

Reply Appendix A-1

[Exhibit 2 to Volume I of Bill of Exceptions, Case No.
CI17-1038, A-19-00147; Application for Tax Deed]

I CERTIFY THAT THIS IS A COPY OF A RECORD
ON FILE IN THE SARPY COUNTY TREASURER'S
OFFICE IN PAPILLION NEBRASKA

12th DAY OF December, 2017

Linda L. White

SARPY COUNTY TREASURER

August 16, 2016

VIA HAND DELIVERY

Office of the Douglas County Treasurer

Attn: Rich James

1210 Golden Gate Drive, Room 1127

Papillion, NE 68046

Re: Application for Treasurer's Tax Deeds

Dear Mr. James:

I am hereby requesting that the Treasurer issue and deliver a tax deed for the following properties. I understand that Sarpy County holds the original Tax Certificate. I am enclosing an Affidavit with attachments along with a check for \$20 in payment of each application for the following:

1. Tax Certificate 12389, Grochal, 10203
Brentwood Dr., La Vista
2. Tax Certificate 12308, Barnette, Parcel
01157219 (No Situs), Bellevue

If you need anything further, please contact me at 402-933-5393. Thank you very much.

Very truly yours,
Lilly Richardson-Severn
General Counsel

Enclosures

Exhibit #2
2-15-18 BAH

AFFIDAVIT

[illegible]

Lilly Richardson-Severn, being first duly sworn upon oath deposes and states as follows:

1. I am the attorney for PONTIAN LAND HOLDINGS LLC, A Nebraska Limited Liability Company, and have knowledge of the facts related herein.

2. The property is commonly described as, Parcel ID # 01157219 (No Situs Address) and legally described as Lot 2, Swaney's Addition, Replat 1, an Addition to the City of Bellevue, as surveyed, platted and recorded, Sarpy County, Nebraska.

3. PONTIAN LAND HOLDINGS LLC is the owner and holder of Tax Sale Certificate No. 12308, which was issued on or about March 05, 2013. The original Tax Sale Certificate is attached hereto as Exhibit "A" and incorporated herein.

4. PONTIAN LAND HOLDINGS LLC ordered a title company to conduct the title search of the above property, which title search is attached hereto as Exhibit “B” and incorporated herein. The title search was completed to determine all persons and entities with an interest in the property, the person in whose name the title to the real property appears of record, and every encumbrancer of record, who are entitled to notice pursuant to Neb. Rev. Stat. § 77-1832.

5. PONTIAN LAND HOLDINGS LLC, as purchaser of Tax Sale Certificate, served, or caused to be served a Notice of Application for Tax Deed pursuant to Neb. Rev. Stat. § 77-1831 to all persons and entities with an interest in the property, the

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person in whose name the title to the real property appears of record, and every encumbrancer of record, who were entitled to notice. The notice was served more than three (3) months prior to the Application for treasurer's tax deed. A copy of the Notice of Application for Tax Deed is attached hereto as Exhibit "C", and incorporated herein. The owners and/or interested parties of record failed to claim the notices and/or after diligent inquiry, could not be found. The original certified mail return receipts, the return of services and envelopes are attached hereto, all attached pursuant to Neb. Rev. Stat. § 77-1833.

6. PONTIAN LAND HOLDINGS LLC caused the notice to be served by publication in accordance with Neb. Rev. Stat. § 77-1834 and 77-1835 in Papillion Times, a newspaper published in Sarpy County, and having a general circulation in Sarpy County, which notice was published for three consecutive weeks, with the last publication not being less than three months prior to the Application for the tax deed. Proof of publication by affidavit of the publisher, manager or other employee of Papillion Times is attached hereto as Exhibit "D" and incorporated herein.

7. To the knowledge of the undersigned, all conditions required by statute effective and in existence at the time of the issuance of the Tax Sale Certificate identified herein have been complied with in order that the Treasurer of Sarpy County may issue a treasurer's deed in favor of PONTIAN LAND HOLDINGS LLC.

FURTHER AFFIANT SAYETH NOT.

