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RIGHT OF REDEMPTION FROM TAX FORECLOSURE IN ILLINOIS

INTRODUCTION

The field of tax foreclosure is for the most part confined to a few specialists. Their practice is almost completely limited to representing realtors who wish to obtain tax-laden land, and other private owners who wish to free their land from liens for back taxes in order that it may become productive. This is necessarily so because of the strict statutory character of a tax foreclosure. However, one facet of foreclosure law which may and usually does arise in the business of a general practitioner is the redemption from tax foreclosure sales. Because the action is in rem and service by publication is allowed,¹ it can and often does happen that an owner is not aware of the foreclosure until after the sale and the confirmation of the sale. At that time, the owner possesses the right of redemption.²

In the consideration of the right of redemption, this comment will discuss four general topics. The first will be the statutory provisions applicable to the right of redemption; the second will be the consequences of a tax foreclosure sale; the third will be the question of who may redeem; and the fourth will be a consideration of the problems surrounding the actual process of redemption and the effects thereafter. After reviewing these subjects, an attempt will be made to evaluate the protection afforded a property owner against an unjust deprivation of his property as balanced against the ability of the state to enforce the payment of real estate taxes by foreclosure.

STATUTORY PROVISIONS

The primary basis for redemption from the sale of land for the non-payment of taxes is the Illinois Constitution,³ which provides in part as follows:

The right of redemption from all sales of real estate for the non-payment of taxes . . . shall exist in favor of owners or persons interested . . . for a period of not less than two years from such sales. . . .⁴

¹ Ill. Const. Art. IX, § 5.

² Ill. Rev. Stat. (1953) c. 120, § 734. This section applies to annual tax sales and while the clause prohibiting bids of more than 25% penalty is inapplicable, the rest of the provisions are controlling as to foreclosure sales. Cf., *Clark v. Zaleski*, 253 Ill. 63, 97 N.E. 272 (1912).

³ Ill. Const. Art. IX, § 5.

⁴ *Ibid.*

It is to be noted that this section says *not less than two years* and it has been held that there is no restriction as to extending the time.⁵ Nevertheless, the supreme court has said that the above section cannot be interfered with by the legislature.⁶

The section in the Illinois Statutes which more fully sets out the rights and conditions surrounding the right of redemption is Section 253 of the *Revenue Act of 1939*.⁷ This statute provides that a person can redeem any time within a two year period from the date of sale of any property sold for the non-payment of taxes. In *Lawton v. Sweitzer*,⁸ the court held that in construing this section, the interest of the land owner must be protected and the statute must be given a liberal interpretation. However, it also has been said that the circuit court is not empowered to allow redemption according to its conception of equitable principles.⁹ This leads to the conclusion that a property owner's interest are to be protected in every possible manner within the confines of the statute.

The same section also provides for redemption after the two year period as follows: "Such real property may also be redeemed after the expiration of two years from the date of sale, at any time up to the date a tax deed is issued. . . ."¹⁰ As to this clause of the statute, it was held that it was completely within the right of the legislature to make this extension of the period of redemption because it only affected a remedial right.¹¹

The Illinois State Constitution says that notice must be served upon owner or parties interested, of the time of the expiration of the period of redemption.¹² It also requires personal service upon occupants before the time of redemption expires.¹³ This requirement is very strictly construed and the absence of such service, where necessary, may be fatal to the tax deed issued. In *Palmer v. Riddle*,¹⁴ it was held that unless the person in whose name the land was taxed or the owners or parties interested are served with notice of the expiration of the period of redemption and an affidavit thereto is filed, a tax deed issued under these circumstances is

⁵ *Elmhurst State Bank v. Stone*, 346 Ill. 157, 178 N.E. 362 (1931).

⁶ *People v. Thain*, 392 Ill. 592, 65 N.E. 2d 344 (1946); *Clark v. Zaleski*, 253 Ill. 63, 97 N.E. 272 (1912).

⁷ Ill. Rev. Stat. (1953) c. 120, § 734.

⁸ 354 Ill. 620, 188 N.E. 811 (1934).

⁹ *Depuy v. Morse*, 337 Ill. App. 1, 85 N.E. 2d 187 (1949).

¹⁰ Ill. Rev. Stat. (1953) c. 120, § 734.

¹¹ *In re Argyle-Lake Shore Bldg. Corp.*, 78 F. 2d 491 (C.A. 2d, 1935).

¹² Ill. Const. Art. IX, § 5.

