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NJ Supreme Court Clarifies Investor Rights in Tax Sale

On November 17, the New Jersey Supreme Court in *Green Knight Capital, LLC v. Calderon* clarified the rights and applicable procedure for an investor to redeem a tax sale certificate. The court held that an investor otherwise qualifying to redeem a tax sale certificate may intervene in a pending foreclosure matter at any time prior to the final judgment of foreclosure. The court further found that an investor could seek to redeem a tax sale certificate prior to intervening in the foreclosure matter and that failure to intervene first would not bar the investor from redeeming the tax sale certificate. The court reiterated, however, that the appropriate procedure is for the investor to move for and obtain intervention before making any attempt to redeem the tax sale certificate. Prior to that clarification, the Supreme Court, in *Simon v. Cronecker*, 189 N.J. 304 (2007), held that a late arriving investor must first intervene in a tax foreclosure action before being allowed to redeem and that an investor's failure to do so rendered a pre-intervention redemption or attempted redemption invalid. Under the Tax Sale Law (N.J.S.A. 54:5-98), a redemption is permitted only by someone who has been "admitted as a party to [the tax foreclosure] action."

In *Green Knight*, the investor, 133 73rd Street Apt., LLC, contracted with the property owner to purchase the subject property for $100,000 after the tax foreclosure action had been initiated but before the tax sale certificate holder sought an order setting the time, place and amount of the redemption or obtained final judgment. On the closing date, the settlement agent forwarded $21,612.72 to the tax collector to redeem the tax sale certificate. Thereafter, the tax sale certificate purchaser moved in the tax foreclosure action for an order barring the investor from redeeming. The investor then cross-moved for intervention and permission to redeem.

New Jersey's Tax Sale Law (N.J.S.A. 54:5-89.1) prohibits redemption whenever a third party acquires an interest in the property for "less than fair market value" consideration after the filing of the foreclosure complaint. In its prior decision in *Cronecker*, the Supreme Court interpreted the Tax Sale Law (in effect at that time) as not barring "third-party investors from helping property owners in desperate need of financial assistance, but rather to ensure that the third-party investors do not exploit vulnerable owners by offering only nominal consideration for their property rights." The Supreme Court in *Green Knight* noted that the Tax Sale Law (N.J.S.A. 54:5-3) is "remedial" in nature and should be "liberally" construed and that one of those remedial objects is the "recognition of an owner's right to rescue some part of its property interest in the face of an impending foreclosure by contracting with an investor…" Hence, the theory that "there may be no forgiveness for an investor's mistaken or premature attempt to redeem ... stands in stark contrast to the law's evolving attitude toward late investors and its greater interest in providing property owners with the opportunity to salvage or maximize their interests before foreclosure." In short, an investor's entitlement to redeem is not forfeited because it failed to move to intervene prior to attempting redemption of the tax sale certificate, provided the investor meets the statutory prerequisite, inter alia, of a fair market value acquisition.

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