

No. 21-

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IN THE  
**Supreme Court of the United States**

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JAMES G. SWEET, PERSONAL REPRESENTATIVE  
OF THE ESTATE OF DANIEL A. GROSSO,

*Petitioner,*

v.

THORNTON MELLON, LLC and AL CZERVIK, LLC,

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
MARYLAND COURT OF APPEALS

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether purported service of a summons and complaint on a deceased homeowner by publication and “nail and mail” at the decedent’s former home provided due process under the 14<sup>th</sup> Amendment to the United States Constitution to the personal representative of the deceased’s estate?

## RELATED CASES

*Thornton Mellon, LLC v. Doris E. Sweet and Daniel A. Grosso, et al.*, No. 460697, Circuit Court of Maryland for Montgomery County. Default Judgment against Doris E. Sweet, deceased, and Daniel A. Grosso, deceased, entered July 2, 2019. Final Judgment as to James Sweet, Intervenor, entered Sept. 2, 2020.

*James Sweet v. Thornton Mellon, LLC, et al.*, No. 700, Sept. term 2020, Maryland Court of Special Appeals. Judgment entered Aug. 23, 2021.

*James Sweet v. Thornton Mellon, LLC, et al.*, No. 246, Sept. term 2021, Maryland Court of Appeals. Judgment entered Nov. 22, 2021.

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## **PETITION FOR WRIT OF CERTIORARI**

James Sweet, the personal representative of the Estate of Daniel A. Grosso by and through counsel, John J. Beins, Esq. respectfully petitions this court for a writ of certiorari to review the judgment of the Maryland Court of Appeals.

## **OPINIONS BELOW**

The unpublished decision of the Circuit Court for Montgomery County Maryland is attached at App. 12a - 26a. The unpublished decision of the Maryland Court of Special Appeals is attached at App. 2a - 11a. The Maryland Court of Appeals order denying certiorari is attached at App. 1a.

## **JURISDICTION**

Mr. Sweet's petition for certiorari to the Maryland Court of Appeals was denied on November 22, 2021. Mr. Sweet invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Maryland Court of Appeals judgment.

## **CONSTITUTIONAL PROVISIONS INVOLVED**

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall

make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### STATEMENT OF THE CASE

Courts have “consistently held that the legitimacy of all judgments in civil litigation depends on the ability of parties affected by them to participate in the processes that produced them.” James J. Kelly Jr., *Bringing Clarity to Title Clearing: Tax Foreclosure and Due Process in the Internet Age*, 77 U. Cin. L. Rev. 63, 75 (2008-2009). Available at: [https://scholarship.law.nd.edu/law\\_faculty\\_scholarship/451](https://scholarship.law.nd.edu/law_faculty_scholarship/451).

In a long line of cases beginning with *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) and continuing through *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983) and *Jones v Flowers*, 547 U.S. 220 (2006) and beyond, this Court has consistently held that the due process clause of the 14<sup>th</sup> Amendment to the U.S. Constitution requires civil plaintiffs to take reasonable steps to provide defendant property owners with actual notice and the opportunity to be heard before the entry of a legitimate final enforceable judgment. See *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to

present their objections.”); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 796 n 3 (1983)(rejecting the argument that a different due process standard applies to in rem proceedings because “an adverse judgment in rem directly affects the property owner by divesting him [or her] of his [or her] rights in the property before the court”); *Jones v Flowers*, 547 U.S. 220 (2006)(mailed notice to property owner in tax sale action did not comport with federal due process requirements where the sender knew that the mailing did not reach the property owner and thus did not constitute notice of one “desirous of actually informing the [homeowner].”).

In this case, petitioner James Sweet, the personal representative of an estate received no notice of the tax foreclosure proceedings prior to the entry of a default judgment. As a result, the deceased’s home was lost to a tax sale purchaser because the deceased failed to pay \$1,200.49 in property taxes due five days after the deceased passed away.

The Circuit Court of Maryland for Montgomery County held that Respondent Thornton Mellon, LLC’s (“TM”) claim that it did not know that the homeowners were deceased and TM’s concomitant efforts to serve the homeowners as if they were alive were reasonable under the circumstances. Thus, the Circuit Court denied Mr. Sweet’s motion to vacate the default judgment entered against Mr. Grosso and Mrs. Sweet. App. 15a.<sup>1</sup> The Circuit Court found:

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1. Mr. Sweet preserved the due process issue under the 14<sup>th</sup> Amendment to the United State Constitution at every stage of these proceedings in the Maryland Courts. *See* Sweet 1/30/2021 Motion to Intervene and Vacate Default Judgment at p. 7, n.3 (“*citing Mullane, supra.*, and arguing that the Circuit Court never had personal

the actions taken by TM here were not mere gestures. Instead, the actions taken and notices given were reasonably calculated to provide notice to anyone interested in the Property, and were sufficient related to Mr. Grosso as a properly named individual defendant under the statute and the circumstances existing here. **In addition to the newspaper publication and the courthouse postings, there were repeated mailings to the Property, as well as**

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jurisdiction over Mr. Sweet, stating, “[d]ue process is guaranteed to Intervenor under the 14th Amendment to the U.S. Constitution and Article 24 of the Md Declaration of Rights. Failure of procedural due process under either deprives the court of jurisdiction and so gives grounds to reopen the judgment. . .”).

Mr. Sweet continued to assert his due process rights under the 14<sup>th</sup> Amendment in his brief submitted to the Maryland Court of Special Appeals, *citing* this Court’s opinions *in Mullane, supra.*; *Mennonite Bd., supra.*; and *Flowers, supra.* Sweet Merits Brief at 13-14, 22. *James Sweet v. Thornton Mellon, LLC, et al.*, No. 700, Sept. term 2020, Maryland Court of Special Appeals.

Finally, Mr. Sweet continued to preserve this due process issue in his unsuccessful petition for a writ of certiorari to the Maryland Court of Appeals. *See* Sweet petition at 3, 12-14. *James Sweet v. Thornton Mellon, LLC, et al.*, No. 246, Sept. term 2021, Maryland Court of Special Appeals *citing* this Court’s opinions *in Mullane, supra.*; *Mennonite Bd., supra.*; and *Flowers, supra.*:

#### ISSUE 3:

Whether Thornton Mellon, LLC’s attempted service of the Summons and Complaint on the decedent by publication and “nail and mail” at the decedent’s former home provided due process to the personal representative of the Estate, under the 14th Amendment to the United States Constitution and Article 24 of the Maryland Declaration of Rights?

**the required actual posting on the Property's door.<sup>2</sup>**

App. 21a. (emphasis added).

In footnote 5 of its opinion, the Circuit Court noted: “Those efforts [at serving Daniel A. Grosso and Doris E. Sweet] were of course unavailing, given that Ms. Sweet and Mr. Grosso had passed from this life in 2016 and 2017 respectively.” *Id.*

On Appeal, the Maryland Court of Special Appeals failed to address the glaring due process issue holding that petitioner’s appeal was moot because Respondent, Al Czervik, LLC had sold the property to a third party during the pendency of the appeal. App. 8a-10a. The Maryland Court of Appeals denied petitioner’s writ of certiorari without opinion. App 1a.

Petitioner asks this Court to grant certiorari so that it can address a previously unaddressed issue that threatens property owners and their heirs and legatees nationwide: whether purported service on a deceased homeowner provides reasonable notice and the opportunity to be heard to the personal representative of the deceased’s estate.<sup>3</sup>

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2. The Circuit court’s first-class mailed notices to Daniel A. Grosso and Doris E. Sweet of the 7/2/2019 Judgment foreclosing their right of redemption and granting title to TM were returned undeliverable on 8/8/2019 as noted in the Circuit Court docket entries of that date. Therefore, TM’s pre-suit and prejudgment first-class mailings to Daniel A. Grosso and Doris E. Sweet were almost certainly returned as well.

3. In this case, Mr. Sweet had yet to be appointed as personal representative at the time Respondent purportedly served the

In *LN Management v. J.P. Morgan*, 957 F.3d 943 (9th Cir. 2020), Judge Boggs of the 6th Cir - sitting by designation in the 9th circuit - examined the issue present in this matter and stated:

...there are sound logical reasons not to allow suits against the dead. Our concern is not, primarily, injustice to the deceased. Rather, if lawsuits against the dead were allowed, injustice to the living would result. In this case, if [the deceased's] heirs did have a viable claim to the property. . . , **then a suit against the [deceased] would allow the plaintiff to create the appearance of a true quiet-title action while in fact avoiding notifying those who could actually defend their rights, i.e. the representative of the estate.** As a formal matter, we acknowledge the force of the Fourth Circuit's analysis that the dead do not provide the requisite adversarialness to make them parties to an Article III case or controversy. **More generally, we are confident that allowing proceedings against the dead would, in this case and many others, deprive the living of due process.**

*LN Management v. J.P. Morgan*, 957 F.3d 943, 954-955 (9th Cir. 2020)(emphasis added).

This case squarely presents the question raised by Judge Boggs in *L.N.Managment* - whether service on the dead provides due process to the living.

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deceased Mr. Grosso by publication and "nail and mail" to Mr. Grosso's former home. App. 5a.

In this case, TM purported to serve the deceased Daniel A. Grosso and his deceased wife, Doris E. Sweet and then obtained a default judgment against them when they failed to respond. The trial Court then compounded the error when it held that service on the deceased former homeowners constituted valid service on the personal representative of the deceased's Estate and refused to vacate the default judgment which purported to grant good title to TM. Thus, the family of Daniel A. Grosso lost his home to a Montgomery County tax sale due to his failure to pay a \$1,200.49 property tax bill five days after he passed away.<sup>4</sup>

## 1. Factual Background

On September 25, 2017, Daniel A. Grosso died. App. 13a. At the time of his death, he was the sole owner of real property located at 15107 Interlachen Rd. Apt 2-924 Silver Spring, Md. 20906 ("the property"). App. 12a. The property was previously owned tenants by the entirety by Daniel A. Grosso and his wife, Doris E. Sweet. App. 13a. However, Doris E. Sweet died on January 4, 2016. *Id.* Upon Mrs. Sweet's death, her ownership interest in the property automatically passed to her husband Daniel A. Grosso by operation of law as surviving tenant by entirety owner. *Id.* Therefore, Mr. Grosso was the sole owner of the property as surviving owner, from January 4, 2016 until his death on September 25, 2017. *Id.*

On September 30, 2017, five days after his death, Mr. Grosso failed to pay his 2017 Montgomery County

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4. In cases where the deceased's home is the main or only asset of the Estate, valid creditor claims against the Estate will go unpaid if the Estate loses its only asset from which to pay such claims.

property taxes of \$1,200.49. *Id.* As a result, Montgomery County commenced tax sale proceedings. *Id.*

On June 11, 2018, respondent, Thornton Mellon, LLC (“TM”) bought a tax certificate for the property at a Montgomery County tax sale. *Id.* On December 18, 2018, TM filed the underlying Complaint against Daniel A. Grosso and Doris E. Sweet, both deceased, seeking to foreclose their right of redemption. App. 13a. However, neither were the owners at that time since both were deceased. *Id.* Moreover, TM purported to serve Daniel A. Grosso and Doris E. Sweet with a copy of the Summons and Complaint. However, once again that was an impossibility since they were deceased. *Id.* Nor did respondent serve Mr. Grosso’s personal representative with the Summons and Complaint because a personal representative had yet to be appointed even though the estate was opened on October 13, 2017. App. 14a.