PONTIAN LAND HOLDINGS
LLC, A Nebraska Limited
Liability Company

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Lilly A. Richardson-
Severn, Attorney, #25625
General Counsel
* * * *

* * * *

[Labeled Exhibit B]

CERTIFICATE OF TITLE

FILE #: 12308

EFFECTIVE: February 11, 2016

SUBJECT PROPERTY IS LEGALLY DESCRIBED
AS:

Lot 2, Swaney's Addition Replate 1, an Addition to the
City of Bellevue, as surveyed, platted and recorded in
Sarpy County, Nebraska.

COMMONLY KNOWN AS: No Situs Address

Midwest Title having given bond required by the laws
of the State of Nebraska, and having been granted
authority in accordance with statutes of the State of
Nebraska, to engage in the business of abstracting in
said State hereby certifies that from an examination of
the records of Sarpy County, Nebraska, with reference
to the above described property, find as follows:

LAST GRANTEE OF RECORD:

Walter D. Barnette, a single person

ENCUMBRANCE(S):

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Deed of Trust executed by Walter D. Barnette, to Jim L. Kuhn, as Trustee and Edward S. Swaney, as Beneficiary in the amount of \$17,000.00, dated November 29, 2002 and recorded December 6, 2002 as Instrument Number 2002-50577 of the Sarpy County, Register of Deeds Office.

JUDGMENTS AND PENDING SUITS:

None of Record

FEDERAL AND STATE TAX IENS:

None of Record

CODE VIOLATIONS AND CITY COMPLAINTS:

None of Record

TAXES:

1. 2015 COUNTY TAXES (Parcel ID #011572191) in the amount of \$517.06, unpaid, but not delinquent
2. 2014 COUNTY TAXES (Parcel ID #011572191) in the amount of \$520.44, unpaid AND delinquent
3. 2013 COUNTY TAXES (Parcel ID #011572191) in the amount of \$509.68, unpaid AND delinquent
4. 2012 COUNTY TAXES (Parcel ID #011572191) in the amount of \$494.44, unpaid AND delinquent
5. TAX SALE CERTIFICATES:

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1. Tax sale certificate #12308 for the payment of county real estate taxes for the year(s) 2010 & 2011 in the amount of \$1,170.90.

6. ASSESSED VALUE - \$25,000.00

SPECIAL ASSESSMENTS

Special Assessment for Weed Complaint, levied December 9, 2013 in the amount of \$150.00, plus interest.

Special Assessment for Weed Complaint, levied December 12, 2011 in the amount of \$150.00, plus interest.

Special Assessment for Weed Complaint, levied April 26, 2010 in the amount of \$150.00, plus interest.

THIS REPORT IS NOT A GUARANTY OF TITLE, OR A STATEMENT AS TO THE LEGALITY OR SUFFICIENCY OF ANY INSTRUMENT OR PROCEEDINGS IN THE CHAIN OF TITLE TO SAID REAL ESTATE, AND MIDWEST TITLE ASSUMES LIABILITY ONLY TO THE EXTEND OF THE AMOUNT CHARGED FOR THIS REPORT OF TITLE.

[Labeled Exhibit C]

Notice of Application for Tax Deed

UNLESS YOU ACT YOU WILL LOSE THIS
PROPERTY

To: Walter D. Barnette

* * * *

1. On March 05, 2013, the following real property was sold by Sarpy County for delinquent taxes. On that date, PONTIAN LAND HOLDINGS LLC, (the "Purchaser") bought the property at the sale.
2. The property is described as:
 - a. Legal Description: Lot 2, Swaney's Addition Replat 1, an Addition to the City of Bellevue, as surveyed, platted and recorded, Sarpy County, Nebraska.
3. The taxpayer named and in whose name the tax assessment is made is: Walter D. Barnette, a single person.
4. The amount of the Tax Certificate No. 12308, assessed for the year 2011 is: \$1,180.90.
5. The amount of subsequent taxes paid by the Purchaser is: \$0.00.
6. Interest has accrued on the taxes assessed. The amount of interest to March 30, 2016 is: \$503.45.

