ("The law measures *bona fide* purchasers and mortgagees under the same standards."); *Sinks v. Karleskint*, 130 Ill. App. 3d 527, 530 (1985) (holding that a purchaser of

real estate "must be charged with knowledge of matters that a cursory visual inspection of the premises would reveal"); *Beals v. Cryer*, 99 Ill. App. 3d 842, 844 (1981) ("Illinois courts have uniformly held that the actual occupation of land is equivalent of the recording of the deed or other instrument under which the occupant claims interest in the property."). Molina asserted that Chase Bank's and Homefront's interests in the Property were thus subject to his ownership rights. See *Lah v. Chicago Title Land Trust Co.*, 379 Ill. App. 3d 933, 939 (2008) ("A party who receives property with notice of other claims takes title subject to those known claims."). Molina again argued that even assuming that his contract with Smith had not adequately conveyed to him legal title to 501, legal title had vested in him upon Smith's death. Molina asserted that having received a copy of Smith's will from Wilson, Chase Bank was aware that he had a "cognizable interest" in the Property and should have therefore served him with notice. Molina also complained that the notice of sale had failed to include 501 in its property description.

¶ 30 In response, Homefront and Chase Bank contended, among other things, that because 501 had never been partitioned from 503, Molina was claiming title to something that did not legally exist. Homefront also asserted that a drive-by inspection would not have revealed whether 501 and 503 were "separate or together," as "there is nothing to indicate 501 is in any way, shape[,]or form part of 503." See *Townsend v. Little*, 109 U.S. 504, 511 (1883) (holding that where possession is relied on as imparting constructive notice, it cannot be "liable to be misunderstood or misconstrued" and "must be sufficiently distinct and unequivocal so as to put the purchaser on his guard"). Homefront further suggested that a *bona fide* purchaser should not be "tied up in litigation" aimed at determining whether "the guy next door" has "a valid claim or not." Chase Bank noted that a probate estate had never been opened on Smith's will.

¶ 31 The circuit court questioned how Molina could claim a "legally recognizable interest in something that no one else in the world kn[ew] about" and noted the absence of proof that Molina had actually paid Smith anything. The court further noted that Molina had never previously attempted to have 501 separated from the Property, despite the length of time that he had lived there and despite his awareness that, upon Smith's death, "something in the near future [would] happen with 503." The court also suggested that if 501 and 503 were ostensibly separate properties, a party serving process at 503 would not contemplate having to "give someone at 501 notice with regards to anything." The court ultimately reasoned that although Molina had obviously "had some sort of arrangement with Mr. Smith," 501 had never been partitioned as a separate, taxable parcel, so Molina had no recognizable interest in the Property. The court indicated that while it was sympathetic to Molina's situation, Molina had slept on whatever rights he once had. The court therefore denied Molina's amended combined motion and gave him until January 4, 2017, to vacate the Property.

¶ 32 In November 2016, Molina filed a motion for reconsideration, arguing that the circuit court erred in finding that Homefront was a *bona fide* purchaser "without conducting a factual inquiry." Apparently referencing the court's granting of Homefront's motion to quash Molina's notice of deposition as to Mathis, Molina further argued that the court erred in not allowing him the opportunity to discover additional facts that would be relevant to such an inquiry. At a subsequent hearing on the motion, Molina requested an evidentiary hearing on whether Homefront was a *bona fide* purchaser. In response, Homefront claimed that it had become a *bona fide* purchaser the moment it was issued a certificate of sale. See *Mortgage Electronic Systems v. Gipson*, 379 Ill. App. 3d 622, 634 (2008). Molina countered that Homefront's purchase was not protected from his interests because his status as a named legatee under

Smith's will was a matter of record, and "[h]e was not an unknown heir or legatee." Noting that Molina did not have a deed indicating that he owned any portion of the Property, Homefront suggested that his present possession of 501 was his only recognizable interest. Determining that Homefront had done all that it had been required to do, the circuit court denied Molina's motion for reconsideration and adhered to its prior ruling.

¶ 33 In December 2016, Molina filed a timely notice of appeal and a motion to stay the circuit court's order directing him to vacate the Property by January 4, 2017. The circuit court subsequently stayed its previous order to vacate pending the outcome of this appeal.

¶ 34 DISCUSSION

¶ 35 Molina's arguments on appeal are generally consistent with the arguments he advanced below. He contends that Chase Bank had constructive notice of his interests in the Property through his open, visible, and unambiguous possession of 501 and through the filing of Smith's will and that it had actual notice of his interests given that Wilson sent it a copy of the will. He maintains that Chase Bank's failure to serve him with process resulted in "the failure of the circuit court to obtain personal jurisdiction, rendering all the judgments and orders void as to [him] and his ownership interests in 501." Asserting that Homefront also had constructive notice of his interests through his open, visible, and unambiguous possession of 501 and through the filing of Smith's will, Molina further argues that Homefront is not a *bona fide* purchaser and thus took title to the Property subject to his interests in 501.

¶ 36 In response, Homefront and Chase Bank contend, among other things, that the circuit court did not abuse its discretion in denying Molina's combined motion because he was properly served by publication as a nonrecord claimant. See *Teerling Landscaping, Inc. v. Chicago Title & Trust Co.*, 271 Ill. App. 3d 858, 863-68 (1995). They further suggest that notice aside, Molina

never possessed a valid ownership interest in the Property. They maintain that Molina's failure to act on whatever rights to the Property he might have once had was the result of his own negligence and that, at best, he is now a mere tenant with an extinguishable right of possession. We agree and conclude that even assuming that Molina was not properly made a party to the foreclosure action, he had no cognizable interest in the Property that required termination.

¶ 37 Standards of Review

¶ 38 Whether a judgment is void for lack of personal jurisdiction is a question of law reviewed *de novo*. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. The denial of a 2-1401 petition seeking to vacate a void judgment is also reviewed *de novo*. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶¶ 47-49. The denial of a motion to set aside a judicial sale pursuant to section 15-1508(b)(iv) of the Foreclosure Law is reviewed for an abuse of discretion. *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶¶ 25, 31.

¶ 39 The Circuit Court's Judgments and Orders Are Not Void

¶ 40 An order entered without personal jurisdiction over a necessary party is void. See *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986); *Bank of New York v. Unknown Heirs & Legatees*, 369 Ill. App. 3d 472, 473-57, 477 (2006); *Schlosser v. Schlosser*, 218 Ill. App. 3d 943, 946-47 (1991); *Downers Grove Estates Fire Protection District v. Village of Downers Grove*, 86 Ill. App. 3d 1089, 1090 (1980). Here, Molina was not a necessary party; as the mortgagor of the Property, the only necessary party was Smith, whose interests were represented by Wilson. See 735 ILCS 5/15-1501(a) (West 2014); *ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526, 536-37 (2010). The circuit court's judgments and orders are therefore not void. See *Williams v. Tazewell County State's Attorney's Office*, 348 Ill. App. 3d 655, 659 (2004). Nevertheless, a third party such as Molina is not bound by a foreclosure judgment unless he or

she was properly made a party to the foreclosure action or unless his or her interests were otherwise barred or terminated in the foreclosure proceeding. See 735 ILCS 5/15-1501(a) (West 2014); *McGahan*, 237 Ill. 2d at 536-37. Whether Molina was properly made a party or whether his interests were otherwise terminated depends on the nature of his interests and his attendant status under the Foreclosure Law. See *Applegate Apartments Ltd. Partnership v. Commercial Coin Laundry Systems*, 276 Ill. App. 3d 433, 438-42 (1995). If, however, Molina has no cognizable interest in the Property, then there was nothing to terminate, and Chase Bank's alleged failure to make him a party to the foreclosure proceeding was "harmless." See *In re Estate of Stokes*, 225 Ill. App. 3d 834, 842 (1992). By the same token, if Molina has no cognizable interest in the Property, whether Homefront is a *bona fide* purchaser or not "is of no consequence." *American National Bank & Trust Co. of Chicago v. Vinson*, 273 Ill. App. 3d 541, 545 (1995). We must therefore examine the legitimacy of the interests that Molina maintains should be recognized.