Thereafter, rather than seek appointment of a personal representative under Md. Code, Estate and Trust Art § 5-104 (10) to effect service on the only person authorized to accept service on behalf of the Estate - the personal representative - TM purported to serve Daniel A. Grosso and Doris Sweet as if they were alive. App. 13a - 17a. Thereafter, TM obtained court approval to obtain alternative service through other means on Mr. Grosso and Mrs. Sweet as if they were alive. *Id.* Those other means included first class mail, publication and posting in the courthouse lobby and on the front door of Mr. Grosso’s and Mrs. Sweet’s former residence. App. 17a.

When neither Mr. Grosso nor Mrs. Sweet responded to the Summons and Complaint, TM requested that a



default judgment be entered against Daniel A. Grosso and Doris E. Sweet. App. 5a. Respondent's request for a default judgment was granted on July 2, 2019. App. 17a. A tax sale deed dated August 27, 2019 was subsequently issued to Respondent, Al Czervik LLC ("AC") (as assignee of original Plaintiff, Thornton Mellon, LLC). *Id.* That deed was recorded on September 23, 2019. *Id.*

Following his appointment as personal representative on January 16, 2020, James Sweet filed a motion to intervene in this action to redeem the property by paying the \$1,200.49 unpaid tax bill plus any recoverable expenses. *Id.* TM asserted that the full redemption amount on the \$1,200.49 unpaid tax bill was \$44,609.58. On March 11, 2020, Mr. Sweet deposited \$44,609.58 into the Court registry to demonstrate his immediate ability and intent to redeem the property when and if the default judgment was vacated, subject to proof of the proper redemption amount in the Circuit Court of Maryland for Montgomery County. The trial court granted Mr. Sweet's motion to intervene but denied his motion to vacate the default judgment entered against Daniel A. Grosso and Doris E. Sweet. App. 13a.

## **2. Direct appeal**

Subsequent to the entry of the default judgment against Mr. Grosso, TM transferred the property to Respondent Al Czervik, LLC who then - during the pendency of the appeal to the Maryland Court of Special Appeals - sold the property to a third party. App. 7a-8a. The Maryland Court of Special Appeals seized upon this fact to avoid addressing the merits of Mr. Sweet's appeal, holding that the appeal must be dismissed as moot since "a

reversal will have no effect [where good title was already purportedly transferred]”. *Id.*

A decision whether to vacate the judgment of a trial court in cases where a claim has been abandoned or has become moot on appeal is a discretionary one and “depends on the equities of the case.” *Russman v. Bd. of Educ.*, 260 F.3d 114, 121 (2d Cir.2001). However, vacatur is common where it is the “unilateral action of the party who prevailed below” that causes a judgment to become actually or purportedly unreviewable. *U.S. Bancorp Mortg. Co. v. Bonner Mall P’ship*, 513 U.S. 18, 25 (1994). In other words, the winning party in the trial court should not be able to prevent appellate review of a perhaps-erroneous decision by attempting to render the district court’s judgment unappealable. *Penguin Books USA Inc. v. Walsh*, 929 F.2d 69, 73 (2d Cir.1991).

In this case, the Maryland appellate courts should have reviewed the merits of Mr. Sweet’s appeal on due process grounds rather than avoid review due to the “the unilateral action” of Respondents given the fundamental due process issue at stake. If TM never properly served the personal representative of the Estate of Daniel A. Grosso, the trial court never had personal jurisdiction over the personal representative of the Estate of Daniel A. Grosso - the only living person with an ownership interest in Daniel A. Grosso’s former home. Thus, if service was invalid, the trial court’s default judgment purporting to convey Mr. Grosso’s home to TM for pennies on the dollar was a nullity. *Id.*

## REASONS FOR GRANTING THE WRIT

- A. This case presents an important and recurring issue of national scope. To avoid the erosion of due process protections repeatedly recognized by this court over the 70 years since *Mullane*, this Court should examine whether purported service on a deceased former owner can - and did - provide due process to the personal representative of the deceased owner's estate in a tax sale.**

According to a May 10, 2021 AARP study, property taxes “generate approximately one third of local tax revenue nationwide, and more than half of the revenue in 5 states.” AARP, *Presentation to NCSL Task Force on State and Local Taxation*, at 2. Available at: <https://www.ncsl.org/Portals/1/Documents/Taskforces/Property%20Taxes%20and%20Caregiver%20Tax%20Credit%20.pdf>. Moreover, “demands for local services have increased as the result of covid, placing additional strain on local budgets”. *Id.* Under these emergent circumstances, it can be tempting for state and local governments to short cut due process protections to homeowners - especially elderly or deceased homeowners - in an effort to increase property tax revenue.

Likewise, purchasers of tax sale certificates have a similar incentive to short circuit homeowner's due process protections so that the purchaser can reap the enormous financial benefits of obtaining title to a property for pennies on the dollar, as occurred in this case. These financial incentives can be particularly tempting where the homeowner is deceased, as in this case. *See St. George Antiochian Orthodox Christian Church v. Aggarwal*,

326 Md. 90, 96, 603 A.2d 484, 487 (1990)(“ . . .the plaintiff often stands to benefit from failed attempts to notify the defendant(s), the Court has stressed that when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.”), *cited in Jones v. Flowers*, 547 U.S. 220 at 227 (2006)(“[Most] Courts of Appeals and State Supreme Courts . . .have decided that when the government learns its attempt at notice [of a pending tax sale] has failed, due process requires the government to do something more before real property may be sold in a tax sale, *citing St. George Antiochian Orthodox Christian Church v. Aggarwal, supra.*).

