

[Cite as *Woods Cove II, L.L.C. v. Am. Guaranteed Mgt., Co., L.L.C.*, 2016-Ohio-3177.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 103652**

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**WOODS COVE II, L.L.C.**

PLAINTIFF-APPELLEE

vs.

**AMERICAN GUARANTEED  
MANAGEMENT, CO., L.L.C., ET AL.**

DEFENDANTS-APPELLANTS

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-13-814830

**BEFORE:** McCormack, J., Keough, P.J., and Stewart, J.

**RELEASED AND JOURNALIZED:** May 26, 2016

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TIM McCORMACK, P.J.:

{¶1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. In this case, we are presented with an unusual appeal. Appellant American Guaranteed Management Co., L.L.C. (“American Guaranteed”) appeals from an order of the Cuyahoga County Court of Common Pleas granting summary judgment in favor of appellee Woods Cove II, L.L.C. (“Woods Cove”) in a foreclosure action. However, instead of presenting a substantive argument demonstrating why the trial court erroneously granted summary judgment for foreclosure, American Guaranteed raises only a procedural issue in this appeal: it claims that the trial court failed to rule on American Guaranteed’s counterclaim, rendering the court’s judgment not a final appealable order. Thus, we have before us a rather peculiar situation where appellant itself claims there is no final appealable order and the appeal is brought solely for the purpose of having the case remanded to the trial court to rule on a purported pending counterclaim. Our review of the record indicates that the trial court has resolved all the claims raised in this case. The trial court’s judgment is a final appealable order. As the appellant presents no substantive argument challenging the judgment of foreclosure for our review, we affirm the judgment of the trial court.

## Background

{¶2} This case concerns three tax certificates Woods Cove purchased from the Cuyahoga County Treasurer and the ensuing foreclosure action. Ohio's tax certificate legislation, R.C. 5721.30 through 5721.43, allows a county government to sell tax certificates to private investors. A tax certificate entitles the certificate holder to the first lien on the real property. R.C. 5721.32. A property owner can redeem the certificate and remove the lien by paying the certificate holder the purchase price plus interest, penalties, and costs. R.C. 5721.38. If the property owner fails to redeem the certificates, the tax certificate holder may initiate foreclosure proceedings on the real property after complying with certain statutory requirements. *See generally Ankenman v. Rhea Academy, Inc.*, 2d Dist. Montgomery No. 25296, 2013-Ohio-296, ¶ 10-11.

{¶3} In the instant case, American Guaranteed owed property taxes for tax years 2009 to 2012 on a property located at West 83rd Street in Cleveland. Woods Cove purchased three tax certificates representing the tax liens on the property from the county treasurer.<sup>1</sup> When American Guaranteed failed to redeem the certificates, Woods Cove filed a foreclosure action pursuant to the statute.

{¶4} In its answer, American Guaranteed claimed the tax liens purchased by Woods Cove were invalid because the property was improperly valued for tax purposes and also because the tax certificate statute is unconstitutional. American Guaranteed

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<sup>1</sup>The certificate purchase price for the three tax certificates are \$2,081.21, \$1,255.04, and \$1,535.33, respectively.

also asserted a counterclaim. The counterclaim, however, did not raise any new claims — it sought a declaratory judgment that the subject tax certificates were invalid “for the reasons set forth in Defendant’s Affirmative Defenses.”

{¶5} Subsequently, Woods Cove filed a motion for summary judgment. American Guaranteed also moved for summary judgment on its counterclaim. In its brief opposing Woods Cove’s summary judgment and supporting its own motion for summary judgment on the counterclaim, American Guaranteed conceded that the taxes on the property were unpaid and Woods Cove was entitled to foreclose on the property based on the tax certificates. In addition, it appeared to abandon the claim that the tax certificates were invalid due to improper property valuation. Rather, American Guaranteed’s *sole* ground for opposing Woods Cove’s summary judgment motion and supporting its own summary judgment motion on its counterclaim was that the tax certificate statute is unconstitutional.

{¶6} American Guaranteed argued that the statute is unconstitutional because it allows the county treasurer to arbitrarily select properties that are delinquent for tax certificate sales, in violation of equal protection under the Ohio and federal constitutions.

It also argued the law violates the separation of powers doctrine because it allows the county treasurer to determine the amount of attorney fees related to tax certificate foreclosures.

{¶7} The trial court granted summary judgment in favor of Woods Cove and denied American Guaranteed’s motion for summary judgment on its counterclaim.

{¶8} A magistrate subsequently issued a decision granting foreclosure and setting forth its findings of fact and conclusions of law. American Guaranteed filed objections to the magistrate's decision. It argued the magistrate erred by denying its motion for summary judgment on its counterclaim and ordering foreclosure without ruling on the constitutionality issue. Woods Cove responded to the objections, contending that statutes are presumed constitutional and American Guaranteed has not rebutted that presumption. The trial court overruled American Guaranteed's objections and issued a judgment adopting the magistrate's decision.

