
Personal Liability of Landowners for Real Estate Taxes in Illinois

DePaul College of Law

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

Recommended Citation

DePaul College of Law, *Personal Liability of Landowners for Real Estate Taxes in Illinois*, 4 DePaul L. Rev. 44 (1954)

Available at: <https://via.library.depaul.edu/law-review/vol4/iss1/4>

This Comments is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.

COMMENTS

PERSONAL LIABILITY OF LANDOWNERS FOR REAL ESTATE TAXES IN ILLINOIS

The collection of taxes has long been both one of the principal occupations and problems of governments. In Illinois, this situation has been complicated by the Illinois Constitution and its policy of not allowing the classification of property for the purposes of taxation.

In regard to taxes on real property, there are two basic ways provided for the enforcement of payment, a proceeding against the property, called the in rem method, and an action against the owner himself, called the in personam method. The in rem method has three principal subdivisions, *viz.*, the tax sale, resulting in a tax deed to the purchaser when the statute is complied with.¹ The merchantability of such a title is open to serious doubt, because of the attitude of the courts in failing to sustain many such titles on highly technical grounds, showing an inclination to strictly construe the act. The second in rem method is the so-called equity foreclosure, a bill brought by the people against the delinquent land resulting in a sale that is similar to the sale in a mortgage foreclosure. A second action is then ordinarily brought by the purchaser at the sale, in the nature of a bill to quiet title, joining the former owners of the land, and resulting in a much better title than that under the tax sale method. If the foreclosure is of the consent type, where the owner consents to the sale of his land, a quit-claim conveyance from the owner or owners may then be substituted for the action to quiet title. In the third method in rem the action is brought under the Scavenger Act,² permitting a simpler variation of the equity foreclosure method, when the tax delinquency is for a longer period of time. The title that is obtained under this method is as good as that obtained under the equity foreclosure method.³

The personal liability of the owner of land for the taxes assessed against it was not provided for at first. The first statute on taxation provided for a tax of one-half of one percent on land, bank stock, and slaves,⁴ this statute being interpreted in an early case to provide only for satisfaction

¹ Ill. Rev. Stat. (1953) c. 120, §§ 739-752.

² Ill. Rev. Stat. (1953) c. 120, § 716A.

³ The provisions that govern the in rem methods that are above mentioned will be found in Ill. Rev. Stat. (1953) c. 120. They are discussed at length in (1952) Ill. Law Forum 209.

⁴ Ill. L. 1819, p. 313.

from the property, and not by any in personam proceeding against the owner of the property.⁵ This taxing of named objects, rather than a general property tax, remained the policy of Illinois until 1839, when a general property tax was first imposed by this state. From this time to the present, Illinois has had a general property tax. The taxing clause of the Constitution of 1848, which would not allow the classification of property for purposes of taxation, has been carried over in spirit to the present Constitution of 1870, thus burdening the state with this form of tax, despite several efforts to change it.

This early view of a strictly in rem method of enforcement of tax claims against real property was changed in the Revenue Act of 1872,⁶ which is still, in substance, the personal liability provision of Illinois law.⁷ The act, in regard to real property, provided that there should be personal liability for both special assessments and for the general taxes against the land. The provision providing for personal liability for special assessments was held to be unconstitutional by the Illinois Supreme Court in the case of *City of East St. Louis v. Illinois State Trust Co.*⁸ The personal liability for real property taxes was thus restricted to the general property tax. The constitutionality of the personal liability section was never considered on its merits by the United States Supreme Court.⁹

In order for the state to obtain a judgment in personam for real property taxes, the law requires that there be a forfeiture of the land for the nonpayment of taxes.¹⁰ This means that there must be a notice to the owner, a judgment for the unpaid taxes, the process required for a sale complied with, and a lack of buyers at the sale.¹¹ The county must prove

⁵ *Edwards v. Beaird*, 1 Ill. 70 (1823).

⁶ Ill. L. 1871-1872, § 230 page 1.

⁷ The present act is compiled as Ill. Rev. Stat. (1953) c. 120, § 756, providing: "The County Board may, at any time, institute suit in a civil action in the name of the People of the State of Illinois in any court of competent jurisdiction for the whole amount due for taxes and special assessments on forfeited property; or any county, city, town, school district or other municipal corporation to which any such tax or special assessment may be due, may, at any time, institute a civil action in its own name, before any court of competent jurisdiction, for the amount of such tax or special assessment due any such corporation on forfeited property, and prosecute the same to final judgment. . . ."

⁸ 372 Ill. 120, 22 N.E. 2d 944 (1939). The provision was considered as violative of Ill. Const. Art. IX, § 9 allowing the legislature to vest municipal corporate authorities with power to make local improvements by special assessment. The court interpreted this provision to forbid the imposition of personal liability for special assessments by the legislature.

⁹ In the only case before the United States Supreme Court on the question of personal liability the Court did not consider the question on its merits because the federal constitutional question was not presented in the state court. *Harding v. Illinois*, 196 U.S. 78 (1904).

¹⁰ Ill. Rev. Stat. (1953) c. 120, § 756. ¹¹ *Vetter v. People*, 3 Ill. App. 385 (1879).

that all these steps for forfeiture were taken to lay the foundation for the in personam action.¹² As to the notice required, the Illinois Constitution requires notice to be given owners and interested parties by publication, informing them of the time the period of redemption shall expire.¹³ Personal notice must be given to occupants of the land in question before the period of redemption shall expire. The judgment against the property for the tax is essential to the constitutionality of the proceeding.¹⁴

The action in personam against the land owner is similar to an ordinary civil action, in that the defendant is entitled to personal service of process.¹⁵ The suit is a civil action in the nature of debt,¹⁶ and an ordinary personal judgment results from the proceeding against the owner of the land at the time of the assessment.¹⁷ There must be an allegation from which an averment of ownership at the time of forfeiture can be reasonably inferred, stating the year for which the tax is levied, and alleging that the defendant is the owner on the assessment date in that year.¹⁸

As the statute requires the action to be brought in a court of competent jurisdiction, the authorization of this section of a suit by the county board will not operate to enlarge the jurisdiction of the Municipal Court of Chicago, the Municipal Court Act controlling the jurisdiction of that Court.¹⁹

Although the section of the statute is silent against whom the action is to be brought, a clear inference is that the action is to be brought against the person personally liable under the statute to pay the tax for which the property was forfeited.²⁰

The defenses available and the effect of a judgment that is obtained in this proceeding further reflect its ordinary character. The invalidity of the levy is available to the defendant as a defense to the action.²¹ The lien of the judgment obtained in this proceeding is not superior to prior liens on the land, such as a prior mortgage,²² and in this respect the in personam

¹² *Scott v. People*, 2 Ill. App. 642 (1878).

¹³ Ill. Const. Art. IX, § 5.

¹⁴ Ill. Const. Art. IX, § 4; *Biggins v. People*, 106 Ill. 270 (1883).

¹⁵ *Griffin v. Cook County*, 369 Ill. 380, 16 N.E. 2d 906 (1938).

¹⁶ *People v. St. Louis Merchant's Bridge Co.*, 282 Ill. 408, 118 N.E. 733 (1918).

¹⁷ *Greenwood v. Town of La Salle*, 137 Ill. 225, 26 N.E. 1089 (1891); *Byrne v. Town of La Salle*, 123 Ill. 581, 14 N.E. 679 (1888). The time of the assessment is April 1 of the tax year, the year before the tax is actually paid.

¹⁸ *Bowman v. People*, 114 Ill. 474, 2 N.E. 484 (1885); *Biggins v. People*, 96 Ill. 381 (1880); *People v. Winkelman*, 95 Ill. 412 (1880).

¹⁹ *People v. Dummer*, 274 Ill. 637, 113 N.E. 934 (1916).

²⁰ *Biggins v. People*, 96 Ill. 381 (1880).

²¹ *Griffin v. Cook County*, 369 Ill. 380, 16 N.E. 2d 906 (1938).

