

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DETROIT LEASING COMPANY,  
  
Plaintiff-Appellant,

UNPUBLISHED  
January 9, 2007

v

ELIZABETH PRICE and PHYLLIS A.  
MCINTOSH,

No. 265899  
Wayne Circuit Court  
LC No. 04-421086-CH

Defendants-Appellees.

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Before: Meter, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court’s order dismissing this quiet title action. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants Elizabeth Price and Phyllis A. McIntosh owned a parcel of real property in Detroit. Defendants failed to pay property taxes for the tax year 1998. Plaintiff purchased the property at a tax sale and received a sheriff’s deed. Plaintiff conducted a title search and determined that defendants held a legal interest in the property as joint tenants with full rights of survivorship. A deputy sheriff personally served McIntosh with notice of accelerated foreclosure on June 16, 2003, but, as memorialized in a return of service, he could not serve Price because she had reportedly died. Although the cursory record is not definitive on the issue, it does not appear that McIntosh redeemed the property or paid any money toward the outstanding tax deficit by February 2004. However, an inspection around this time determined that the residence was occupied.

On June 18, 2004, a follow-up inspection revealed that the property had been abandoned, so notice of accelerated foreclosure was posted and mailed to the last known address of all interested parties. On July 7, 2004, plaintiff filed a verified complaint to quiet its title to the property. Plaintiff sought to clear its title to the property and establish marketable title under MCL 211.79a, the statute that deals with abandoned property and accelerated foreclosure procedures. Although plaintiff’s returns of service indicate that both defendants were personally served, this obviously runs contrary to the averment in the service of notice, which stated that defendant Price was deceased. In any event, neither Price nor McIntosh answered the complaint, and plaintiff presented an affidavit for their default and a default order. Although the record does not indicate that the court clerk certified the “default” other than by filing it, plaintiff

verified that it served defendants with notice that default had been entered against them. Plaintiff moved for entry of a default judgment and served defendants with a notice of hearing. At the hearing, McIntosh appeared and claimed that she had paid the 1998 taxes. The trial court adjourned the hearing and requested that a representative from the Wayne County Treasurer's Office appear in court to clarify what McIntosh had paid.

When the hearing reconvened, Jacob Ghannom, principal attorney in the Wayne County Corporation Counsel's Tax Division, appeared pursuant to the court's direction. Ghannom noted that pursuant to MCL 211.140, which deals with non-abandoned property, McIntosh had six months from the date proof of service was filed to redeem the property. Proof of service was filed on August 1, 2003, so McIntosh had until February 1, 2004, to redeem the property. Ghannom explained that the funds McIntosh had paid had been applied to delinquent taxes for the years 2002 and 2003. Although the record does not provide a date of receipt, it indicates that the funds were not received by the Treasury until after February 1, 2004. McIntosh stated that she intended to pay the 1998 taxes with the funds she submitted to the Treasury. The trial court, without explanation, testimony, or even an affidavit from McIntosh, stated that the funds paid by McIntosh should have been applied to the 1998 taxes, and that the property was, therefore, redeemed by her. The trial court denied plaintiff's motion to enter a default judgment and instead entered an order summarily dismissing the case.

Although strict compliance with notice of an impending statutory tax sale is required, *Halabu v Behnke*, 213 Mich App 598, 606; 541 NW2d 285 (1995), McIntosh failed to present any evidence that her notice was deficient. See *Burkhardt v Bailey*, 260 Mich App 636, 648; 680 NW2d 453 (2004). In fact, the trial court did not accept any record evidence or swear any witnesses at all, but disposed of the matter following a cursory hearing that accepted McIntosh's assertions of fact as true and unimpeachable. Moreover, McIntosh failed to assail the entry of default against her, and failed to demonstrate good cause, provide an affidavit of meritorious defense, or pay taxable costs as required by MCR 2.612(D). In short, the trial court's decision to find summarily that McIntosh had duly redeemed the property was unsupported by any properly introduced evidence and was a highly questionable conclusion in light of the affidavits and documentary evidence presented by plaintiff. Although McIntosh may have several legal and factual issues to raise before the court on remand, the skimpy record before us does not clearly establish any grounds for summary relief under MCR 2.116, and McIntosh has not even offered a sufficient basis to lift the default. Because significant legal and factual issues remain unresolved, and the trial court has yet to swear a witness or hear a motion for summary disposition, the order dismissing plaintiff's action was improper.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter  
/s/ Peter D. O'Connell