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Please be advised, pursuant to Neb. Rev. Stat. § 77-1831 (2009), that the issuance of a tax deed is subject to the right of redemption under Neb. Rev. Stat. § 77-1824 to 77-1830. The right of redemption requires payment to the county treasurer, for the use of such purchaser, or his or her heirs or assigns, of the amount of taxes represented by the tax sale certificate for the year the taxes were levied or assessed and any subsequent taxes paid and interest accrued as of the date payment is made to the county treasurer.

UNLESS YOU REDEEM THE PROPERTY BY PAYING ALL TAXES, COSTS, AND FEES COVERED BY THE TAX SALE CERTIFICATE TO THE SARPY COUNTY TREASURER WITHIN THREE (3) MONTHS FROM THE DATE OF SERVICE OF THIS NOTICE, GUARDIAN TAX PARTNERS INC. WILL APPLY FOR A TREASURER'S TAX DEED PURSUANT TO NEB. REV. STAT. § 77-1801 (2009) ET SEQ. ONCE THE TAX DEED IS ISSUED, YOUR RIGHT OF REDEMPTION WILL EXPIRE.

Dated this 30th day of March, 2016

PONTIAN LAND HOLDINGS
LLC, A Nebraska Limited
Liability Company

Lilly A. Richardson-Severn,
#25625
General Counsel
1423 Grandview Avenue
Papillion, NE 68046
* * * *

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[Starting at Page 52 of court transcripts in Bill of
Exceptions, Volume II]

(At 1:09 p.m. on January 8, 2019, with counsel for
the parties present, the following proceedings were
had:)

THE COURT: This is CI17-1038. And if the
parties would make their appearances for the record?

MR. BLUMEL: Jeff Blumel on behalf of the
plaintiff, HBI, LLC.

MR. NOETHE: Ed Noethe, N-O-E-T-H-E, on
behalf of defendant, Walter D. Barnette.

THE COURT: And we're here for a third Motion
for Summary Judgment?

MR. NOETHE: We're here on the plaintiff's
Amended Motion for Summary Judgment and then
the defendant Barnette has a Third Motion for
Summary Judgment, so dueling motions.

MR. BLUMEL: Yes, Your Honor, that's correct.

* * * *

MR. BLUMEL: Your Honor, we've been here a
couple of times on a lot of these same issues, and we've
both submitted briefs. I sent mine in yesterday by
email and I know Mr. Noethe sent his in well before,
but both briefs are in support and in opposition to the
motion so I'm not going to go over everything. just
want to point out one difference.

You previously overruled HBI's Motion for
Summary Judgment back in -- their first Motion for
Summary Judgment, I believe, back in May of 2018.

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When you overruled that you found -- and I'm quoting from your order -- that the Court finds that genuine issues of material fact remain, specifically with respect to the real estate and whether proper procedures, i.e. notice, were followed to quiet title on the same.

I think Mr. Noethe and I would both agree that this entire case, both ways, revolves around the sufficiency of the notice that HBI, LLC gave to Mr. Barnette in order to get the deed to the property. There's certain procedures you have to go through, we've walked through them in our briefs and I don't want to go through all those with you, you've seen them. There's certain procedures.

When we did the first motion, there was an unpublished Court of Appeals opinion entitled Wisner vs. VanDelay (phonetic). Again, it was an unpublished opinion, but that opinion basically -- well, let me back up.

The facts of the case are virtually identical to these with respect to the notice, with respect to the parties, I mean it's, in our mind, it's virtually identical and exactly on point. And in that original unpublished opinion, the Court found that the notice was not sufficient. A petition for review was filed by the defendant VanDelay and the Supreme Court took it and since then a decision came out in August, 2018, August 24, 2018 by the Supreme Court and what they did is they reversed, they reversed that opinion.

And so my position will be, and you can read it in the brief, is that a simple reading of VanDelay vs. Wisner, a Supreme Court case, is right on point. It is absolutely perfectly in line with this case and absolutely stands for the proposition that what our clients did in this case is exactly what they did in that

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case and it's proper.