Given the financial incentives for tax sale purchasers to provide homeowners with inadequate notice - or no notice, as in this case - of an impending tax sale default judgment - it is important that this Court provide additional due process guidance in tax sale cases.<sup>5</sup> This case provides a vehicle for this Court to establish an important nationwide due process principal: that purported service on the dead cannot and does not equate to adequate service on the living.<sup>6</sup>

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5. Under Md Code, Estates and Trusts Art., § 1-301 “title to all property, both real and personal, and as to both testate and intestate estates, shall pass directly to the personal representative [upon the decedent’s death].” Other states have similar procedures providing for the automatic transfer of title to personal representatives or directly to heirs or legatees upon the death of a sole homeowner.

6. Every state provides a statutory procedure for a creditor to petition the state court to open an Estate and appoint a personal representative - sometimes called an Administrator - where either

While a Plaintiff must attempt to provide actual notice to a Defendant in a civil action, actual notice is not required. *Mennonite Bd. of Missions v. Adams*, 462 U.S. at 796-797. However, in this case, TM admits that it never attempted to provide actual notice to the personal representative of the Estate of Daniel A. Grosso. Instead, it purported to serve Mr. Grosso and Mrs. Sweet as if they were alive.<sup>7</sup> Since Mr. Grosso's interest

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no estate has been opened or where no personal representative of the Estate has been appointed. In Maryland, that right is set forth at Md. Code, Estate and Trust Art § 5-104 (10)(2021).

It is undisputed that TM never petitioned the Probate Court for Montgomery County, Maryland to appoint a personal representative of Mr. Grosso's Estate so that the personal representative could be properly served (and provided the opportunity to redeem the property by paying the \$1,200.49 in unpaid property taxes, plus any applicable costs and expenses).

7. TM asserts that it didn't know Mr. Grosso was deceased at the time that TM requested and obtained a default judgement against Mr. Grosso and Mrs. Sweet. However, TM should have requested a death certificate or utilized various publicly available death indexes in order to determine whether Mr. Grosso and Mrs. Sweet were alive.

In Maryland, TM could have requested a copy of Mr. Grosso's death certificate for \$10. <https://health.maryland.gov/vsa/Pages/death.aspx>. If TM had done so, it would have discovered that a deceased Daniel A. Grosso formerly resided at the same property for which TM was seeking to foreclose the right of redemption. See Daniel A. Grosso death certificate at line 10a-e. (Certificate of Death: Daniel A. Grosso, DOD 9/25/17 resided at "15107 Interlachen Dr., 924, Silver Spring, Md. 20906"). Sweet Record Extract at p. 49, *James Sweet v. Thornton Mellon, LLC, et al.*, No. 700, Sept. term 2020, Maryland Court of Special Appeals.

Moreover, as noted by the Circuit Court, an estate for Daniel A. Grosso had been opened on October 13, 2017 in Montgomery County,

in his property passed automatically to his personal representative upon his death, due process required that TM make reasonable attempts to provide actual notice to the personal representative of the Estate of Daniel A. Grosso. *Id.* See also *LN Management v. J.P. Morgan*, 957 F.3d 943, 954-955 (9th Cir. 2020)(purported service on the dead “deprive[s] the living of due process.”).

Petitioning the Court for the appointment of a personal representative and then serving that personal representative would not have required the “heroic efforts” noted in *Dusenbery v U.S.*, 534 U.S. 161, 172 (2002). Instead, it was the only reasonable method available to provide notice to the only person who had an ownership

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Maryland. App. 16a. TM’s title examiner found Mr. Grosso’s Estate prior to the Circuit Court’s entry of default judgment. App.14a. There is no evidence in the record that TM did anything further to follow up on this admitted discovery.

Moreover, the Circuit court’s first class mailed notices to Daniel A. Grosso and Doris E. Sweet of the 7/2/2019 Judgment foreclosing their right of redemption and granting title to TM were returned undeliverable on 8/8/2019 as noted in the docket entries of 8/8/2019. This creates an inference that Respondent’s mailed notices to Mr. Grosso and Mrs. Sweet were also returned to Respondent undeliverable.

In any event, TM certainly knew Mr. Grosso was deceased no later than when Mr. Sweet submitted copies of Mr. Grosso and Mrs. Sweet’s death certificates with his motion to intervene and vacate default judgment. However, TM had already assigned its rights to a related entity, Al Czervik, LLC who then sold the property to a third party during the pendency of Mr. Sweet’s initial appeal.

TM’s actions and inactions did not reflect the actions of one “desirous of actually informing the [homeowner]”. *Jones v Flowers*, 547 U.S. 220 (2006).

interest in the subject property at the time the default judgment was entered: the personal representative. *See Jones v. Flowers*, 547 U.S. 220, 227(2006)(where a plaintiff “becomes aware prior to [judgment] that its attempt at notice [to the property owner] has failed, [d]eciding to take no further action is not what someone ‘desirous of actually informing’ [the defendant] would do; such a person would take further reasonable steps if any were available.”); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) 339 U.S. 306, 314 (1950)(“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”).

Mr. Sweet was denied due process by virtue of the fact that a default judgment was entered in his absence. It is undisputed that neither he nor a court appointed personal representative were ever given any notice of the underlying proceedings prior to the entry of a default judgment. *See Cnty. of Orange v. Goldman (In re Liens)*, 165 A.D.3d 1112, 87 N.Y.S.3d 262 (N.Y. App. Div. 2018) (applying *Mennonite* to actions to foreclose the right of redemption following a tax sale and stating that, “it is well established that the dead cannot be sued. . .Accordingly, [a] party may not commence a legal action or proceeding against a dead person, but must instead name the personal representative of the decedent’s estate” [and holding] that “any determination rendered without [naming or substituting the personal representative] will generally be deemed a nullity.”).

This case presents this Court with an opportunity to clarify the *Mullane* due process principals in tax sale cases. Absent intervention by this Court, states and localities and tax sale purchasers may be tempted to short circuit due process protections in tax sale cases, especially where the homeowner is deceased, given the financial incentives. That would undermine the carefully crafted due process safeguards that this Court has spent the past 70 years developing in similar cases, including tax sale cases.<sup>8</sup>

### CONCLUSION

For the foregoing reasons, Mr. Sweet respectfully requests that this Court issue a writ of certiorari to review the judgment of the Maryland Court of Appeals.

Date: February 22, 2022

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8. The “right of redemption” is the right to pay the property taxes due and owing plus any applicable costs and attorney’s fees in order to redeem the property from the threat of tax sale.



## **APPENDIX**

1a

**APPENDIX A — ORDER OF THE COURT OF  
APPEALS OF MARYLAND, DATED  
NOVEMBER 22, 2021**

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 246  
September Term, 2021

(No. 700, Sept. Term, 2020 Court of Special Appeals)

(No. 460697V, Circuit Court for Montgomery County)

JAMES G. SWEET

v.

THORNTON MELLON LLC, *et al.*

**ORDER**

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals filed in the above-captioned case, it is this 22nd day of November, 2021

**ORDERED**, by the Court of Appeals of Maryland, that the petition be, and it is hereby, **DENIED** as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Joseph M. Getty  
Chief Judge

**APPENDIX B — OPINION OF THE COURT  
OF SPECIAL APPEALS OF MARYLAND,  
FILED JULY 21, 2021**

IN THE COURT OF SPECIAL  
APPEALS OF MARYLAND

No. 0700, September Term, 2020

JAMES G. SWEET

v.

THORNTON MELLON LLC, *et al.*

Shaw Geter,  
Wells,  
Ripken,

JJ.

Opinion by Shaw Geter, J.

July 21, 2021, Filed

Circuit Court for Montgomery County  
Case No. 460697V

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\* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

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This appeal arises from a foreclosure action and an order of the Circuit Court for Montgomery County denying appellant James Sweet's<sup>1</sup> Motion to Vacate a Default Judgment Foreclosing Rights of Redemption. Appellee, Thornton Mellon LLC, initially purchased the real property in question at a tax sale and, after the owners failed to redeem the property, it filed a complaint to foreclose. Following several attempts to serve them, appellee filed a motion requesting a waiver of alternative service and a motion for judgment. The circuit court granted appellee's motions and issued a default judgment. Appellee then assigned its interest to Al Czervik LLC.<sup>2</sup> Five months later, appellant sought to intervene and vacate the judgment, as well as the notice of substitution. The court held a hearing and later issued its memorandum opinion and order that granted appellant's motion to intervene but denied appellant's motion to strike the notice of substitution and motion to vacate the default judgment.

Appellant timely appealed and presents the following rephrased questions for our review:<sup>3</sup>

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1. James Sweet is the personal representative of the estate of Daniel Grosso.

2. Al Czervik LLC is an appellee in this case.

3. Appellant's original questions presented are stated as follows:

- I. Can a default judgment entered in favor of a tax sale purchaser foreclose a personal representative's right of redemption where the tax sale purchaser's Complaint failed to name the personal representative of the decedent's estate as a Defendant in the action?

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1. Did the Circuit Court err in denying Appellant's Motion to Vacate the Default Judgment Foreclosing Rights of Redemption?
2. Did the Circuit Court err in denying Appellant's Motion to Strike Al Czervik, LLC's Notice of Substitution?

**BACKGROUND**

Appellee, Thornton Mellon LLC, purchased the subject property at a tax sale in Montgomery County on June 11, 2018. The owners of the property were listed as Doris Sweet and Daniel Grosso. On December 18, 2018, after sending the required notices, Thornton Mellon LLC filed a Complaint to Foreclose the Rights of Redemption in the Circuit Court for Montgomery County. Appellee, on April 23, 2019, filed an Affidavit describing its efforts to serve Doris Sweet and Daniel Grosso personally and

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- II. Did Thornton Mellon, LLC's attempted service of the Summons and Complaint on the decedent by publication and "nail and mail" at the decedent's former home provide due process to the personal representative under the 14th Amendment of the United States Constitution and Article 24 of the Maryland Declaration of Rights and constitute good service on the decedent's personal representative?
  - III. Did the trial Court err in denying Mr. Sweet's Motion to Strike Al Czervik, LLC's (the substituted Plaintiff) Notice of Substitution where the original Plaintiff (Thornton Mellon, LLC) remained a necessary party to this action for a number of reasons including discovery purposes related to the proper amount of redemption?

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through the mail. Appellee also filed an Affidavit of Additional Diligence. On May 29, 2019, appellee filed a motion requesting a waiver of alternative service and a motion for judgment. The circuit court, on July 2, 2019, granted the motion for a waiver of alternative service and issued a default judgment. Thornton Mellon LLC then assigned its interests in the tax sale certificate to Al Czervik LLC. Thereafter, Al Czervik LLC obtained and recorded a tax sale deed to the property.

On January 31, 2020, appellant filed a motion seeking to intervene and to vacate the foreclosure judgment because Thornton Mellon LLC sued and purported to serve Daniel A. Grosso, who was deceased. Appellant argued that appellee failed to serve the estate or its personal representative. Appellant asserted that Thornton Mellon LLC did not validly foreclose the right of redemption of the personal representative of the estate of Daniel A. Grosso and thus, the court did not have, and never obtained, personal or subject matter jurisdiction over Daniel Grosso.

Appellee opposed the motions and argued that it fully complied with its obligations under the Tax Property Article. Appellee argued that it engaged in an exhaustive process to ensure that notice of the tax sale foreclosure was given to the record title holders of the property, Doris Sweet and Daniel Grosso. On February 12, 2020, appellees filed a Notice of Substitution of Parties, naming Al Czervik LLC as the party Plaintiff. Appellant then filed a Motion to Strike the Notice of Substitution.

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A hearing was held on July 29, 2020, and the court requested additional memoranda on the applicability and effect of Maryland Code, Tax Property §14-836(b)(8) to the dispute. Both sides filed memorandums and replies as requested. On September 2, 2020, Judge Harry C. Storm issued a Memorandum Opinion and Orders granting appellant's Motion to Intervene but denying appellant's Motion to Vacate and Motion to Strike Notice of Substitution. The court concluded that appellee had "satisfied its obligations under the statute to provide notice, and indeed went above and beyond its required obligations and performed additional searches." On September 11, 2020, appellant noted an appeal.

Al Czervik LLC filed a Motion to Deem Stay Not Applicable, or in the Alternative, to Set Supersedeas Bond on September 22, 2020. Appellant responded with a motion to stay the matter pending appeal and to set a supersedeas bond in the amount of \$100,000. On December 17, 2020, at the conclusion of a hearing, Judge Ronald B. Rubin denied appellant's Motion to Stay. The property was sold on February 23, 2021 to Stuart and Naomi Zirotsky.

**MOOTNESS**

Following the circuit court's denial of appellant's Motion to Stay, appellant took no further action in seeking relief from this Court. We note that when the parties filed their briefs with us, appellee filed a motion to dismiss which we denied, "but with leave to reassert the motion in the appellees' brief." Appellees did request this Court to reconsider its initial denial in its brief. Thus, before

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addressing the merits of the appeal, we examine appellee's motion to dismiss. Appellee argues that appellant failed to stay the circuit court judgment or otherwise encumber the property before it was sold to a bona fide purchaser. As a result, any reversal of the circuit court's decision is of no effect and the appeal is moot. Conversely, appellant argues appellee's motion to dismiss was not timely. Appellant also contends that appellees could not properly convey legal title to the property.

**I. Appellees' Motion to Dismiss Appeal as Moot Was Timely Filed**

Under Maryland Rule 8-602(c)(8), this Court may dismiss an appeal if the case has become moot. Rule 8-603(a)(4) provides a motion to dismiss shall be filed within ten days after the case becomes moot, if the motion is based on subsection (c)(8) of Rule 8-602.

Appellees argue its motion to dismiss was timely because it was filed on February 25, 2021, two days after the settlement or sale of the property. Appellant argues the motion was untimely because the deed was signed on February 1, 2021 and the motion was filed more than ten days later. In response, appellees argue the operative date is when title passed to the third-party bona fide purchaser, which was February 23, 2021. We agree.

While we note that the deed was signed on February 1, 2021, the settlement and closing occurred later in the month. The HUD-1 exhibit attached to appellees' Motion to Dismiss Appeal clearly lists the settlement date as



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February 23, 2021 and it is on that date, the seller paid the purchase price, the deed to the property changed hands and was delivered to the purchaser. The notice of appeal was filed two days later, and thus, it was timely.

## **II. The Appeal is Moot Because a Reversal Will Be of No Effect**

In *Baltrotsky v. Kugler*, a case where the appellant sought to void a foreclosure sale following the denial of a stay and ratification of the sale, the Court of Appeals held that “an appeal becomes moot if the property is sold to a bona fide purchaser in the absence of a supersedeas bond because a reversal on appeal would have no effect.” *Baltrotsky v. Kugler*, 395 Md. 468, 474, 910 A.2d 1089 (2006). The Court noted that a bona fide purchaser “is a purchaser who takes the property without notice of defects in the . . . sale.” *Pizza v. Walter*, 345 Md. 664, 674, 694 A.2d 93 (1997); *see also Baltrotsky*, 395 Md. at 474-75. Generally, “the rights of a bona fide purchaser of mortgaged property w[ill] not be affected by a reversal of the order of ratification in the absence of a bond having been filed.” *Baltrotsky v. Kugler*, 395 Md. 468, 474, 910 A.2d 1089 (2006); *Pizza*, 345 Md. at 674; *see also Lowe v. Lowe*, 219 Md. 365, 368, 149 A.2d 382 (1959). “Bona fide purchaser status extends only to those purchasers without notice of defects in title . . . [or] defects in the foreclosure sale.” *Pizza*, 345 Md. at 674; *see also Baltrotsky*, 395 Md. at 474-75.

Maryland Rule 8-422(a)(1) provides, “an appellant may stay the enforcement of any other civil judgment

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from which an appeal is taken by filing with the clerk of the lower court a supersedeas bond under Rule 8-423, alternative security as prescribed by Rule 1-402 (e), or other security as provided in Rule 8-424.” The Court of Appeals, in *Poku v. Friedman*, explained:

If ratified foreclosure sales could be overturned long after the ratification in the absence of the filing of a supersedeas bond and the granting of a stay, the title to any property where any prior conveyance in the chain of title came out of a mortgage foreclosure sale could be questioned even if the foreclosure sale occurred a year in the past, or ten years, or fifty years.

403 Md. 47, 54, 939 A.2d 185 (2008). The Court also discussed the required posting of a bond in *Mirjafari v. Cohn*, stating that “mortgagors were required to post a supersedeas bond in order to secure their right to pursue appellate review.” 412 Md. 475, 489, 988 A.2d 997 (2010). The exceptions to this general rule are: “(1) the occasion of unfairness or collusion between the purchaser and the trustee; and (2) when a mortgagee or its affiliate purchases the disputed property.” *Baltrotsky*, 395 Md. at 475; *Pizza*, 345 Md. at 674; *Leisure Campground & Country Club Ltd. P’ship v. Leisure Estates*, 280 Md. 220, 223, 372 A.2d 595 (1977).

In the present case, the circuit court denied appellant’s Motion to Stay the Judgment of Foreclosure. Appellant sought no further relief thereafter, no motions were filed in the circuit court, nor did appellant post a supersedeas

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bond. The judgment was not vacated or otherwise disturbed. The property was then sold to a third-party. Tax Property §14-844 provides that a “judgment vests in the plaintiff an absolute and indefeasible title in fee simple in the property, free and clear of all alienations and descents of the property occurring before the date of the judgment and encumbrances on the property.” As such, the property had no defects in title and the purchasers were, as a matter of law, bona fide purchasers. Thus, reversing the circuit court’s judgment would be of no effect.

### **III. This Court Will Not Consider the Merits of This Moot Case**

Generally, a case is moot if “there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide.” *Powell v. Md. Dep’t of Health*, 455 Md. 520, 539-40, 168 A.3d 857(2017); *G.E. Capital Mortg. Servs., Inc. v. Edwards*, 144 Md. App. 449, 453, 798 A.2d 1187 (2002). When a case is moot, the Court will “usually dismiss the appeal without addressing the merits of the issue.” *Powell*, 455 Md. at 540. This Court may consider the merits of a moot case under two circumstances, “first is where a controversy that becomes non-existent at the moment of judicial review is capable of repetition but evading review, and the second is to prevent harm to the public interest.” *See Comptroller of the Treasury v. Zorzit*, 221 Md. App. 274, 292, 108 A.3d 581 (2015). Neither exception applies to the case at bar and we hold that any further consideration of this matter would promote the uncertainty surrounding marketable title, identified by the Court of Appeals in *Poku*.

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**JUDGMENT OF THE CIRCUIT  
COURT FOR MONTGOMERY  
COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANT.**

**APPENDIX C — MEMORANDUM OPINION OF  
THE CIRCUIT COURT FOR MONTGOMERY  
COUNTY, MARYLAND, DATED  
SEPTEMBER 2, 2020**

CIRCUIT COURT FOR  
MONTGOMERY COUNTY, MARYLAND

Case No. 460697V

THORNTON MELLON, LLC,

*Plaintiff,*

v.

DORIS E. SWEET & DANIEL A. GROSSO, *et al.*,

*Defendants.*

**MEMORANDUM OPINION**

**I. Introduction**

This case arises from a tax sale of Property located at 15107 Interlochen Drive, Condo Unit 2-924, Silver Spring, Maryland 20906-5634 (the “Property”). On January 31, 2020, James Gregory Sweet, Personal Representative for the Estate of Daniel A. Grosso (the “PR”), filed “Intervenor’s Motion to Intervene and Vacate Judgment” [DE 22]. The PR seeks to intervene in this action, and have the court vacate its July 2, 2019 Order [Judgment] Foreclosing Rights of Redemption. For reasons that follow,

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the PR's request to intervene will be granted.<sup>1</sup> The motion to vacate will be denied.

**II. Background/Chronology**

On June 11, 2018, a Tax Sale Certificate related to the Property was issued by Montgomery County to plaintiff Thornton Mellon LLC ("Plaintiff"). Plaintiff thereafter filed a Complaint to Foreclose Equity of Redemption, and on July 2, 2019 this court entered an Order Foreclosing Rights of Redemption.

The Complaint was accompanied (per Md. Rule 14-502) by an Affidavit of Search signed by a title examiner for Mortiles, LLC. The Affidavit certified that it was a "complete search of the records of the Land Records Office, Circuit Court, and the Register of Wills for Montgomery County, in accordance with generally accepted standards for a title examination for the period of at least 40 years ...." The search confirmed that record title to the Property as of December 7, 2018 was in the names of Doris E. Sweet and Daniel A. Grosso as tenants by the entirety.<sup>2</sup> Under "Estate Results," the search revealed the following:

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1. At a minimum the PR meets the requirements for permissive intervention under Md. Rule 2-214(b). Accordingly, the court allows the PR to intervene to seek substantive relief.

2. Doris E. Sweet and Daniel A. Grosso became the owners of the Property (as tenants by the entirety) pursuant to a Deed dated May 8, 2006. The facts now confirm that Doris Sweet died on January 4, 2016, whereupon Daniel A. Grosso as survivor became the sole owner of the Property. Daniel A. Grosso died on September 5, 2017. The Property is located in The Greens at Leisure World community.

