IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 26, 2016 Session

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY v. OWNERS OF PROPERTY WITH DELINQUENT DEMOLITION LIENS FILED WITH THE REGISTER OF DEED'S OFFICE IN DAVIDSON COUNTY, TENNESSEE, ET AL.

Appeal from the Chancery Court for Davidson County
No. 140442II Carol L. McCoy, Chancellor

No. M2015-00318-COA-R3-CV – Filed April 6, 2016

This appeal arises from a dispute over the meaning of the term "owner" as it relates to Tenn. Code Ann. § 13-21-103, part of the Slum Clearance and Redevelopment Act ("the Act"). The Metropolitan Government of Nashville and Davidson County ("Metro") sued various defendants in the Chancery Court for Davidson County ("the Trial Court") to recover costs associated with the demolition of certain property in Nashville. Regions Bank ("Regions"), the mortgagee of record and a defendant in the case, argues that while it is an owner under other sections of Tenn. Code Ann. § 13-21-103, it is not an owner under the statute as relates to demolition costs and thus is not liable for Metro's demolition costs. The Trial Court granted Regions' motion for judgment on the pleadings, thereby dismissing Metro's lawsuit. Metro appeals to this Court. We hold that under Tenn. Code Ann. § 13-21-101, "owner" is defined explicitly to include mortgagees of record, that the language is unambiguous, and that the Trial Court erred in dismissing Metro's lawsuit. We reverse the judgment of the Trial Court and remand this case to the Trial Court for further proceedings consistent with this Opinion.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed; Case Remanded

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which ANDY D. BENNETT, J., joined. W. NEAL MCBRAYER, J., filed a dissenting opinion.

The Department of Law of the Metropolitan Government of Nashville and Davidson County, Saul Solomon, Jon Cooper, Lora Barkenbus Fox, and Catherine J. Pham, for the appellant, the Metropolitan Government of Nashville and Davidson County.

Marshall L. Hix, Frank H. Reeves, and Elise C. Hofer, Nashville, Tennessee, for the appellee, Regions Bank.

OPINION

Background

Regions entered into a deed of trust with Rebecca V. Richardson and John D. Richardson for property located at 192 Haynes Park Drive in Davidson County in 2007. In December 2010, Regions entered into a second deed of trust for 192 Haynes Park Drive, this time only with Rebecca V. Richardson. Metro eventually demolished the structure at 192 Haynes Park Drive pursuant to Tenn. Code Ann. § 13-21-101 *et seq.*, the Slum Clearance and Redevelopment Act, and recorded a lien for the demolition costs.

In March 2014, Metro filed the present suit against Regions and other defendants for collection of demolition costs. Regions, in its answer, denied that it was an "owner" for purposes of the portion of the statute related to Metro's recovering its demolition costs. In June 2014, Metro filed a motion for judgment on the pleadings. In July 2014, the Trial Court denied Metro's motion. The Trial Court found that "Tenn. Code Ann. § 13-21-103(6) is intended to apply to those with a direct interest in the property, such as the owner in fee simple, or the title owner," and "is not intended to apply to those with an indirect interest, such as a mortgagee of record [like Regions] . . . ."

In August 2014, Metro filed a motion to alter or amend and for summary judgment, arguing that the Trial Court erred in interpreting the statutory definition of owner. Regions then filed its own motion for judgment on the pleadings. In December 2014, the Trial Court heard both parties' motions. In its January 2015 final order, the Trial Court denied Metro's motion to alter or amend and for summary judgment and granted Regions' motion for judgment on the pleadings. Metro timely filed an appeal to this Court.

Discussion

We restate and consolidate the issues raised by Metro on appeal as follows: whether the Trial Court erred in holding that, under Tenn. Code Ann. § 13-21-101 and specifically as it regards demolition costs under Tenn. Code Ann. § 13-21-103(6), mortgagees of record are not "owners" for purposes of liability on demolition costs, and whether, consequently, the Trial Court erred in granting Regions' motion for judgment on the pleadings.

Regions argues in one subpart of its brief that assessing demolition costs against it would violate its substantive due process rights. Regions did not raise this as a separate issue on appeal. The Trial Court did not rely on the constitutional argument in rendering its final judgment and instead resolved the matter by agreeing with Regions' statutory construction as to what constitutes an owner for purposes of assessing demolition costs. Finally, the Tennessee Attorney General filed a notice with this Court of its intent not to file a brief in this matter at this time, noting that the constitutional argument is a conditional one and would be justiciable only should we reverse the Trial Court's judgment. Considering all of these circumstances in light of our decision as to the statutory construction issue and resulting remand, we decline to address the constitutionality of Tenn. Code Ann. § 13-21-103(6) and instead confine our appellate review to the statutory construction issue which was properly raised before this Court.

"[A] motion for judgment on the pleadings is 'in effect a motion to dismiss for failure to state a claim upon which relief can be granted.'" *King v. Betts*, 354 S.W.3d 691, 709 (Tenn. 2011) (citations omitted). Our Supreme Court has instructed:

> In reviewing a trial court's ruling on a motion for judgment on the pleadings, we must accept as true "all well-pleaded facts and all reasonable inferences drawn therefrom" alleged by the party opposing the motion. *McClenahan v. Cooley*, 806 S.W.2d 767, 769 (Tenn. 1991). In addition, "[c]onclusions of law are not admitted nor should judgment on the pleadings be granted unless the moving party is clearly entitled to judgment." *Id*.