²² *Kepley v. Jansen*, 107 Ill. 79 (1883). The judgment against the defendant in this case was for taxes on land other than that subject to the mortgage.

judgment for the taxes differs from the in rem enforcement.²³ The statutory requirement²⁴ that execution be taken out within one year applies to this judgment, in order to make it a lien on the land of the defendant, good against a subsequent purchaser of the land.²⁵ A claim of a homestead right is good as a prior claim against a judgment in personam for taxes, even if the taxes are due on the same land out of which the homestead claim is made.²⁶ The in personam enforcement of a real estate tax is a concurrent remedy with the more usual enforcement against the land; only a satisfaction of the debt in another proceeding will bar the personal claim.²⁷ Although the county board is empowered by the statute to commence the action,²⁸ the board need not expressly authorize each action against the delinquent taxpayer.²⁹ In the absence of fraud, the overvaluation of the property by the assessor is not a defense to the action in personam against the landowner.³⁰ But when the land on which the taxes sought to be collected in a personal action has been adjudged exempt, in a prior proceeding, from taxes, this is a bar to the personal action.³¹ Also, an individual taxing unit within the county may institute an action for the amount of the tax that is due it, without any action by the county board, but only the county board may bring an action for the entire amount due.³² While a school district may bring an in personam action for the amount of the tax due it, the trustees of schools of a township may not maintain such an action, as they are not included in the statute, as the statute relating to personal liability for real estate taxes³³ provides the exclusive method of enforcing such personal liability.³⁴ The school district itself could, however, bring the action in its own name.³⁵ For the same reason that the

²³ The lien of taxes on land takes precedence over prior encumbrances, *Jader v. Costello*, 405 Ill. 181, 89 N.E. 2d 814 (1950); *Murch v. Epley*, 385 Ill. 138, 52 N.E. 2d 125 (1944).

²⁴ Ill. Rev. Stat. (1953) c. 77, § 1: ". . . When execution is not issued on a judgment within one year from the time the same becomes a lien, it shall thereafter cease to be a lien. . . ."

²⁵ *Smith v. Toman*, 368 Ill. 414, 14 N.E. 2d 478 (1938). The judgment that was sought to be claimed as a lien on the land was for the nonpayment of personal property taxes in this case, but the effect would be the same if it were for taxes on real property.

²⁶ *Douthett v. Winter*, 108 Ill. 330 (1884).

²⁷ *People v. Davis*, 112 Ill. 272 (1884). ²⁸ Ill. Rev. Stat. (1953) c. 120, § 756.

²⁹ *People v. Kimmel*, 323 Ill. 261, 154 N.E. 97 (1926).

³⁰ *Ibid.*; *People v. Hibernian Banking Association*, 245 Ill. 522, 92 N.E. 305 (1910).

³¹ *Elmwood Cemetery Company v. People*, 204 Ill. 468, 68 N.E. 500 (1903). The land was held exempt in this case as a graveyard.

³² *Ward v. City of Alton*, 23 Ill. App. 475 (1887).

³³ Ill. Rev. Stat. (1953) c. 120, § 756.

³⁴ *School District No. 88 v. Kooper*, 380 Ill. 68, 43 N.E. 2d 542 (1942).

³⁵ *School District No. 88 v. Holland*, 384 Ill. 277, 51 N.E. 2d 266 (1943).

trustees of the township schools could not bring the action, the board of education of a school district was not allowed to maintain a similar action for the amount of taxes on forfeited land due to it.³⁶

When a personal judgment has been obtained against the owner of the land, it is then too late for the owner to start, or have started, any other proceeding against the land itself, so as to defeat the personal liability of said owner on the personal judgment that has been rendered against him. As was held in the case of *Byrne v. Town of La Salle*,³⁷ after a judgment has been rendered against the property owner individually, he cannot then commence any proceeding to relieve himself of liability by having the tax satisfied out of the land. Thus the use of the in personam judgment for taxes has the advantage of not allowing the property owner to reduce the amount of the tax he actually pays by the device of a tax foreclosure later.

The formality required of the in personam action is not as extreme as that required to enforce the claim against the land. Even irregularities that would be admittedly fatal to a tax deed to the land have been held not to be fatal to a judgment in personam for the amount of the taxes.³⁸ Part of the more liberal attitude may be attributed to the fact that the defendant does receive personal notice of the action, and thus the opportunity, more surely, to defend the action for the taxes.

As the cases for the enforcement of the liability for real property taxes against the owner of the land by an in personam proceeding indicate, recent action along this line has not been common. The increased number of personal judgments obtained against owners of land on which taxes are delinquent has advantages which would seem to recommend its increased use. One of the principal advantages to its use would be in giving the state a method of making unpaid taxes on one parcel of land owned by a person, a lien on other land the person may own, by having the judgment against him made a lien on the other land, thus hampering the owner in dealing with the other, and possibly more desirable land that he owns until the taxes and penalties on the delinquent parcel are paid. Spreading the lien to more property would have the effect of forcing a quicker settlement of delinquent taxes on land, and should result in more revenue to the taxing bodies.

The increased use of the personal judgment against tax delinquent

³⁶ *Board of Education of District 88 of Cook County v. Home Real Estate Improvement Corporation*, 378 Ill. 298, 38 N.E. 2d 17 (1941). The court reasons that as this is a statutory proceeding, the right to sue is vested in "school districts or other municipal corporations," not in boards of education.

³⁷ 123 Ill. 581, 14 N.E. 679 (1888). The proceeding was attempted to be started under *Smith Hurd Stat. c. 120, § 189*, now codified as *Ill. Rev. Stat. (1953) c. 120, § 727*.

³⁸ *Greenwood v. Town of La Salle*, 137 Ill. 225, 26 N.E. 1089 (1891); *Sanderson v. Town of La Salle*, 117 Ill. 171, 7 N.E. 114 (1886).

landowners would also discourage the practice in some cases of allowing the taxes to run on land that is not likely to be sold for lack of buyers at the tax sale, in the hope of a settlement at a later time, through a consent foreclosure proceeding, for a smaller amount than the taxes due. If the lien were placed on the owner, as well as on the land, the loss through this process to the state might be lessened. The threat of a personal action for the payment of the unpaid real estate taxes should increase the number that are paid, especially on vacant land in undeveloped areas, the principal class of land on which it has been found profitable in some instances to allow the taxes to accrue.

While the use of the personal method of the enforcement of a tax claim will hardly end all nonpayment of taxes, it may possibly act as some deterrent to the most flagrant violators of the tax law, those who look at it as a speculation, hoping to, in effect, discount their property tax by allowing it to accrue, and by means of a friendly foreclosure proceeding, aided by the highly technical process to obtain a merchantable title to land without the consent of the former owner, reduce the amount of tax they pay. The in personam method of enforcement may be of some aid in acting as a deterrent to this.

ADMISSIBILITY OF PAROL EVIDENCE TO SHOW NON-DONATIVE INTENT IN JOINT BANK ACCOUNTS

The problem of admissibility of parol evidence has been discussed by many courts in the past with seemingly basic disagreements in regard to the special situation where the evidence is submitted to dispute the existence of a joint bank account.

The factual situation prevalent in most of these instances has one depositor, called a donor, supplying the funds and executing a joint bank account with another, called a donee-survivor. Both parties sign an agreement appearing on a signature card at the time of opening the account whereby they agree with the bank that either party or the survivor is entitled to draw funds from the account with the account being the joint property of the two depositors, and finally, the sole property of the survivor upon the death of one of the joint owners. There is no dispute when the donor-depositor is the survivor, since the funds were originally his, but a dispute often arises between the donee-survivor and the executor of the donor's estate upon the death of the donor-depositor as to whether the intent was to open up a joint account with survivorship rights, or whether the intent was for some other reason, such as convenience.

The disagreement among the states, therefore, takes the form of whether parol evidence may be allowed to show this other intention or whether the agreement on the signature card is conclusive evidence of the inten-