¶ 41 Molina Is Unable to Establish a Cognizable Interest in the Property

¶ 42 Claiming that he both purchased and inherited 501 from Smith, Molina suggests that he has a valid ownership interest in the Property. He does not dispute, however, that having never been partitioned as a separate parcel, 501 is still legally part of the Property, its own mail service and utilities notwithstanding. See *Matzon v. Griffin*, 78 Ill. 477, 480 (1875) (recognizing the "fundamental rule that the term 'real estate' embraces lands, tenements and hereditaments"); 735 ILCS 5/15-1213 (West 2014) (defining real estate as including all "structures, fixtures and other things which by custom, usage or law pass with a conveyance of land though not described or mentioned in the contract of sale or instrument of conveyance"). Nor does he dispute that whatever land "501" was to be comprised of has never been described, particularly or generally.

Whether Molina has a valid interest in the Property is a question of law (see *Wooters v. Joseph*, 137 Ill. 113, 115 (1891); *Charles v. Lasher*, 20 Ill. App. 36, 39 (1886)), and a party claiming an interest in real estate has the burden of establishing the validity of his or her title (*Mullarky v. Trautvetter*, 276 Ill. 409, 412 (1916)).

¶ 43 Referencing their August 2002 contract, Molina maintains that he purchased 501 from Smith for $15,000. However, even assuming such payment was made, the contract does not support this contention. Pursuant to the terms of the contract, Smith expressly retained an ownership interest in 501, and a fee simple absolute interest was clearly not granted. See *Woods v. Seymour*, 350 Ill. 493, 496-97 (1932); Restatement (First) of Property § 15 (Oct. 2017 Update). The contract gave Molina the option to have 501 "surveyed and separated" from the Property and recommended that he have 501 "put in his name as soon as possible." During the proceedings below, Homefront suggested that by not exercising that option, Molina had essentially purchased a "long-term lease." In any event, given its lack of certainty and its failure to describe an identifiable parcel of land, the contract falls far short of being an enforceable contract for deed. See *Calvary Temple Assembly of God v. Lossman*, 200 Ill. App. 3d 102, 105-07 (1990); 71 Am. Jur. 2d *Specific Performance* § 135 (Nov. 2017 Update); see also 15 Solomon Gutstein, Eileen Murphy, & Joshua Gutstein, Illinois Practice, Real Estate § 10:63 (Nov. 2017 Update) ("Even when exempt from the Plat Act, when property is divided, the deed will need to utilize an appropriate legal description for the new parcels."). Moreover, any attempts to amend or correct the deficiencies in the contract would have had to have been made prior to Smith's death. See *Jatcko v. Hoppe*, 7 Ill. 2d 479, 485 (1955); *Jenkins v. Brittin*, 185 Ill. App. 67, 68 (1913). Additionally, "[w]hile a purchaser may have a right to enforce the contract, he or she has no interest in the property (legal or equitable) under a contract to sell an interest in land."

Jackson v. DBR Jackson Partnership, 2016 IL App (3d) 150229, ¶ 21. Although a contract for the sale of real estate is a properly recordable interest (*Farmers State Bank v. Neese*, 281 Ill. App. 3d 98, 105-07 (1996)), "a contract for the sale of real estate does not transfer legal title and is not equivalent to an actual sale" (*Carollo v. Irwin*, 2011 IL App (1st) 102765, ¶ 20). "[A]n actual transfer of legal title, not equitable title, is required for an actual sale." *Carollo*, 2011 IL App (1st) 102765, ¶ 20.

¶ 44 Here, it is apparent that an actual sale of land never occurred and that there was never a transfer of any legal title. Although the contract gave Molina the option to have 501 "surveyed and separated" from the Property so that an actual sale might be accomplished, Molina never exercised that option, despite the contract's suggestion that he do so. As a result, legal title was never conveyed, 501 remained part of the Property, and Molina has no interest that he can claim through the contract. We lastly note that even assuming, *arguendo*, that the intent of the contract was to convey a quitclaim deed to 501, the deed would have been "void for uncertainty" (*Alleman v. Hammond*, 209 Ill. 70, 71 (1904)), and a "void deed passes no title" (*Logue v. Von Almen*, 379 Ill. 208, 223 (1941)). We further note that "a prerequisite to the application of the doctrine of equitable conversion" is that the underlying contract be valid and enforceable. *Shay v. Penrose*, 25 Ill. 2d 447, 450 (1962).