I did bring, if you want, I have an extra copy of the case if you'd like, or if you just want to look it up, it's up to you.

THE COURT: I'll look it up -- well, if you have an extra copy, sure.

MR. BLUMEL: It's long, but the good news is a lot of that doesn't really apply to this case. They took their time and they did a long one. But essentially, Your Honor, I don't have a whole lot more to add. I think there's -- the notice they gave -- you're going to walk through that case and walk through the facts of this case and you're going to see it's identical. I think that case held -- it was the right decision.

Mr. Barnette essentially avoided service of this case and he shouldn't be rewarded by avoiding service. He also didn't pay his taxes to start the whole matter, but he avoided service at a residence where he was located. So our client, HBI, was forced to publish and that's all they could do under the statutes and so they did. And, again, the Court found, under these circumstances, that was proper.

That's really all I have new to add. There's also an argument that the statute is unconstitutional. We argued that in the brief. I think that's a tough argument. We've made argument in our brief with respect to that. But I think if you look at the facts, and the facts are really not in dispute in this case, what happened is not in dispute at all, it's just the law that applies to it. I think if you look at the VanDelay case, that's going to walk you down the road that would lead you to be able to grant HBI's motion for summary judgment.

That's all I have, Your Honor.

THE COURT: Mr. Noethe.

MR. NOETHE: Thank you, Your Honor.

What is new, from our point of view, is we did amend our answer and our counterclaim to include failure to provide due process in this case. And we did brief this in our brief. We're basically relying upon a United States Supreme Court decisions, Jones vs. Flowers is one of the main cases we cite. And in that case, again we have the type of situation where there's going to be a sale of an individual's property, an unclaimed, certified letter was sent and then later publication was made in a local newspaper. The Supreme Court in Jones talked about when mailed notice is unclaimed there must be reasonable steps taken to notify the property owner.

What steps were taken here after Mr. Barnette did not claim the certified letter? They published notice in a newspaper in Sarpy County, knowing full well my guy never lived in Sarpy County, they knew he lived in Pottawattamie County, Iowa. They could have gone over and published in Pottawattamie County, that might have worked, or they could have sent the sheriff out where he's lived at the same address for around 30 years. They didn't do anything like that. They took no reasonable efforts to try to reach him, in fact the opposite.

Publication in the county where the man doesn't live is really just kind of a mere gesture.

And if you read the cases we have in there, Your Honor, there are several where they talk about when you know a guy is gone, you can't publish in that area. It doesn't make any sense. You're not really trying.

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And they want you to try. United States Supreme Court, when you read this case, actually want people to try to serve them. That's not what happened here.

They argue that Mr. Barnette avoided service. Interesting, when you look at the exhibit, the certified mail they sent had a tax -- had a return of Guardian Tax Partners, Inc. Who the heck are they? They were never an owner of this property, they never purchased this property, why would my guy claim certified mail from Guardian Tax Partners, Inc. who never bought this at tax sale, who never owned this property. This could have been the Nebraska Nazi party as far as we know. And they're saying he purposely avoided by not picking up certified mail from an entity that he's never heard of. And to claim that he somehow purposely avoided service, no. They could have very easily, very easily served him. He's an elderly man, he's lived in the same place.

We do have other defenses, Your Honor, that have been briefed in the past, nothing new there. We claim the notice is defective because it talks about Guardian Tax Partners, LLC will apply for a treasurer's deed, they never owned the property so that clearly was not going to be truthful.

And then we also talk about the fact that they started a foreclosure procedure and then switched over to the tax deed process. And we cite the renowned case which we cited before, which they state in other words, after the election to proceed to judicial foreclosure has been made, both the holder and the property owner are bound by that election. What they've done here is changed horses, they started with foreclosure and then went to the tax deed route. That case tells us you can't do that. That argument has been made in the past, too, Your Honor.

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Our new argument is the due process argument. I would ask the Court to read the Jones case and those other cases carefully. The United States Supreme Court really does care about due process and taking property away from individuals. They care a lot. And if you read those cases, they're very uniform. You gotta try. There's no real effort made here. This is how do we get this property as quickly as we can.

And so, Your Honor, we think they violated his due process. We agree that there's really not a lot of facts that are in dispute and nothing that really is material here, they just violated his due process. They didn't try, they made a mere gesture. They may have followed the statute, but that's not the end of the inquiry. If you read Wisner, that's where the Supreme Court stopped. They said did you follow the statute, but that's because the other side never raised due process. They never raised it. They're raising it now on further review. Somebody woke up and said, Wow, we should've thought of this, but it was not raised in that case. It is raised in our case, Your Honor, and I think that's a big difference between our case and the Wisner case.

Thank you, Your Honor.

MR. BLUMEL: Just quickly, Your Honor.

In order to give notice on these tax deeds or these tax certificates, our clients are stuck with the statutory scheme -- not stuck, they have to follow it. There's a specific statutory scheme. Mr. Noethe's saying that we should have published in Sarpy County because we knew he was in -- We should have published in Pottawattamie County because we knew he was there, not in Sarpy County. Well, the statute regarding publication that you have to use in this, 77-1834, requires you to publish in the county where the

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property is. Simple as that. They had no choice. They had to publish in the county where the property is located.

Serving by sheriff, it's not in the statute, it's not allowed by the statute. It talks about served by certified mail, if you can't do it by certified mail then you have the option of publishing. That's exactly what happened here. It's exactly what happened here.

Again, whether it's intentional -- whether it was intentional for Mr. Barnette not to sign for that certified mail or unintentional, I mean it doesn't matter. You gotta be responsible. Number one, you need to pay your taxes. That's what started this whole thing. Let's not forget that Mr. Barnette did not pay his property taxes and that's what started this whole matter. He pays his taxes like everyone else is required to do, we're not here. But when he didn't, they followed the statute. They knew where he lived. What more inquiry can you do than send something to where he lives. He admitted he lived there, he's not answering it. Does it matter who's on the return envelope, I highly doubt that. I would guarantee Mr. Barnette didn't know that the tax certificate was purchased by Pontian (phonetic). If he knew that he would have done something about it I assume. He's just head in the sand, Your Honor. His head is in the sand and that's what got him to the spot where we are.

I think, again, they did everything they could. We've talked about the Jones case in our brief, too, you'll read our argument on that so I won't go through that.

The last couple of arguments where it says in the notice that Guardian Tax Partners -- it said Guardian Tax Partners would apply for a tax deed instead of Pontian (phonetic), that's a mistake. But if you look at

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the statute, and again it's clear in our brief, the statute doesn't require a notice to state who's going to apply for the tax deed. It has a bunch of other requirements in it, the legal description of the property, the name in who the property is assessed, which our client followed. Pontian is listed in there, but that was just a mistake. I just think it's a nonissue.

Lastly, the fact that they started a foreclosure, the Nin (phonetic) does not stand for that. Our case in the Supreme Court just doesn't stand for that. I think if you read it you'll see that.

I would agree with Mr. Noethe that had they started that foreclosure and had it still going, an ongoing thing, when they sent the notice, I think that's a problem. But what happened was they started the judicial foreclosure and dismissed it in August of 2016, which is the Order you took judicial notice of. And then they started the tax deed process. So they weren't doing two simultaneously, they did one following the other. And the Nin case, it just doesn't stand for that proposition that that prohibits that. Again, had they been going simultaneously at the same time, maybe there's a problem there, but they weren't. That's all I have.

THE COURT: Anything else?

MR. BLUMEL: Very briefly, Your Honor.

Their position is we followed the statute that that's enough. Our position is due process applies. If you read the Jones case, they followed the law in Arkansas too, very similar law, and the Supreme Court said, no, not enough, you gotta try and they didn't try. You've got to give these people notice, you've got to try hard.

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And publishing in Sarpy County when you know the guy lives in Pottawattamie County is a mere gesture and it ain't trying, Your Honor. Thank you.

THE COURT: Thank you. You're excused.

(END OF PROCEEDINGS)