¹³ *Ibid.*

¹⁴ 180 Ill. 461, 54 N.E. 227 (1899).

unauthorized. It also has been decided that if no notice is given of the expiration of the period of redemption from a tax sale to the owner, the tax deed is inoperative and can be set aside on equitable principles as determined by the court.¹⁵

There are other statutory provisions which concern certain facets of the right of redemption which will be considered later in their proper place. From those sections heretofore reviewed, it can be easily seen that the constitutional framers, the legislatures, and the courts, are constantly striving to preserve the rights of the property owner against unjust taking of his property. As a result, prospective bidders are discouraged and the delinquent taxes on vacant property continues to increase. At this point, the bidder has his bid and interest, but he does not have the land nor his time expended in the foreclosure, or the money spent on title charges and attorneys' fees. Still, parcels of real estate are foreclosed each month throughout the state and the effect of a sale of such forfeited property will now be considered.

EFFECT OF A TAX FORECLOSURE SALE

The Illinois State Constitution authorizes the sale of property for the non-payment of general real estate taxes or special assessments.¹⁶ It is not the purpose of this comment to consider the statutory provisions authorizing and regulating such sale. However, it is important here to consider the effect of the sale and the interest of the parties involved. The interest of the parties determines some of the rights when a redemption is attempted.

*French v. Toman*¹⁷ is a very important case in the field of tax foreclosure redemption and defines some of the principles surrounding the sale. It is declared therein that it was never intended that the foreclosure be for the full amount of the lien. This is a very elementary fact, for the whole idea of foreclosure is the realization of part of the debt because of the inability or the unwillingness of the debtor to pay in full. It would hardly be the intent of the constitutional framers that a foreclosure should be invalid because the full amount of the lien is not realized. It is said as a

¹⁵ *Gage v. Bailey*, 115 Ill. 646, 4 N.E. 777 (1886) (Here the court set the tax deed aside because the owner, in an honest mistake, deposited before the expiration of the period of redemption an amount insufficient for such redemption).

¹⁶ Ill. Const. Art. IX, § 4. "The general assembly shall provide in all cases where it may be necessary to sell real estate for the non-payment of general taxes or special assessments. . . ."

¹⁷ 375 Ill. 389, 31 N.E. 2d 801 (1940) (This case will be considered later because it involves an attempt to restrain the County Treasurer from collecting the amount of taxes between the amount found due and the bid at the sale, after a redemption).

corollary to the above statement that a purchaser shall not be required to pay any lien or encumbrance above the amount of his bid because the sale is made in full satisfaction of all previous liens. This, of course, refers only to tax liens on the property. The theory behind these statements is that the cause of action is merged in the foreclosure and all rights and liabilities are transferred to the decree of foreclosure which becomes the basis of the purchaser's title if no redemption is made.

The purchaser at a tax foreclosure sale acquires no interest in the title to the land.¹⁸ What is acquired is an alternate right to receive the redemption money which might be paid by a redeemer, or in case no such redemption should be made within the statutory period, to receive a deed. An owner, however, who has a redemption right, possesses a property right which is an asset for the purpose of bankruptcy.¹⁹ However, this right of redemption is not an estate subject to being sold on execution.²⁰ Also, it has been said that after a foreclosure sale, the owner of the equity of redemption has precisely the same interest that he had prior to the decree of foreclosure.²¹ If there is a dispute between a creditor who wishes to redeem and a purchaser at the foreclosure sale, such dispute does not involve a freehold.²² Thus, no direct appeal to the Supreme Court is allowed. The title is still in the owner until the issuance of a deed. Certificates of purchases which are the evidence of the interest of a tax foreclosure purchaser are assignable by endorsement and the assignment vests in the assignee all of the right and title of the original purchaser.²³

It was stated above that the tax foreclosure purchaser has the right either to receive the redemption money, or in the event of no redemption to receive a deed at the end of the statutory period. If the purchaser takes no deed within the statutory period of limitation,²⁴ the certificate becomes void and the original owner has absolute title, not by any new title, but by the title which he always had.²⁵

At this point, there is the purchaser on one side with his alternative

¹⁸ *Sutherland v. Long*, 273 Ill. 309, 112 N.E. 660 (1916).

¹⁹ *In re Argyle-Lake Shore Bldg. Corp.*, 78 F. 2d 491 (C.A. 2d, 1935).

²⁰ *Johnson v. Zahn*, 380 Ill. 320, 44 N.E. 2d 15 (1942); *Hill v. Blackwelder*, 113 Ill. 283 (1885).

²¹ *Aetna Life Ins. Co. v. Beckman*, 210 Ill. 394, 71 N.E. 452 (1904).

²² *Taylorville Loan Ass'n v. McBride*, 369 Ill. 544, 17 N.E. 2d 221 (1938).

²³ *Dupuy v. Morse*, 337 Ill. App. 1, 85 N.E. 2d 187 (1949).

²⁴ Ill. Rev. Stat. (1953) c. 120 § 752.

²⁵ *Miller v. Bullington*, 381 Ill. 238, 44 N.E. 2d 850 (1942); *Sutherland v. Long*, 273 Ill. 309, 112 N.E. 660 (1916); *Lightcap v. Bradley*, 186 Ill. 510, 58 N.E. 221 (1900).

right to redemption money or a deed and the owner on the other with his right of redemption. However, this does not exclude other parties because the constitution says that the right of redemption belongs to owners and interested parties²⁶ and this has come to include many persons.

PARTIES ENTITLED TO REDEEM

The Supreme Court of Illinois in considering the problem of who can redeem from a foreclosure has continually cited cases involving mortgage foreclosures wherein a redemption from a tax foreclosure is at issue and vice versa.²⁷ The wording is different in each statute but not such that a different result would follow given an identical set of facts.²⁸ Both are general, leaving to the discretion of the courts the matter of deciding according to the circumstances. Whatever the reason for this intermingling of cases, there can be little objection to it. As a practical matter, there is little conflict of priorities of interest in a tax foreclosure redemption because the vast majority of land foreclosed for taxes is vacant, thus eliminating such things as mechanics' liens. Since, there has been little pronouncement as to who may redeem from a tax foreclosure, these mortgage cases may be used analogously.

The owner of the equity of redemption has the right to redeem after foreclosure sale, but no legal obligation rests upon the holder of this right to make such a redemption and he cannot be compelled to redeem.²⁹ Any person "interested" in the real estate may redeem from a tax foreclosure sale.³⁰ A woman having an inchoate right of dower was held to be a person "interested" and entitled to redeem.³¹ A party may have a right to redeem from a foreclosure sale both as a party interested in the premises and as a judgment creditor.³²

²⁶ Ill. Const. Art. IX, § 5.

²⁷ *People v. Anderson*, 380 Ill. 158, 43 N.E. 2d 997 (1942); *French v. Toman*, 375 Ill. 389, 31 N.E. 2d 801 (1940); *Chicago Title & Trust Co. v. Wolchinosky*, 326 Ill. App. 194, 61 N.E. 2d 264 (1945).

²⁸ Ill. Rev. Stat. (1953) c. 77, § 18. This section referring to redemption by defendants in a mortgage foreclosure enumerates "any defendant, his heirs, executors, administrators, assigns, or any person interested in the premises..." There is no mention of persons entitled to redeem from tax foreclosure sales in either § 697 or § 734 of c. 120; and Art. IX, § 5 of the Ill. Const. says only that those who possess the right of redemption from tax sales are "... owners and persons interested..." The narrower of the two, if there is any difference, would be the redemptioner from a mortgage foreclosure because of the general construction rule of exclusion by enumeration.

²⁹ *Morgan v. Clayton*, 61 Ill. 35 (1871).

³⁰ *In re Argyle-Lake Shore Bldg. Corp.*, 78 F. 2d 491 (C.A. 7th, 1935).

³¹ *Bigness v. Hibbard*, 267 Ill. 301, 108 N.E. 294 (1915).

³² *Heinroth v. Frost*, 250 Ill. 102, 95 N.E. 65 (1911).

Section 253 of the *Revenue Act of 1939* which is the redemption section, states:

Tenants in common or joint tenants shall be allowed to redeem their individual interest in real property sold under the provisions of this Act, in the same manner and under the terms specified in this section for the redemption of other real property. . . .³³

In *Lomax v. Gindele*,³⁴ where a tenant-in-common redeemed the entire premises, the redemption was held to inure to the benefit also, of his co-tenant upon the condition that the co-tenant pay the one redeeming one-half of the cost of redemption.