¶ 45 Molina also asserts that he inherited 501 as a named legatee in Smith's will. However, a grantor of property can convey no greater title than he or she holds, and if there is no title held, then any attempted conveyance necessarily fails. See *City of Alton v. Fischback*, 181 Ill. 396, 399 (1899); *Elson v. Comstock*, 150 Ill. 303, 308 (1894); *Cree Development Corp. v. Mid-America Advertising Co.*, 294 Ill. App. 3d 324, 332 (1997). Here, Smith did not hold separate title or deed to "501"; he held title and deed to the Property, which included 501. See 15 Solomon Gutstein,

Eileen Murphy, & Joshua Gutstein, Illinois Practice, Real Estate § 10:51 (Nov. 2017 Update) ("When a landowner divides a parcel of land, he or she must issue deeds for the newly divided parcels containing a new legal description of the divided parcel."); see also 55 ILCS 5/3-5020(a) (West 2014) (directing that "no recorder shall record any conveyance of real estate unless the conveyance contains the name and address of the grantee for tax billing purposes"). Having never been partitioned as a separate parcel, 501 was legally part of the Property at the time of Smith's death. As such, it passed to Ferendzo as part of the "[r]eal estate and improvements at 503 South Vine." Ferendzo inherited the Property subject to Chase Bank's mortgage (see 755 ILCS 5/20-19 (West 2014)), which she apparently did not wish to assume. In any event, Molina did not inherit 501 as he maintains, nor did he inherit a valid quitclaim deed. Moreover, because his contract with Smith was not a valid contract for deed, Molina could not have compelled its specific performance by Smith's estate. Accordingly, Molina has no interest that he can claim through Smith's will. We further note that "[t]he validity of a will is not established until the will is admitted to probate" (*In re Chenoweth*, 3 F.3d 1111, 1112 (7th Cir. 1993)), that a devisee of real estate cannot claim an interest therein until the will is probated (*Eckland v. Jankowski*, 407 Ill. 263, 266 (1950); 755 ILCS 5/4-13 (West 2014)), and that Smith's will was never admitted to probate (see 755 ILCS 5/6-3 (West 2014)).

¶ 46 Under the circumstances, we conclude that Molina possessed no valid interest in the Property that required termination in the foreclosure proceeding. Thus, even assuming *arguendo* that he should have been made a party to the proceeding, the failure to make him a party was harmless. Similarly, even assuming that Homefront took title to the Property subject to Molina's interests, he has no interests beyond his present possession of 501. Homefront thus acted within its rights when it proceeded to displace him as an unauthorized occupant. See 735 ILCS 5/9-101

et seq. (West 2014); 735 ILCS 5/15-1701 (West 2014). In light of our disposition, we need not address the party's remaining arguments, and we deny Chase Bank's and Homefront's motions to submit additional authority that were taken with the case.

¶ 47 CONCLUSION

¶ 48 For the foregoing reasons, the circuit court's denial of Molina's amended combined motion to set aside sale, vacate order confirming sale, vacate default judgment, and vacate judgment of foreclosure and sale is affirmed; the circuit court's quashing of Molina's notice of deposition and subpoena for deposition is affirmed; and Chase Bank's and Homefront's motions to submit additional authority are denied.

¶ 49 Affirmed; motions denied.