Cherokee Country Club, Inc. v. City of Knoxville, 152 S.W.3d 466, 470 (Tenn. 2004).

Statutory construction is a question of law and our review is *de novo*. *Hayes v. Gibson Cnty.*, 288 S.W.3d 334, 337 (Tenn. 2009). Our Supreme Court has instructed:

> When dealing with statutory interpretation, well-defined precepts apply. Our primary objective is to carry out legislative intent without broadening or restricting the statute beyond its intended scope. *Houghton v. Aramark Educ. Res., Inc.*, 90 S.W.3d 676, 678 (Tenn. 2002). In construing legislative enactments, we presume that every word in a statute has meaning and purpose and should be given full effect if the obvious intention of the General Assembly is not violated by so doing. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). When a statute is clear, we apply the plain meaning without complicating the task. *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). Our obligation is

> simply to enforce the written language. *Abels ex rel. Hunt v. Genie Indus., Inc*., 202 S.W.3d 99, 102 (Tenn. 2006). It is only when a statute is ambiguous that we may reference the broader statutory scheme, the history of the legislation, or other sources. *Parks v. Tenn. Mun. League Risk Mgmt. Pool*, 974 S.W.2d 677, 679 (Tenn. 1998).

Lind v. Beaman Dodge, Inc., 356 S.W.3d 889, 895 (Tenn. 2011).

This appeal involves the Slum Clearance and Redevelopment Act. Under the Act, "unless the context otherwise requires," an owner "means the holder of the title in fee simple and every mortgagee of record." Tenn. Code Ann. § 13-21-101(4) (2011). Regarding liability for demolition costs, the Act provides as follows:

> Upon the adoption of an ordinance finding that conditions of the character described in § 13-21-102 exist within a municipality, the governing body of the municipality is hereby authorized to adopt ordinances relating to the structures within the municipality which are unfit for human occupation or use. Such ordinances shall include the following provisions, that:
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> (1) A public officer be designated or appointed to exercise the powers prescribed by the ordinances;
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> (2) Whenever a petition is filed with the public officer by a public authority or by at least five (5) residents of the municipality charging that any structure is unfit for human occupation or use, or whenever it appears to the public officer, on the public officer's own motion, that any structure is unfit for occupation or use, the public officer shall, if the public officer's preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest of such structure, a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer, or the public officer's designated agent, at a place therein fixed, not less than ten (10) days nor more than thirty (30) days after the serving of the complaint, that:
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> (A) The owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and
>
> (B) The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer;

(3) If, after such notice and hearing, the public officer determines that the structure under consideration is unfit for human occupation or use, the public officer shall state in writing the public officer's findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order:

(A) If the repair, alteration or improvement of the structure can be made at a reasonable cost in relation to the value of the structure (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to repair, alter or improve such structure to render it fit for human occupation or use or to vacate and close the structure as a place of human occupation or use; or

(B) If the repair, alteration or improvement of the structure cannot be made at a reasonable cost in relation to the value of the structure (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to remove or demolish such structure;

(4) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the structure, the public officer may cause such structure to be repaired, altered or improved, or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any structure so closed, a placard with the following words: "This building is unfit for human occupation or use. The use or occupation of this building for human occupation or use is prohibited and unlawful";

(5) If the owner fails to comply with an order to remove or demolish the structure, the public officer may cause such structure to be removed or demolished; and

(6) The amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer, as well as reasonable fees for registration, inspections and professional evaluations of the property, shall be assessed against the owner of the property, and shall, upon the certification of the sum owed being presented to the municipal tax collector, be a lien on the property in favor of the municipality, second only to liens of the state, county and municipality for taxes, any lien of the municipality for special assessments, and any valid lien, right or interest in such property duly recorded or duly perfected by

> filing, prior to the filing of such notice. These costs shall be collected by the municipal tax collector or county trustee at the same time and in the same manner as property taxes are collected. If the owner fails to pay the costs, they may be collected at the same time and in the same manner as delinquent property taxes are collected and shall be subject to the same penalty and interest as delinquent property taxes as set forth in §§ 67-5-2010 and 67-5-2410. In addition, the municipality may collect the costs assessed against the owner through an action for debt filed in any court of competent jurisdiction. The municipality may bring one (1) action for debt against more than one (1) or all of the owners of properties against whom the costs have been assessed, and the fact that multiple owners have been joined in one (1) action shall not be considered by the court as a misjoinder of parties. If the structure is removed or demolished by the public officer, the public officer shall sell the materials of such structure and shall credit the proceeds of such sale against the cost of the removal or demolition, and any balance remaining shall be deposited in the chancery court by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the person found to be entitled thereto by final order or decree of such court. Nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

Tenn. Code Ann. § 13-21-103 (2011).

