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Public Sale Has No Effect on Obligation to Pay Common Assessments

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In planned communities, property owners share the cost of maintaining the common elements through assessments charged by the property owners association.

In *Locust Lake Village Property Owners Association v. Wengerd*, the Commonwealth Court recently found that a property owner's obligation to pay these assessments may not be discharged simply because the unit was purchased at a judicial or tax repository sale.

In *Wengerd*, the property owners had purchased several units in a planned community through judicial and repository tax sales. After acquiring the units, the association attempted to collect annual dues and assessments from them as unit owners. The association only sought charges that came due after the property owners acquired title to the units. They nevertheless refused to pay the dues and assessments, claiming that, under the Real Estate Tax Sale Law, the restrictive covenants and express and implied easements otherwise obligating them to pay such charges extinguished as a result of the judicial and tax repository sales.

The association thereafter filed separate lawsuits in state court against each property owner for the dues and assessments. The association subsequently sought summary judgment against them on the basis that, under the Uniform Planned Community Act (UPCA), it had the power to collect assessments for common expenses from the property owners and that "[t]here is no authority for the proposition that a judicial or tax sale will affirmatively remove or negate covenants running with the land, including those requiring payment of association assessments."

After the trial court granted summary judgment in the association's favor, the property owners appealed the trial court's ruling to the Superior Court, which transferred the appeal to the Commonwealth Court.

In upholding the trial court's ruling, the Commonwealth Court concluded that, despite the judicial and tax repository sales, the property owners remained liable for the dues and assessments charged by the association because the Real Estate Tax Sale Law did not trump the UPCA.

The Commonwealth Court first addressed whether the easements and restrictive covenants requiring payment of the dues and assessments are interests in real property would fall within the meaning of the term "estates," as used in the Real Estate Tax Sale Law. Under the statute, any property sold at a judicial or tax repository sale is conveyed "free and clear of all ... estates of whatsoever kind."

Since the Real Estate Tax Sale Law does not define the term "estate," the Commonwealth Court looked at *Black's Law Dictionary* and the *First Restatement of Property* for guidance.

Black's Law Dictionary describes an "estate" as "[t]he amount, degree, nature and quality of a person's interest in land or other property."

According to the *First Restatement of Property*, the term "estate" is an interest in land that "is or may become possessory" and "is ownership measured in terms of duration." The explanatory comments to the *Restatement* explain that "[s]uch interests as easements, profits, restrictive covenants and agreements affecting the use of land,

powers of appointment and rents are not possessory interests and are not interests which may become possessory."

Relying heavily on the explanatory comments to the *Restatement*, the Commonwealth Court concluded that "[c]ovenants running with the land and easements are not 'estates' within the meaning of the Real Estate Tax Sale Law because those interests are nonpossessory."

The Commonwealth Court refused to expand the scope of the statute beyond its literal meaning, noting that "[i]f the General Assembly had wanted covenants and easements to be extinguished at the time of judicial and repository tax sales, it could have specifically so stated."

The Commonwealth Court also found the Supreme Court of Pennsylvania's ruling in *Tide Water Piping Company v. Bell* as instructive. In *Tide Water Piping Company*, the Supreme Court held that a right-of-way was not discharged by a treasurer's sale in light of an earlier tax sale statute. The Supreme Court in *Tide Water Piping Company* "[fou]nd nothing ... to cause [it] to differentiate a tax sale from other judicial sales and, as such, "if land is sold for taxes, an easement, servitude, or interest in the nature of an easement, is not destroyed, but the purchaser takes subject thereto."

The Commonwealth Court then flatly rejected the property owners' contention that the trial court "erred in finding that they gained easement rights over the subdivisions' common elements and facilities when they acquired their units, because their tax claim deeds do not refer to a subdivision plan or a development plan."

In doing so, the Commonwealth Court stressed that the property owners readily admitted that the restrictive covenants at issue are contained within the chain of title for their deeds and that "the law is clear that a grantee is chargeable with notice of everything affecting his title which could be discovered by an examination of the records of the deeds or other muniments of title of his grantor."

The Commonwealth Court emphasized that the property owners' "failure to perform the requisite due diligence is to their own detriment, where the tax claim bureau deeds contain lot and section numbers as well as other information presumably associating the properties with" the association.

As the final death knell, the Commonwealth Court found their obligation to pay the dues and assessments to be even more compelling considering that, in *Spinnler Point Colony Association v. Nash*, it had previously forced unit owners to pay assessments even though the chain of title did not refer to the unit owners' association.

The Commonwealth Court in *Wengerd* cited the following passage of *Spinnler Point Colony Association*: "residential communities ... are 'analogous to mini-governments' and as such are dependent on the collection of assessments to maintain and provide essential and recreational facilities. When ownership of property within a residential community allows the owners to utilize the roads and other common areas of the development, there is an implied agreement to accept the proportionate costs for maintaining and repairing these facilities ... If we were to find to the contrary, lot owners would be able to avoid their duty to pay assessments, and because associations would be powerless to operate, the facilities of a development would fall into disrepair."

LESSONS LEARNED

The Commonwealth Court in *Wengerd* rightfully blocked the property owners' attempt to unilaterally discharge their obligation to share the financial burden of maintaining and operating the planned community. Property owner associations have been empowered by the state legislature to serve as mini-governments. The assessments are a form of taxation. Similar to taxpayers, as evidenced by the property owners in *Wengerd*, unless required to do so, property owners will resist paying their fair share of maintaining and operating their community.

Since these property owners clearly enjoyed the benefit of the common elements, the Commonwealth Court refused to allow them to escape the burden

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