STATE OF MICHIGAN

COURT OF APPEALS

FREEWAY MEDIA OF MICHIGAN, LLC,

Plaintiff/Counter-Defendant-Appellee,

v

VISION MEDIA,

Defendant/Counter-Plaintiff-Appellant.

UNPUBLISHED
January 14, 2010

No. 286920
Wayne Circuit Court
LC No. 06-624567-CH

Before: Davis, P.J., and Fort Hood and Servitto, JJ.

PER CURIAM.

Vision Media (Vision) appeals as of right orders denying its motion for summary disposition and granting summary disposition in favor of Freeway Media (Freeway). We affirm.

The facts in this case are not seriously disputed. In the mid-1980's, the Presbytery of Detroit owned a parcel of property consisting of two lots with a single tax identification. On one of the lots was a billboard visible from the Interstate 96 freeway. The Presbytery sold that portion of that property to Golden Media Joint Venture, which was the name Vision was known by at the time. Vision attempted to obtain a tax parcel split, but for some reason the split failed. A year later, the Presbytery quitclaimed the entire parcel – including the part it had previously sold to Vision – to another entity.

No property taxes were thereafter paid on any portion of the property. In 1990, the property was sold to the State of Michigan at a tax sale. The State of Michigan conveyed the property in 2004 to one Bryan J. Brincatt, who demanded the billboard be removed. Vision contends that this was the first time it learned of any problem with the property, although it is undisputed that it never paid any taxes, inquired into the lack of any tax bills, or checked whether the tax split had occurred. Brincatt conveyed his interest to Freeway in 2006.

Irrespective of which party filed first, this action is fundamentally both parties' cross-claims to quiet title to the property. Freeway also seeks recovery of rental fees collected by Vision during the time Freeway owned the property, on a theory of unjust enrichment. The trial court found, in a nutshell, that Vision brought its troubles upon itself by failing to confirm that the tax split had occurred and subsequently failing – for *twenty years* – to inquire into the lack of

receipt of any tax bills. The trial court also granted Freeway's motion for summary disposition as to an unjust enrichment claim for billboard rental fees paid after the tax sale.

This Court reviews de novo equitable actions to quiet title. *Mason v City of Menominee*, 282 Mich App 525, 527; 766 NW2d 888 (2009). Whether a party has been afforded sufficient notice to satisfy due process is a question of law reviewed de novo. *Vicencio v Ramirez*, 211 Mich App 501, 503-504; 536 NW2d 280 (1995). This Court reviews de novo questions of statutory interpretation and application, and it reviews de novo rulings on motions for summary disposition. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). Under a motion for summary disposition pursuant to MCR 2.116(C)(10), the evidence is viewed in the light most favorable to the non-moving party to determine whether it establishes a genuine issue as to any material fact. *Id*. at 567-568. We are of the view that the trial court's lengthy and thorough opinion is exemplary and correct in all respects. As such, we adopt it as our own. We nevertheless briefly address the main arguments raised on appeal.

Vision correctly states that the state may not foreclose on property for nonpayment of taxes unless the state first provides the owner with due process, which requires "'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Sidun v Wayne Co Treasurer*, 481 Mich 503, 509; 751 NW2d 453 (2008), quoting *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950). While this means that the state must employ a means that would be used by someone who genuinely desires to inform the owner – in other words, "more than a mere gesture" – the owner is not necessarily entitled to *actual* notice. *Id*. Whether a notification method is reasonable depends on the circumstances of the case, including any unique information known to the state about the owner and, if applicable, the way in which an initial attempt to provide notice fails. *Id*. at 510-512. As long as the state's efforts to effectuate notice are reasonable, *actual* notice is not a prerequisite to "foreclosure of the statutory lien and indefeasible vesting of title on expiration of the redemption period." *Dow v State of Michigan*, 396 Mich 192, 211; 240 NW2d 450 (1976).