Initially, we observe that a straightforward reading of the statutory text reflects that, under the Act, the mortgagee of record is indeed an owner. One would be hard-put to arrive at any other conclusion, policy arguments aside. The only possible ambiguity is perhaps found in the caveat "unless the context otherwise requires." Regions appears to concede that "owner" means what it is plainly defined to mean in subsections (2) and (4), but not in (6), as regards demolition costs.

Regions advances several distinct arguments as to why the plain and seemingly unambiguous inclusion of mortgagees of record in the definition of owner under the Act fails to decide the issue. We restate and consolidate Regions' sub-arguments on this issue as follows: (1) that including mortgagees of record as owners for purposes of demolition costs would have the effect of undermining Regions' lien priority in favor of the demolition lien, which is expressly made subordinate under the Act; (2) that interpreting owner to include mortgagees of record would create a conflict with the Property Tax Statutes; and (3), the legislative history does not favor Metro's interpretation. We address these arguments in turn.

With respect to lien priority, Regions is incorrect in asserting that its lien priority would be jeopardized were it assessed demolition costs. The pursuit of demolition costs by Metro in an action for debt under subsection (6) operates separate and apart from any lien claim theory. Metro seeks a personal judgment against Regions to collect demolition costs. This is not the same as seeking to eliminate Regions' lien on the property. There simply is no conflict to be had, as Regions would preserve its lien priority even were it assessed demolition costs as an owner under the Act.

Regarding the Property Tax Statutes, Regions states that property taxes are a personal debt of the property owner and not mortgagee, yet subsection (6) provides that demolition costs are to be collected at the same time and manner as property taxes. Therefore, according to Regions, an irreconcilable conflict arises if the statutory definitions of owners are put at odds. We, however, find no such conflict.

Subsection (6) does provide that demolition costs "shall be collected by the municipal tax collector or county trustee at the same time and in the same manner as the property taxes are collected." The same subsection, however, provides for two separate methods to collect the demolition costs if they are not paid. The first is that the demolition costs "may be collected at the same time and in the same manner as delinquent property taxes are collected and shall be subject to the same penalty and interest as delinquent property taxes as set forth in §§ 67-5-2010 and 67-5-2410." If subsection (6) ended with only this provision for the means of collecting unpaid demolition costs, Regions' argument would be stronger. Such, however, is not the case as subsection (6) provides for a second method for the municipality to collect the unpaid demolition costs. Specifically, the statute further provides: "In addition, the municipality may collect the costs assessed against the owner through an action for debt filed in any court of competent jurisdiction." Given the statutes specific provisions for two separate methods for collecting unpaid demolition costs, including two methods that taken together are not in conflict in any way with the property tax statutes, we find no irreconcilable conflict from following the statutory definition of owner.

Finally, Regions points out that the Slum Clearance and Redevelopment Act was created piecemeal from 1939 onward, not altogether at once, and that there is no evidence that the legislature ever intended for "owner" to include mortgagees of record for purposes of demolition costs. In 1989, "owner" appeared in subsection (6), and priority was given to previously recorded mortgages. This is a puzzling argument from Regions, as our Supreme Court has stated the following: "The rules of statutory construction permit the courts to employ a number of presumptions with regard to the legislative process. The courts may, for example, presume that the General Assembly used every word deliberately and that each word has a specific meaning and purpose."

Lee Medical, Inc. v. Beecher, 312 S.W.3d 515, 527 (Tenn. 2010). Therefore, we must presume the General Assembly knew the definition of owner under the Act and amended the Act with that already in mind. Moreover, the legislative intent behind the Act is not shrouded in secrecy. Tenn. Code Ann. § 13-21-102(a) (2011) states quite clearly that the Act confers power upon municipalities to repair, close or demolish those dilapidated structures that are, among other things, "detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of such municipality . . . ." Regions asserts, in effect, that a mortgagee of record may enjoy the benefit of a potential increase in the value of its subject property through demolition of dilapidated structures on said property at taxpayer expense. We find it difficult to believe that our General Assembly intended that outcome.

We find none of Regions' arguments persuasive such as to require that we override the very straightforward, unambiguous definition of owner found in the Act. When presented with unambiguous statutory language, our duty is to enforce the written language, not hold the statute up to the light and peer about for strained, cryptic interpretations. Likewise, we need not turn to the legislative history as the statute is unambiguous. Under the Act, a mortgagee of record is an owner "unless the context otherwise *requires*." (Emphasis added). We find no such countervailing context that *requires* a different definition of owner. The statutory definition means what it plainly states. An allegedly harsh result does not equate to an absurd result. Insofar as Regions advances policy arguments against the Act's inclusion of mortgagees of record as owners for purposes of liability on demolition costs, these policy arguments are better directed toward our General Assembly. We reverse the judgment of the Trial Court, and remand this case to the Trial Court for further proceedings consistent with this Opinion.

Conclusion

The judgment of the Trial Court is reversed, and this cause is remanded to the Trial Court for further proceedings consistent with this Opinion and for collection of the costs below. The costs on appeal are assessed against the Appellee, Regions Bank.

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D. MICHAEL SWINEY, CHIEF JUDGE