Section 253, in its final clause, states that any redemption inures to the benefit of the owner subject to reimbursement by the property owner of the party redeeming.³⁵ The supreme court has held that an agent who obtains an assignment from the holder of the certificate of purchase affects a valid redemption on behalf of his principal, the property owner, even though he reassigned the certificate to the original holder, under the mistaken belief that he, as a stranger to the title, could not accomplish a redemption.³⁶

In *Zeman v. Ward*,³⁷ the Illinois Supreme Court held that the heirs of a person whose land had been sold on a decree of foreclosure have a right to redeem. A mortgagee of land sold for unpaid taxes may redeem or may even file a bill in equity to set aside a defective tax deed.³⁸ A mortgagee can redeem by getting an assignment of the certificate of purchase from a stranger but he may not set a tax title up against the mortgagor by having a nominee bid at a tax foreclosure sale and then get the assignment.³⁹ If a mortgagor tells a mortgagee that a tax foreclosure was a mistake and will be cancelled, the mortgagee can have the period of redemption extended when the sale is never vacated.⁴⁰

The owner of the equity of redemption has a right to confess judgment to a bona fide indebtedness for the purpose of enabling a creditor to re-

³³ Ill. Rev. Stat. (1953) c. 120, § 734.

³⁴ 117 Ill. 527, 7 N.E. 483 (1886) (herein, a tenant-in-common agreed with certificate of purchase holder to let the latter take a deed and convey the land to such tenant-in-common. The court held this was a redemption for the benefit of both tenants-in-common).

³⁵ Ill. Rev. Stat. (1953) c. 120, § 734.

³⁶ *Houston v. Buer*, 117 Ill. 324, 7 N.E. 646 (1886).

³⁷ 260 Ill. 93, 102 N.E. 1066 (1913).

³⁸ *Glos v. Evanston Building Association*, 186 Ill. 586, 58 N.E. 374 (1900).

³⁹ *Stinson v. Connecticut Life Ins. Co.*, 174 Ill. 125, 51 N.E. 193 (1898).

⁴⁰ *Glos v. Evanston Building Association*, 186 Ill. 586, 58 N.E. 374 (1900).

deem.⁴¹ The right of redemption includes creditors of a deceased debtor whose land was sold on foreclosure, with claims for the debtor's funeral expenses if the claim is duly probated and allowed against the estate.⁴² A judgment creditor of a person who purchased an equity of redemption from the holder after the foreclosure sale but before the expiration of the period of redemption may redeem the premises.⁴³ Even though a judgment has been discharged in bankruptcy, a judgment creditor can redeem.⁴⁴ The representative collection of cases just noted points to the conclusion that the law is very eager to accomplish a redemption and explains the difficulty of obtaining a tax deed. With this difficulty, it is surprising that there are any adverse foreclosures attempted. For one who does seek to obtain land through bidding at a tax foreclosure sale, redemption may come from most any direction. The effects of such a redemption concern both the holder of the certificate of purchase and the redeemer.

EFFECTS OF REDEMPTIONS

As stated above, an owner has an election to redeem or not.⁴⁵ Under ordinary circumstances, this cannot be accomplished beyond the statutory two year period.⁴⁶ This has been interpreted to mean that when the act is required to be performed within a specified time from a day named, one excludes the day from which the time commences to run and includes the last day on which the act is to be done.⁴⁷ Thus, in case of a sale on one date of a given year and a redemption period of two years, the redeemer has until the same date two years hence to redeem.

The doctrine of laches has been invoked where a land owner alleged after eleven years that he failed to redeem because of an agreement with the purchaser at the sale to buy his interest.⁴⁸

When there is an attempted redemption, there is no immediate loss of rights by the certificate holder.⁴⁹ Such holder retains an unextinguished certificate and unaltered interest in the land until he actually accepts the redemption price or until valid redemption proceedings are completed. One who redeems must pay the amount of the bid plus penalties and in-

⁴¹ *Kufke v. Blume*, 304 Ill. 288, 136 N.E. 678 (1922).

⁴² *Zeman v. Ward*, 260 Ill. 93, 102 N.E. 1066 (1913).

⁴³ *Aetna Life Ins. Co. v. Beckman*, 210 Ill. 394, 71 N.E. 452 (1904).

⁴⁴ *Pease v. Ritchie*, 132 Ill. 638, 24 N.E. 433 (1890).

⁴⁵ *Morgan v. Clayton*, 61 Ill. 35 (1871).

⁴⁶ *Finch v. Brown*, 8 Ill. 488 (1846).

⁴⁷ *Roan v. Rohrer*, 72 Ill. 582 (1874).

⁴⁸ *Converse v. Brown*, 200 Ill. 166, 65 N.E. 644 (1902).