¶ 50 JUSTICE CATES, dissenting:

¶ 51 In my view, when Jean Molina purchased the home located at 501 South Vine Street in O'Fallon, Illinois, from Christopher Smith, in August 2002, the doctrine of equitable conversion applied, and Molina became the owner of that property. *Life Savings & Loan Ass'n of America v. Bryant*, 125 Ill. App. 3d 1012 (1984). Under that doctrine, in 2008, when Smith mortgaged the property to Regions Bank, the mortgagee could only acquire those interests that Smith had at the time he mortgaged the property. "One who takes a mortgage upon property with knowledge, either actual or constructive, of an earlier although unrecorded conveyance of it, takes it subject thereto and will not be permitted by placing his mortgage first on the record to gain priority over the earlier lien. *St. Boniface Building & Loan Association v. Demopoulos* (1939), 302 Ill. App. 614, 24 N.E.2d 171." *Life Savings & Loan*, 125 Ill. App. 3d at 1019. Further, "[t]he open and

visible possession of land by the equitable owner is sufficient to charge a mortgagee with notice of the rights of such owner, and the mortgagee will take subject to the rights of the person in possession." *Life Savings & Loan*, 125 Ill. App. 3d at 1019. Molina had been occupying his home for approximately six years before the mortgage was entered into between Smith and Regions Bank. And Smith obtained the mortgage from Chase Bank in October 2011, more than nine years after the agreement for purchase of 501 South Vine Street had been entered into. In my view, the law did not require Molina to record his interest. My colleagues fail to deal with the doctrine of equitable conversion, and, instead, conclude that the original contract of August 2002 was not enforceable. I disagree with their conclusion that "an actual sale of land never occurred and that there was never a transfer of any legal title," and believe that the reference to the Plat Act is irrelevant to the issues before us.

¶ 52 In this case, it seems that if there had been a reasonable inquiry and investigation into the property which was the subject of the mortgage, Chase Bank (and Regions Bank) would have discovered the existence of the two distinct homes. Although Molina's home was not the subject of a separately recorded parcel number, Molina's house number, "501," was clearly placed on the front of his house. There were independent sewer, water, and power lines running to his home, and he paid the utilities separately from the 503 South Vine Street house. Molina's residence had its own driveway, with its own carport, and a separate mailing address. Thus, when Smith mortgaged the property, Molina was in open and notorious possession of his home located at 501 South Vine Street. Further, with minimal additional inquiry, the mortgagees would have learned of Molina's interest in the property. Therefore, in my view, Molina had a genuine, protectable property interest at the time Smith placed a mortgage on the property, and any efforts

to foreclose on 501 South Vine Street were not properly described within the complaint filed by Chase Bank pursuant to section 15-1504 (735 ILCS 5/15-1504 (West 2014)).

¶ 53 Additionally despite the overt signs that there was a person residing in a separate home, commonly known as 501 South Vine Street, Chase Bank never named Molina as a potential defendant in its lawsuit to foreclose on the Smith property. Consequently, based upon this record, I do not believe that the circuit court ever obtained personal jurisdiction over Jean Molina, the owner of 501 South Vine Street. Therefore, the judgment of foreclosure and sale entered by the circuit court on July 30, 2015, is void, and subject to challenge directly, or collaterally, at any time. *BankUnited v. Velcich*, 2015 IL App (1st) 132070.

¶ 54 The record reveals two distinct occasions when Chase Bank was placed on notice that there was a person with a possessory interest, who should have been named as an additional defendant. See 735 ILCS 5/15-1501(b)(1) (West 2014). First, the key provision granting Molina a property interest in his home arose out of the August 2002 contract between Molina and Smith, which stated, in relevant part:

> "In the event that something should happen to Chris [Smith] or in the event that the property is sold or transferred to another, Jean [Molina] will receive his money of $15000.00 (fifteen thousand dollars) upon the sale of the house."

The document further indicated: "This agreement will also be put in Chris' [Smith's] will, which Tom Benedict [*sic*] is in the process of writing." Mr. Benedict is an Illinois licensed attorney practicing in O'Fallon, Illinois. The agreement also stated, "Martha Ferendzo has POA for Chris [Smith] and will make sure these demands are fulfilled."

¶ 55 Smith died on January 4, 2014. Smith's death certificate named Martha Ferendzo as having power of attorney for Smith. Martha Ferendzo is a key player in the history of this case. As noted above, she was named in the aforementioned contract entered into in August 2002.

Ferendzo's name appears again with respect to the actual note and mortgage. Contrary to the representations that Smith executed the note and mortgage, the record reveals it was Martha Ferendzo who actually signed the note and mortgage dated October 19, 2011, as "ATTORNEY-IN-FACT FOR CHRISTOPHER SMITH, UNMARRIED."

