SUPREME COURT OF NEW JERSEY

Simon v. Cronecker; Grivas v. Smyth, 189 N.J. 304

915 A.2d 489 (2007) · No. A-105-05; A-106-05 · Decided January 29, 2007

SUMMARY

The Supreme Court of New Jersey considered whether a third-party investor may purchase a property interest and redeem a tax sale certificate after the filing of a foreclosure complaint. The Court held that the Tax Sale Law permits such conduct when the investor timely intervenes in the foreclosure action and pays more than nominal consideration to the property owner. Because Cherrystone Bay failed to intervene before arranging redemption, the Court imposed constructive trusts and allowed the tax certificate holders to succeed in the investor's place.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Justice Albin; Chief Justice Zazzali; Justice LaVecchia; Justice Rivera-Soto; Justice Wallace
JURISDICTION	New Jersey
DECIDED	January 29, 2007
DOCKET	A-105-05; A-106-05
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs holding tax sale certificates appealed rulings permitting property owners, through third-party investor Cherrystone Bay, LLC, to redeem the certificates after foreclosure complaints had been filed. The Supreme Court of New Jersey granted direct certification, reversed the trial court, and remanded.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of New Jersey
PARTIES	Richard Simon, Trustee, Nicholas Grivas v. Richard William Cronecker and other defendants, Loretta Smyth and Richard Smyth

TOPICS

tax liens · foreclosure · statutory interpretation · constructive trust · remedies

PRACTICE AREAS

real estate | tax | municipal law | statutory interpretation | equitable remedies

QUESTIONS PRESENTED

1. Whether the Tax Sale Law permits a third-party investor to acquire a property interest and arrange redemption of a tax sale certificate after a foreclosure complaint has been filed.
2. Whether a third-party investor must intervene in the foreclosure action before directly or indirectly redeeming the tax sale certificate.
3. What standard determines whether consideration paid to a property owner is more than nominal under N.J.S.A. 54:5-89.1.
4. What equitable remedy is appropriate when a third-party investor paid more than nominal consideration but failed to intervene before arranging redemption.

HOLDINGS

1. The Tax Sale Law does not prohibit a third-party investor from purchasing a property owner's interest for more than nominal consideration and redeeming or assisting in the redemption of a tax sale certificate after a foreclosure complaint has been filed, provided the investor timely intervenes in the foreclosure action and obtains court approval.
2. A third-party investor who acquires an interest in property subject to a pending tax-sale foreclosure must intervene and obtain judicial authorization before directly or indirectly arranging redemption of the tax certificate.
3. More than nominal consideration means consideration that is not insubstantial under all the circumstances and is not unconscionable in light of the nature of the transaction and the benefit to the property owner.
4. The appropriate remedy is to impose constructive trusts on Cherrystone's contractual rights, allowing the tax certificate holders to succeed to those rights after reimbursing Cherrystone for amounts expended to redeem the certificates and purchase the properties.

KEY QUOTATIONS

> *"We do not read the Tax Sale Law, N.J.S.A. 54:5-1 to -137, to discourage commercial competition that is likely to benefit a financially-strapped property owner, and we will not interfere with salutary market forces for the purpose of impoverishing him."* (at 492-493)

> *"In the end, more than nominal consideration under N.J.S.A. 54:5-89.1 means consideration that is not insubstantial under all the circumstances; it is an amount, given the nature of the transaction, that is not unconscionable."* (at 507)

> *"Without the court's approval, that person is not entitled to redeem the tax certificate."* (at 508)

FACTUAL BACKGROUND

Simon and Grivas held tax sale certificates securing unpaid municipal taxes and charges and had filed foreclosure actions against the affected properties. During the post-complaint period, Cherrystone contracted to purchase the owners' interests for substantial sums and arranged for redemption of the certificates, but did not intervene in either foreclosure action before doing so. The trial court found that the owners received more than nominal consideration and allowed redemption; the Supreme Court held that Cherrystone's procedural default barred it from profiting from the transactions.

PROCEDURAL HISTORY

In consolidated Chancery Division proceedings, the trial court permitted Cherrystone to intervene and approved redemption of the tax sale certificates, finding that the property owners received more than nominal consideration. Simon and Grivas appealed, and the Supreme Court granted direct certification under Rule 2:12-1. The Supreme Court held that Cherrystone's failure to intervene before arranging redemption invalidated the redemptions and imposed constructive trusts in favor of the certificate holders, subject to reimbursement of Cherrystone's expenditures.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Impose constructive trusts on Cherrystone's rights under its contracts with the property owners. Permit the tax certificate holders to assume Cherrystone's contractual rights after reimbursing Cherrystone for monies expended to redeem the tax certificates and for the purchase prices of the properties. If the certificate holders decline, vacate the constructive trusts and allow the contractual rights to revert to Cherrystone.

CASES CITED

- Bron v. Weintraub, 42 N.J. 87, 199 A.2d 625 (1964)
- Wattles v. Plotts, 120 N.J. 444, 577 A.2d 131 (1990)
- Varsolona v. Breen Capital, 180 N.J. 605, 853 A.2d 865 (2004)
- Savage v. Weissman, 355 N.J. Super. 429, 810 A.2d 1077 (App. Div. 2002)
- Cherokee Equities v. Garaventa, 382 N.J. Super. 201, 887 A.2d 1203 (Ch. Div. 2005), appeal dismissed per stipulation, 186 N.J. 598, 897 A.2d 1055 (2006)
- Simon v. Rando, 374 N.J. Super. 147, 863 A.2d 1078 (App. Div. 2005), aff'd, 189 N.J. 339, 915 A.2d 509 (2007)
- O & Y Old Bridge Dev. v. Continental Searchers, 120 N.J. 454, 577 A.2d 137 (1990)
- DiProspero v. Penn, 183 N.J. 477, 874 A.2d 1039 (2005)
- Lane v. Holderman, 23 N.J. 304, 129 A.2d 8 (1956)
- Corestates/N.J. Nat'l Bank v. Charles Schaefer Sons, Inc., 386 N.J. Super. 554, 902 A.2d 309 (App. Div. 2006)
- New Jersey Div. of Youth v. S.S., 187 N.J. 556, 902 A.2d 215 (2006)

- Wilson v. Unsatisfied Claim and Judgment Fund Bd., 109 N.J. 271, 536 A.2d 752 (1988)
- Dvorkin v. Twp. of Dover, 29 N.J. 303, 148 A.2d 793 (1959)
- Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Ctr. Assocs., 182 N.J. 210, 864 A.2d 387 (2005)
- Jones v. Haridor Realty Corp., 37 N.J. 384, 181 A.2d 481 (1962)
- Feighner v. Sauter, 259 N.J. Super. 583, 614 A.2d 1071 (App. Div. 1992)