

Missouri Federal Court Sets Aside Tax Sale in Favor of MERS

By: Dana Fidazzo, Esq., Venable LLP¹

Mortgage Electronic Registration Systems, Inc., et al. v. Robert Bellistri
No. 4:09-CV-731 CAS (E.D. Mo. 2010)

On July 1, 2010, the United States District Court in the Eastern District of Missouri set aside a tax sale that was the subject of a quiet title action in state court later affirmed by the Missouri Court of Appeals. In doing so, the court found that Mortgage Electronic Registrations Systems, Inc.'s ("MERS") interest in the underlying deed of trust (the "Deed of Trust") was sufficient to (i) require notice of redemption under Missouri's Jones-Munger Act, (ii) require MERS' joinder in the quiet title action and (iii) trigger a due process right to notice of the tax sale.

Under the facts of the case, Bellistri was the successful bidder at a tax sale of the property on August 22, 2005. At that time, MERS was the named beneficiary under the Deed of Trust, as nominee for the original lender. Bellistri delivered the required notice of redemption under the Jones-Munger Act to the original lender, but not to MERS. In September 2006, Bellistri obtained a collector's deed for the property. On April 4, 2007, MERS assigned the Deed of Trust to Ocwen Loan Servicing, L.L.C. ("Ocwen"). Subsequent to that assignment, Bellistri filed an action in state court to quiet title, naming the borrower and Ocwen as defendants. The state circuit court granted Bellistri's motion for summary judgment, which Ocwen appealed and the Missouri Court of Appeals affirmed on the basis that Ocwen lacked standing. MERS and its parent then filed an action in the United States District Court in the Eastern District of Missouri seeking a declaratory judgment and injunctive relief.

The court determined that MERS was required to be delivered notice of redemption under the Jones-Munger Act and should have been joined in the quiet title action as a defendant. As a result of Bellistri's failure to do either, the court set aside and voided the collector's deed. In arriving at this ruling, the court interpreted the plain language of the Jones-Munger Act to require notice of redemption to any party who claims a publicly recorded interest in the property. The court confirmed that MERS claimed a publicly recorded interest in the property as beneficiary under the Deed of Trust, as nominee for the lender. The court also confirmed that MERS' interest in the property as beneficiary under the Deed of Trust was sufficient to require joinder in the quiet title action under Missouri Revised Statutes Section 140.330, which requires joinder of all parties who appear of record to have a claim in, or lien upon, the real property. In interpreting both statutes, the court stressed that the interest claimed by MERS did not need to be "adjudged legally valid" in order to trigger the requirements of the statutes. This conclusion was consistent, in the court's view, with the Fourteenth Amendment's protection of property, which the court emphasized protects all legitimate claims to property interests, not just unequivocal ownership rights in property.

This same analysis led the court to rule that the collector's deed violated MERS' due process rights by attempting to divest MERS of its interests in the property without notice and an opportunity to be heard. The court cited MERS' right to enforce the lien of the Deed of Trust

¹ Dana Fidazzo is an associate in the Real Estate Group at Venable LLP where she regularly represents clients in all aspects of complex real estate matters, with a specific focus on real estate finance. Dana is resident in the firm's Baltimore, Maryland office. For more information about Dana please visit <http://www.venable.com/dana-m-fidazzo/>. For more information about Venable LLP, please visit www.venable.com

against the property, including the right to foreclose, as a specific property interest (citing, among others, *Kinsella v. Landa*, 600 S.W.2d 104, 107 (Mo. Ct. App. 1980) and *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555 (1935)). The court also stated that Missouri could not provide MERS with a statutory right to notice of the tax sale and then arbitrarily deprive MERS of that right.

Although the court did not ultimately determine whether MERS' interest in the Deed of Trust was a legally valid interest, the case should be considered a victory for MERS and MERS' defenders. Recent decisions by state courts have called into question whether MERS, as nominee, held any real interest in the mortgage or deed of trust, instead characterizing MERS' relationship with the lender as that of a "straw man." (See *Landmark Nat'l Bank v. Kesler*, 216 P.3d 158 (Kan. 2009) and *Bank of New York vs. Raftogianais, et al.*, No. F-7356-09 (N.J. Super. Ct. Ch. Div. June 29, 2010). In this case, the court recognized that MERS' claim to interest in the property as nominee of the lender under the Deed of Trust was sufficient to require statutory notices and to trigger due process rights. In addition, the court emphasized that MERS' fundamental business model is predicated upon MERS' legal right to receive the types of notices required under the Jones-Munger Act in order to protect its members' security interests in property. The court cautioned that if tax purchasers were permitted to obtain title to property without properly notifying MERS, then the MERS® System would be compromised and its members would not be protected.