¶ 56 In July 2014, Chase Bank filed its complaint to foreclose its mortgage with Smith. As additional defendants, the original complaint named "UNKNOWN OWNERS AND NON RECORD CLAIMANTS." In October 2014, Chase Bank filed a motion to amend its complaint for foreclosure and to appoint a special representative to represent Smith's interest in the action. See 735 ILCS 5/13-209 (West 2014). On December 11, 2014, the circuit court appointed attorney Judith Trentman Wilson as Smith's special representative, and granted Chase Bank leave to amend its complaint. In its request for the appointment of the special representative, Chase Bank failed to follow the plain language of the statute, which provides:

> "(a) If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives:
>
> ***
>
> (2) if no petition for letters of office for the decedent's estate has been filed, the court may appoint a special representative for the deceased for the purpose of prosecuting the action. The appointment shall be on verified motion of any party who appears entitled to participate in the deceased's estate, reciting the names and last known addresses *of all known heirs and the legatees and executor named in any will that has been filed*." (Emphasis added.) 735 ILCS 5/13-209(a)(2) (West 2014).

¶ 57 As set forth hereafter, the heirs and legatees were never named, despite the fact that Chase Bank, through its attorneys, knew that a will had been filed. Moreover, even assuming, *arguendo*, that there was an invalid contract for the sale of 501, Smith's will clearly named Molina as a legatee, and the statute required Molina be named by Chase Bank, who sought the appointment of Wilson. On this issue, the majority skips over the requirements of the statute, which would have required Chase Bank to name Molina, and, instead, decides whether Smith

could have conveyed a property interest to Molina pursuant to the will. But this is not the issue before us in this appeal. The issue is whether Chase Bank named Molina, pursuant to the statute, in requesting that the court appoint Wilson as a special representative. Clearly, Chase Bank did not do so. Had Chase Bank read the will, they would have known to name Molina and give him notice.

¶ 58 On December 26, 2014, Chase Bank filed its amended complaint. The amended complaint named as defendants, Regions Bank, Unknown Owners and Non Record Claimants, Judith Trentman Wilson, as Special Representative of the Deceased Mortgagor, Christopher Smith a/k/a Christopher C. Smith, Caya Aufiero, and Unknown Heirs and Legatees of Christopher Smith a/k/a Christopher C. Smith, if any. Martha Ferendzo was not named as a defendant, even though the amended complaint attached a copy of the mortgage and the note securing the mortgage. One of the purposes of the amended complaint was to reform the legal description of the mortgaged property, as reflected in count II. The amended complaint, even in count II, repeatedly referred to the property as "503 SOUTH VINE STREET, OFALLON, IL 62269."

¶ 59 Additionally, in paragraph 4 of its amended complaint, Chase Bank alleged the following:

> "4. Plaintiff alleges that in addition to persons designated by name herein and the Unknown Defendants referred to above, there are other persons, and/or non-record claimants who are interested in this action and who have or claim some right, title, interest or lien in, to or upon the real estate, or some part thereof, in this Complaint described, including but not limited to the following: UNKNOWN OWNERS AND NON RECORD CLAIMANTS, IF ANY.
>
> That the name of each of such persons is unknown to the Plaintiff and on diligent inquiry cannot be ascertained, and all such persons are therefore made party defendants to this action by the name and description of UNKNOWN OWNERS and NON-RECORD CLAIMANTS."

The record does not support this allegation.

¶ 60 Judith Trentman Wilson filed her "Report of Special Representative" on January 5, 2015. This report was prepared by counsel for Chase Bank. In her report to the court, Wilson indicated the "unknown heirs have not yet been served by publication, [but] Plaintiff's Attorney indicates they will effectuate publication; therefore this Special Representative has not done so." Significantly, the Wilson report also indicates Smith's date of death, and identifies that she has located "heirs, devisees, or legatees." These individuals were identified as Caya Aufiero and Martha Ferendzo. Further, Wilson indicated,

> "A Last Will & Testament for Christopher Smith was filed with the St. Clair County Circuit Clerk on January 27, 2014 (14-W-0039). A copy of the Last Will & Testament was mailed to Plaintiff's Attorney on December 18, 2014."