In this case, the state sent notice by certified mail to the street address of the property itself, which, Vision argues, was apparently a small sliver of land containing only a billboard. The notice was returned by the United States Postal Service as undeliverable because "no such street or number for addressee." The state apparently did not make any further attempt to notify Vision. We note that certified mail is appropriate. *Dow*, *supra* at 211. The notice "must be directed to an address reasonably calculated to reach the person entitled to notice." *Id*. Generally, that means that the state is obligated to send notice to any addresses it has at hand for the property owner, but the state is *not* obligated to *search* for any other addresses that might exist. *Sidun*, *supra* at 510-511, 514-515; *Republic Bank v Genesee Co Treasurer*, 471 Mich 732, 739-740; 690 NW2d 917 (2005). Unless the foreclosing entity has some affirmative knowledge to the contrary, we cannot agree with Vision's unsupported contention that mailing notice to the property itself would not be reasonably calculated to reach the owner of the property.[1]

[1] Vision also complains that this notice omitted the correct subdivision name in the otherwise-
(continued…)

At issue is really what steps, if any, the state should have taken upon learning that its first attempt at providing notice failed. This "depends on the circumstances, including what information the government had both before and after its failed attempt." Under some circumstances, posting notice on the property or publishing notice may be sufficiently reasonable to satisfy due process, *Sidun*, *supra* at 515, even though notice by publication "provides most taxpayers no notice at all." *Dow*, *supra* at 210. Generally, however, if the foreclosing entity has a second address on hand, it should send notice to that second address. *Sidun*, *supra* at 516. We observe that the state here did have a second address on hand, listed on the deed to the property, and it did not even attempt to physically post notice on the property. Under ordinary circumstances, we would be inclined to agree with Vision's assertion that the state's efforts were unreasonable and constituted a failure of due process.

Nevertheless, the trial court correctly found that the circumstances of this case are unique. It is undisputed that the alternative address listed on the deed was incorrect. Notwithstanding Vision's protestation that it was only a little incorrect and still listed an address that was part of the same building, the address remains incorrect, and therefore any notice that had been mailed there presumably would not have reached Vision. Our Supreme Court has explained that an owner's failure to keep the government's records updated or accurate does not excuse the government's due process obligation to provide reasonable notice. *Sidun*, *supra* at 517. However, that explanation was in a context where the foreclosing entity had an accurate alternative address to which it could have sent notice. Again, the instant situation is critically distinguishable: the state here did *not* have any accurate contact information on hand. The state's failure to send notice to the other address in the deed had no *practical* effect. And the only other way in which the state could have mailed notice to Vision would have involved the kind of scouring of records that the state is explicitly not obligated to engage in.

Again, the better practice would have been for the state to try sending notice to the other address it had on hand and to post notice on the property itself, even if that meant taping notice to the pylon supporting the billboard. However, the outcome in this case would have been the same.

Moreover, the trial court correctly explained that this is not merely a situation in which a party was dilatory in updating an address in its governmental records. Vision paid no taxes, and made no inquiries into the absence of a tax bill, for *twenty years*. While not completely absolving the government of failing to afford a taxpayer his or her due process right to reasonable notice, *Sidun*, *supra* at 517, the egregiousness of the situation is also one of the circumstances that bears on what notice is reasonable.[2] Notice requirements would obviously need to be more stringent "in cases where the property owner had no reason to expect that a judicial proceeding might be commenced against his property," but "property tax assessments

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complete legal description of the property. The trial court correctly found this omission immaterial, because the property was nevertheless sufficiently well-described that, had Vision received the notice, Vision would have understood what property was being described. See *Watters v Kieruj*, 242 Mich 537, 541; 219 NW 673 (1928).

[2] It is worth noting that in *Sidun*, the taxing authority had a valid address for the taxpayer, whereas here, the state did not.

are a definite annual event of which all competent landowners are cognizant." *Dow*, *supra* at 199 (footnote omitted). Vision could not be considered on notice of a pending tax sale on that basis, but it *should* be considered on notice that the taxing authority was, for whatever reason, not contacting it. As the trial court concluded, Vision's failure to follow up caused the taxing authority to lack a proper address to which it could send notice, and as such, its failure to receive actual notice is entirely its own fault.

We therefore conclude that, under the particular circumstances of this case, the trial court correctly found that the state provided reasonable notice to Vision.

Vision also argues that Freeway's unjust enrichment claim must fail because it included a demand for rents received from the billboard during a time period prior to Freeway's acquisition of the property. Vision argues that Freeway therefore has no rights to the rents received during that time. However, as Freeway points out, Freeway's predecessor executed an "assignment of lease" that included a conveyance of "all rights or claims to all escrowed rents or other rents with respect to [the billboard lease] accruing at any time prior to the date hereof which have not bee paid to Seller prior to the date hereof." Vision's sole argument on appeal is that the assignment of rights did not explicitly include the right to pursue Vision for rents Vision received prior to Freeway assuming ownership. While technically accurate, we believe that the assignment of rights clearly encompasses the right to seek recovery of rents paid to Vision during Freeway's predecessor's ownership of the property. We therefore decline to reverse on this basis.

Affirmed.

/s/ Alton T. Davis
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto