

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Wade Kapszukiewicz, as Treasurer
of Lucas County, Ohio

Appellee

Court of Appeals No. L-12-1292

Trial Court No. TF12-1092

v.

Chiaverini, Inc., et al.

Appellant

DECISION AND JUDGMENT

Decided: August 9, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Suzanne Cotner Mandros, Assistant Prosecuting Attorney,
for appellee.

George C. Rogers, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Chiaverini, Inc. appeals a September 14, 2012 judgment of the Lucas County Court of Common Pleas granting the Lucas County Treasurer, appellee, a judgment of foreclosure on existing liens for delinquent taxes, special assessments, penalties and interest against two parcels of real property. Under the judgment, the total

lien amount was determined to be \$59,844.40. The judgment ordered transfer of title to the properties, fee simple without appraisal and without sale, to the Lucas County Land Reutilization Corporation after expiration of a 45 day alternative right to redemption period as defined in R.C. 323.65(K).

{¶ 2} Chiaverini appeals the judgment to this court.

{¶ 3} The Lucas County Prosecutor filed the foreclosure complaint in this case on March 29, 2012. Wade Kapszukiewicz, the Treasurer of Lucas County, Ohio, is the named plaintiff. Appellant, S & W Drive In Systems, Inc., and Jones & Scheich were named defendants as having or claiming to have an interest in the properties as set forth in title work attached to the complaint, as were the State of Ohio Department of Taxation, State of Ohio Department of Job & Family Services, and the City of Toledo Department of Public Utilities. The City of Toledo, Department of Development was also named a defendant. The defendants were served by certified mail.

{¶ 4} Appellant has not claimed lack of in personam jurisdiction over it or insufficiency of service of process. In its answer, appellant asserted the defense that “[t]he complaint fails to comply with R.C. 5721.18(D).”

{¶ 5} On July 26, 2012, appellee filed a motion for summary judgment, stating that the foreclosure proceedings were instituted pursuant to R.C. 5721.18(A) and that there existed no dispute of material fact on whether the elements for foreclosure under R.C. 5721.18(A) had been established by materials submitted in support of the motion. Appellant opposed the motion arguing that the claim for foreclosure was barred by failure

to comply with the requirements of R.C. 5721.18(D). Appellant argued that pursuant to R.C. 5721.18(D) a foreclosure complaint for relief under R.C. 5721.18(A) must set forth the grounds upon which an action in rem under R.C. 5721.18(B) or (C) was precluded. Appellant argued that without such a statement in the complaint, the complaint failed to state a claim upon which relief could be granted.

{¶ 6} The trial court granted the motion for summary judgment and issued the judgment in foreclosure. This appeal followed.

{¶ 7} On appeal, appellant restates its argument under R.C. 5721.18(D):

Assignment of Error

The trial court erred in granting summary judgment on the tax delinquency complaint as an in personam action filed under R.C. 5721.18(A), when said complaint failed to specify, as required by subsection (D), why an in rem complaint was not able to be filed under subsections (B) or (C).

{¶ 8} Appellee contends that the revised code affords counties numerous statutes to utilize in collecting taxes and that where taxes have been delinquent for greater than two years, the county has a choice of remedy, including whether to pursue foreclosure under R.C. 5721.18 (A), (B), or (C). Appellee argues that proceeding under R.C. 5721.18(A) in a given case may have practical advantages including transfer of clear title to the transferee and avoiding potential due process notice problems in the case. Here

there were only three defendants, other than public entities, named in the complaint and each was served by certified mail.

{¶ 9} R.C. 5721.18(D) provides:

(D) If the prosecuting attorney determines that an action in rem under division (B) or (C) of this section is precluded by law, then foreclosure proceedings shall be filed pursuant to division (A) of this section, and the complaint in the action in personam shall set forth the grounds upon which the action in rem is precluded. (Emphasis added.)

{¶ 10} The parties do not dispute that that the prosecutor in this case made no determination that in rem actions for foreclosure under R.C. 5721.18(B) or (C) were precluded by law. Appellee argues that under the facts of this case the requirements for a statement in the complaint under R.C. 5721.18(D) do not apply.

{¶ 11} Appellant has cited the court to no legal authority for the proposition that a prosecuting attorney cannot file an in personam foreclosure complaint under R.C. 5721.18(A) where in rem complaints under R.C. 5721.18 (B) or (C) are not precluded by law. We find no ambiguity in the statute. Under its clear and express terms, the requirement under R.C. 5721.18(D) for a statement in the foreclosure complaint exists only upon a determination by the prosecutor that actions in rem R.C. 5721.18(B) or (C) were precluded by law. As no such determination was made in this case, the requirements of R.C. 5721.18(D) do not apply.

{¶ 12} Even if the statute were ambiguous, a court construes an ambiguous statute in a manner that gives effect to the legislative intent behind its enactment. *Boley v. Goodyear Tire & Rubber Co.*, 125 Ohio St.3d 510, 2010-Ohio-2550, 929 N.E.2d 448, ¶ 20-21. Appellant has not argued any legislative purpose behind enactment of R.C. 5721.18 that would be served by restricting availability of in personam foreclosure procedures under R.C. 5721.18(A) where remedies in rem under R.C. 5721.18(B) or (C) are available. We find none.

{¶ 13} Accordingly, we conclude appellant's assignment of error is not well-taken.

{¶ 14} We conclude that justice has been afforded the party complaining and affirm the judgment of the Lucas County Court of Common Pleas. We order appellant to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.

CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