Finally, the Wilson report revealed there were no occupants or claims of a possessory interest in the property. This representation, coupled with the statement that a will had been mailed to Chase Bank's counsel, and that there were no individuals with a possessory interest allows only one, quite obvious conclusion, that Chase Bank's lawyers never read Smith's will. Had they done so, the lawyers would have known, immediately, that the real estate and improvements at 503 South Vine had been devised to Martha Ferendzo, and the real estate and improvements at 501 South Vine were devised to Jean Molina.

¶ 61 Further, the will named Ferendzo as executor of Smith's estate, and awarded her any residue or remainder of the estate. Therefore, the contentions that Chase Bank was not on notice that both Ferendzo, and someone named Jean Molina, at 501 South Vine, had at least a colorable property interest in the parcel being foreclosed upon, are disingenuous. The record reveals that Chase Bank had added Caya Aufiero as a defendant in the action, and had even mailed a copy of the Wilson report to Ferendzo, although it did not name her as a defendant. But Molina was

never given notice of the foreclosure action or the Wilson report. Had Molina received some sort of notice, he would have at least been given the opportunity to appear, prior to any judgment, to protect his property interest. In light of the foregoing, Chase Bank cannot credibly claim that its notice of publication was sufficient to obtain personal jurisdiction over Molina, and foreclose on his property interests. Given that, I do not believe the circuit court obtained personal jurisdiction over Molina. Therefore, I believe the judgment of July 30, 2015, is void, and any orders entered thereafter are equally invalid as to Molina.

¶ 62 The second scenario that defeats personal jurisdiction, and prevents Homefront from maintaining its status as a *bona fide* purchaser, began on July 19, 2014, when a process server from Provest visited the property and attempted to serve Smith with the original complaint for foreclosure. At that time, through its agent, the individual from Provest filled out a "Tenant and Property Inspection Report Form." That form indicates that contact was made with Anna Frendzo, who stated that she was the only occupant and that Smith had died. The report clearly indicates that the person associated with Provest made an inspection, as the property is described as in "fair" condition, with the utilities "on," and "no" garage. The 503 home was beige in color and was a single family unit.

¶ 63 Having had an agent visit the property, the bank, in my view, should have been on constructive notice that there was a separate residence, commonly known as 501 South Vine Street, located on the property that was the subject of the foreclosure action. Again, even a casual visit to 503 South Vine Street would have revealed that there was a separate home, with its own driveway and carport, located on the parcel. By all accounts, the address was clearly visible on Molina's home at 501 South Vine Street. Therefore, given that there was open and obvious possession, it is incredulous for the bank to now claim that its agent may not have noticed the

Molina home. Therefore, any affidavit filed pursuant to section 15-1502(c) (735 ILCS 5/15-1502(c)) as to Molina, as an unknown, nonrecord claimant, would have been false.

¶ 64 Additionally, Homefront is not a *bona fide* purchaser. A purchaser cannot be a *bona fide* purchaser if he had actual or constructive notice of the outstanding rights of other parties to the property. *U.S. Bank National Ass'n v. Johnston*, 2016 IL App (2d) 150128. Here, Homefront had constructive notice of Molina's interest in 501 South Vine Street.

¶ 65 "Constructive notice is knowledge that the law imputes to a purchaser, whether or not he had actual knowledge at the time of conveyance." *Hachem v. Chicago Title Insurance Co.*, 2015 IL App (1st) 143188, ¶ 27. In Illinois, one who intends to purchase land has an affirmative obligation, as follows:

> " '[A] purchaser of land is charged with constructive notice not only of whatever is shown in the records of the office of the recorder of deeds, but in addition, with matters affecting the title of the land which appear in the records in the circuit, probate, and county courts in the county where the land is situated.' *Eckland v. Jankowski*, 407 Ill. 263, 267 (1950). It is the duty of a purchaser of land to examine the record and he is chargeable with notice of whatever is shown by the record. *Id.*" *Hachem*, 2015 IL App (1st) 143188, ¶ 27.