### **Appeal**

{¶9} American Guaranteed filed a notice of appeal. Its sole assignment of error states, "The trial court erred in entering judgment for foreclosure and ignoring a pending counterclaim." The entirety of appellant's brief on appeal is devoted to the contention that the trial court failed to rule on the constitutionality issue presented in its counterclaim. American Guaranteed requests that this case be "reversed and/or remanded to the trial court with a mandate for a determination of the Counterclaim and a final appealable order."

## Analysis

{¶10} Because American Guaranteed's sole defense against the foreclosure of its property was the unconstitutionality of the tax certificate statute, pursuant to which the foreclosure action was filed, the trial court *necessarily* considered that issue before concluding Woods Cove was entitled to a foreclosure of the subject property. Although the trial court did not make an express ruling, it is apparent that, in granting foreclosure, the court rejected American Guaranteed's defense. In entering a judgment of foreclosure, the court impliedly found the statute to be constitutional. In other words, the judgment of foreclosure in this case is predicated on the validity of the tax certificate statute; inherent in the judgment of foreclosure is a finding of the constitutionality of the statute. The only issue that remained in American Guaranteed's counterclaim was the constitutionality of the statute. As such, the counterclaim was subsumed in the underlying foreclosure complaint. By granting summary judgment for foreclosure, the trial court implicitly disposed of the counterclaim. No claims remained pending. *Ward v. Stene*, 1st Dist. Hamilton No. C-810986, 1982 Ohio App. LEXIS 5940 (Jan. 1, 1982) (the issues raised by the counterclaim were by implication disposed of by the trial court in its disposition of the motion for summary judgment). Consequently, the trial court's judgment is a final appealable order.<sup>2</sup>

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<sup>2</sup>We note that the trial court could have dismissed American Guaranteed's counterclaim on a procedural ground as well. R.C. 2721.12 requires service of a copy of the proceeding on the Attorney General when a party challenges the constitutionality of a statute in a declaratory judgment action. *Ohioans for Fair Representation v. Taft*, 67 Ohio St.3d 180, 182-183, 616 N.E.2d 905 (1993). If the requirement of R.C. 2721.12(A) is not met, a trial court lacks subject matter

{¶11} American Guaranteed cites two cases to support its contention that the summary judgment of the trial court granting foreclosure was not final because a counterclaim remains. In the first case, *RBS Citizens, N.A. v. Krasnov*, 8th Dist. Cuyahoga No. 98997, 2013-Ohio-1670, after the bank filed a foreclosure complaint, defendant homeowners raised a fraud claim in their counterclaim alleging the bank’s appraiser committed fraud by inflating the value of property to induce them to sign the promissory note. This court reasoned that it was conceivable that defendant homeowners’ monetary damages for the fraud claim could exceed the bank’s damages in its foreclosure action. Therefore, by failing to resolve the counterclaim before granting the bank’s motion for summary judgment on the foreclosure action, the trial court “put the cart before the horse,” and its judgment for foreclosure was not a final appealable order. *Id.* at ¶ 7.

{¶12} In the second case, *Countrywide Home Loans Servicing, L.P. v. Stultz*, 161 Ohio App.3d 829, 2005-Ohio-3282, 832 N.E.2d 125 (10th Dist.), defendant homeowners also sought monetary damages in their counterclaim. The counterclaim alleged the bank’s representative entered the premises and changed the locks unlawfully and raised causes of action of trespass and conversion. The appellate court reasoned that if the amount of damages in the counterclaim was proven, it would affect the nature of the

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jurisdiction to determine the constitutionality of that particular statute. *George Shima Buick, Inc. v. Ferencak*, 91 Ohio St.3d 1211, 1212, 741 N.E.2d 138 (2001). American Guaranteed did not serve a copy of the proceeding on the Attorney General, and therefore, its counterclaim had not been properly raised. The trial court here did not explicitly state the reason it rejected American Guaranteed’s constitutionality claim. It was not required to do so.



judgment of foreclosure; therefore, the trial court's failure to adjudicate the counterclaim required a reversal and remand.

{¶13} In these cases, the defendants' counterclaims asserted causes of action independent of the foreclosure and debts owed to the plaintiff, where the potential award of damages to the defendant could affect the foreclosure judgment. Accordingly, the courts held that the judgment of foreclosure was not a final appealable order without an adjudication of the counterclaim. These two cases have no relevance here. Here, there was no outstanding claim. American Guaranteed's counterclaim sought a declaratory judgment that the tax certificate statute is unconstitutional, an issue the trial court implicitly resolved before issuing the order of foreclosure. Unlike *RBS* and *Stultz*, there was no pending claim before the trial court here.

{¶14} American Guaranteed defended against the foreclosure action initiated under the tax certificate statute by arguing that the statute is unconstitutional. Yet, after receiving an adverse judgment, American Guaranteed filed an appeal but failed to present any substantive argument for our review regarding the constitutionality of the statute.

{¶15} The trial court's judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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TIM McCORMACK, JUDGE

KATHLEEN ANN KEOUGH, P.J., and  
MELODY J. STEWART, J., CONCUR