⁴⁹ *Sutherland v. Long*, 273 Ill. 309, 112 N.E. 660 (1916).

terest.⁵⁰ If it is shown that part of the taxes included in a foreclosure decree were illegal, the owner should be allowed to redeem from the sale by paying the redemption money allowed by the statute had the foreclosure and sale been for the proper amount of taxes.⁵¹

It was mentioned earlier that a problem arises as to the ability of the county treasurer to revive the lien of taxes foreclosed and to bring what would be a counterpart of a mortgage deficiency action. That is, could an owner who redeems from a tax foreclosure have his land again foreclosed for the difference between the amount found due in the decree of foreclosure and the amount bid at the sale? *French v. Toman*⁵² holds that one who was not the owner when the foreclosed taxes were assessed and therefore is not personally liable for such taxes, is not subject to a suit to collect the unsatisfied balance. The theory of this case is that the decree and sale extinguish the lien. This case excludes mortgagees of the owner or grantees from the owner from liability. However, it may lend weight to the proposition that if the redeemer were personally liable for the taxes, the lien would revive.

*People v. Courtney*⁵³ strengthens this position. That case held that a purchaser, who buys property subject only to the taxes for the current year and, in order to free the property from the tax liens, agrees to submit to a tax foreclosure sale with his nominee as bidder at the sale and then redeems, is not liable with his vendor to see that all taxes are paid or to have his purchase subject to the unpaid balance of the taxes. The court, however, stressed that this would be the result only in the absence of an agreement to suppress bidding or to hinder any interested person from bidding at the sale. It is possible to deduce from this that if there were collusion between the vendor and the vendee, the lien would revive.

*Brown v. Jacobs*⁵⁴ set up the procedure that title companies follow to insure themselves against loss through the revival of lien. It said that equity has jurisdiction to enjoin the collection of taxes not authorized by law, and where no appeal is taken from a decree so enjoining collection and finding all taxes to have been paid in full, such decree cannot be questioned by a defendant in a suit for specific performance.

There is no specific answer to this problem at this time. The Chicago Title and Trust Company no longer requires that an injunction be ob-

⁵⁰ Ill. Rev. Stat. (1953) c. 120, § 734.

⁵¹ *Gage v. Busse*, 102 Ill. 592 (1882) (the amount of the bid is affected by the amount of the tax in that each county board prescribes a minimum bid which is usually based on the amount of tax found due in the decree of foreclosure).

⁵² 375 Ill. 389, 31 N.E. 2d 801 (1940).

⁵³ 380 Ill. 171, 43 N.E. 2d 982 (1942).

⁵⁴ 367 Ill. 545, 12 N.E. 2d 10 (1937).

tained as a condition to the guaranteeing of a title of an owner who has redeemed from a tax foreclosure sale. This may be interpreted as an indication that it is no longer felt that a revival of lien is possible or it merely may mean that this company does not believe that the county treasurer will attempt to revive such lien. Whatever the case may be, it still remains that there is no positive barrier in the way of such proceeding and the owner who redeems from a foreclosure runs the risk of again having his land foreclosed for the same taxes.

Mention should be made of the recent changes in the interest rate to be paid by a redemptioner to a purchaser at a tax foreclosure sale. Until 1953, the rate had been 1% per month for the first six months or fractions thereof and 6% per annum thereafter.⁵⁵ In 1953 the rate was changed to 12% for the first six months, 24% for the second six months, 36% for the third and 48% for the last six months.⁵⁶ The constitutionality of this charge was tested and upheld.⁵⁷ The 1955 legislature again changed the rate by making it 1% per month for the first two months and then 12% for the next four months and then the same rates as the 1953 Amendment as to the period between six and twenty-four months.⁵⁸

CONCLUSION

The undeniable conclusion to be drawn from the foregoing material is that it is a very difficult task to obtain land by bidding at tax foreclosure sales. It is admittedly extremely important that a land owner be protected from unjust deprivation of his property. However, the local governmental units must be able to obtain revenue or they cannot carry on their functions. At the present, if the recent increase of interest on redemption is an accurate indication, the officials are beginning to realize that the interest of bidders must also be considered. With the present widespread development of land in Illinois, tax foreclosure is a valuable process for it is the undeveloped land that clutters the delinquent tax rolls. If a trend is indeed present in favor of easier foreclosures, it will benefit everyone concerned. The state will receive a portion of previously considered unreceivable income, the purchaser may get land he wants and which the owner by not paying the taxes has signified that he does not want, and heretofore valueless property as it is improved will produce more revenue for the state.

⁵⁵ Ill. L. (1943) Vol. I, p. 1085.

⁵⁶ Ill. L. (1953), p. 1637.

⁵⁷ *People v. Lewis*, 5 Ill. 2d 117, 125 N.E. 2d 87 (1955).

⁵⁸ Ill. Sen. 208, 69th Assemb. Reg. Sess. (May 21, 1955).