¶ 66 Chase Bank initiated the appointment of Wilson, and the pleadings clearly indicated a will had been filed. Therefore, Homefront knew, or should have known, through the Wilson report, that Smith's will was filed on January 27, 2014, in the circuit clerk's office in St. Clair County, Illinois. Had Homefront conducted its due diligence, it would have reviewed Smith's will, which clearly named Molina as a legatee of 501 South Vine Street. Homefront simply has no defense to its failure to examine the record, and thus cannot be considered a *bona fide* purchaser.

¶ 67 Additionally, in January 2016, Darin Mathis, an agent for Homefront, visited the 503 South Vine Street property, and actually spoke with Molina. Contrary to the express provisions

of section 15-1508.5 (735 ILCS 5/15-1508.5 (West 2014)), Molina did not receive written notice from Homefront that the real estate upon which his home was located was the subject of a foreclosure action. Simply put, Molina was not informed by Mathis that he was an agent for Homefront, a company that had recently purchased the parcel of property at public auction in November 2015.

¶ 68 Homefront clearly violated the notice provisions in section 15-1508.5, despite its actual notice that there was an individual, Molina, with possessory interest, not previously named in any of Chase Bank's pleadings. Nevertheless, instead of notifying Chase Bank, or giving Molina written notice, the bank proceeded, with Homefront standing quietly by, to have an order entered granting Homefront the right to possess the property. The order also gave the sheriff the authority to evict those possessing the property known as 503 South Vine Street. The order made no mention of 501 South Vine Street, despite Homefront's knowledge of Molina's open and obvious possession of that property. On March 10, 2016, the sheriff's department served Molina with a 48-hour notice of imminent eviction. This order originally set forth the 503 South Vine Street address. Upon recognizing that Homefront sought to evict Molina at the 501 South Vine Street address, the sheriff's department indicated that it would not do so, as the address on the order of eviction was incorrect. Without the permission of any court, Darin Mathis crossed out the 503, and altered the court order by writing in 501 on the eviction order. Service of this eviction order was the first notice that Molina had of any proceedings against his property interests, despite the fact that Chase Bank's attorneys knew, in December 2014, that Smith's will devised 501 South Vine Street to Molina. Upon learning of the legal proceedings, Molina immediately notified the court that he was Smith's heir, as evidenced by the will filed in January 2014.

¶ 69 In my view, Chase Bank failed to act with due diligence in providing notice to Molina, and therefore, the circuit court did not have personal jurisdiction over Molina in order to enter the foreclosure order, terminating his property rights in his home at 501 South Vine Street. Thus, as previously noted, I conclude that any orders entered by the circuit court against Molina's property interests are void. Further, in light of Homefront's constructive notice, and intentional failure to inform Molina pursuant to the statute, it cannot be a *bona fide* purchaser.

¶ 70 Finally, I believe the circuit court erred on June 30, 2016, when it quashed the deposition and granted the oral motion to quash a subpoena for documents. The court order of that date indicates "Discovery premature as no pleadings are on file." Clearly, the court must have been referring to Illinois Supreme Court Rule 201(d) (eff. July 1, 2014), as that is the only rule that governs the timing of discovery. Rule 201(d) states: "Prior to the time all defendants have appeared or are required to appear, no discovery procedure shall be noticed or otherwise initiated without leave of court granted upon good cause shown." At the time the circuit court denied Molina's attempts at discovery, all interested parties were before the court. The discovery sought was relevant, and the information being sought was important to the issues regarding the right of possession, as well as constructive notice. Therefore, the circuit court, in my view, should not have denied the motion to quash notice of deposition and the motion to quash a subpoena for documents.

¶ 71 In this case, Molina had lived in the home he purchased at 501 South Vine Street for 14 years in open and obvious possession. He never knew that he was in jeopardy of losing his home until he was served by the sheriff with a 48-hour notice of imminent eviction. I do not believe the law favors such an unfair and harsh result under these circumstances, and must strongly disagree

with the path of analysis undertaken by my colleagues. For all of these reasons, I respectfully dissent.