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“Doris Sweet: None Found/ Daniel Grosso: See attached possible Estate Docket No. 000000W92902.”<sup>3</sup>

The Complaint named as individual defendants Doris E. Sweet and Daniel A. Grosso; The Greens at Leisure World; Unknown Occupant [at the Property]; and Montgomery County, Maryland (for Maryland Annotated Code [Tax Prop. Art.] 14-836(b)(1)(v) purposes only). The Complaint also named as defendants (collectively the “Additional Defendants”) “[a]ll other persons that have or claim to have any interest in the property 15107 Interlochen Dr. Condo Unit:2-924, Silver Spring, MD 20906-5634, Parcel No. 13-02478886” and “any unknown owner of the property .... the unknown owner’s heirs, devisees, and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest.” Summonses were issued for service upon the individual defendants, and notices were issued for posting by the Sheriff at the courthouse and for publication in the Daily Record [DE 4/5,/617].<sup>4</sup>

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3. While the Title Search suggests that there was an attachment related to the Estate, nothing was attached. It is undisputed that as of the time the Title Search was conducted in late 2018, a Will for decedent Daniel A. Grosso had been filed with the Register of Wills of Montgomery County, with a docket number of W92902. As discussed further *infra*, it was not until January 16, 2020 when a Petition for Probate was filed. On that same date (January 16), a Consent to Appointment of Personal Representative was filed, along with a nominal bond of the PR, among other things.

4. The Sheriffs Department verified that the notice of publication was posted on January 28, 2019 and removed on

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On April 23, 2019, Plaintiff filed an Affidavit with Respect to Service. Non-Service, Posting [Pursuant to] Maryland Tax-Property §14-836 and Maryland Tax-Property §14-839(a)(4) [DE 14]. Among other things, the Affidavit described efforts to serve Doris Sweet and Daniel Grosso personally and through the mail. Those efforts included two attempts by a process server to serve them (and any unknown occupant) at the Property, mailing notice to them at the Property address, and posting a notice on the door of the Property.<sup>5</sup> The Affidavit attested that “[t]o the best of [the Affiant’s] knowledge, the notice provisions of Maryland Tax-Property §14-836 have been complied with.” *Id.*

Also on April 23, 2018, Plaintiff filed an “Affidavit of Additional Diligence” [DE 15] with respect to Doris E. Sweet and Daniel A. Grosso. Included with that Affidavit were several attachments, which showed the following: First, while a search of the Register of Wills indicated “no results” for “Doris Sweet,” an Individual Report (a “skip trace” performed through Clear, an online database of Thompson Reuters) showed that a Doris Sweet had died on October 1, 2018. Second, as related to Daniel A. Grosso, the search of the Register of Wills showed that a Daniel

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February 27, 2019. (DE #10). The Daily Record confirmed by Certificate of Publication that the notice was published on 3 dates—January 17, 2019, January 24, 2019, and January 31, 2019 (DE #9). Defendants Leisure World and Montgomery County were served by certified mail. (DE 14).

5. Those efforts were of course unavailing, given that Ms. Sweet and Mr. Grosso had passed from this life in 2016 and 2017 respectively.



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A. Grosso had died on September 25, 2017, and that an estate had been opened (and closed) on October 13, 2017. The Register of Wills docket sheet accompanying the Affidavit reflected a status of “archived” and noted that the Will was “unprobated.” The last entry, on October 26, 2018, indicated a “document disposal action”. The individual skip trace report for Daniel A. Grosso, however, showed on the one hand a date of death of March 1, 2018, but on the other showed Daniel A. Grosso to be alive and residing at 14400 Homecrest Road, #106, Silver Spring, MD 20906. The Service List accompanying the Affidavit of Additional Diligence indicates that the Affidavit was mailed to both the Property address and to Mr. Grosso at the Homecrest Road address.<sup>6</sup>

On May 29, 2019, Plaintiff filed a Motion for Order Foreclosing Rights of Redemption & Request for Hearing, [DE 17] and a Motion Requesting Waiver of Alternative Service [DE 16]. In the latter, Plaintiff described its efforts with respect to service, including publication and posting, and requested that the court waive alternate service given the service efforts already undertaken. Related to the former, Plaintiff alleged that it had fully complied with the requirements of the Md. Code, Tax-Property Article

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6. As explained by Plaintiff, based on the information in the Clear Report that Ms. Sweet may have been the surviving spouse (assuming these were the right Sweet/Grosso parties), Plaintiff retained counsel, Joshua E. Zuckerberg, Esq. to possibly open an Estate for Ms. Sweet. Mr. Zuckerberg, however, confirmed in an Affidavit that his searches and investigation revealed that Daniel Grosso was alive. See Affidavit attached as Exhibit A to Opposition to Motion to Vacate (DE #39).

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(“TP”), and that it was entitled to an Order Foreclosing the Rights of Redemption with respect to the Property. Both motions were served by mail addressed to the Property and to Mr. Grosso at the 14400 Homecrest Road address. The court granted both motions by Orders entered on July 2, 2019 [DE 18 and 19].<sup>7</sup>

A Tax Sale Deed dated August 27, 2019 was subsequently issued to Al Czervik LLC (as assignee of Plaintiff). That deed was recorded on September 23, 2019.

**III. The PR’s Motion**

On January 31, 2020, the PR filed the motion now before the Court [DE 25], seeking to intervene and to vacate the Order Foreclosing Rights of Redemption. According to the PR, upon the death of Daniel A. Grosso on September 5, 2017, “title in the property automatically passed by operation of law to the personal representative of Daniel A. Grosso’s estate ... pursuant to Md. Code, Estates and Trusts Article, §1-301(a).” The PR claims that an estate for Mr. Grosso was opened on October 13, 2017, “but Plaintiff failed to serve the Estate or its personal representative, or to have a personal representative appointed and made a party to this action.” Because of this, the PR posits, “this Court does not have, and never obtained, personal jurisdiction over Daniel A. Grosso, a deceased person, or subject matter of this action against

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7. The Order Foreclosing Rights of Redemption (DE #19) adjudged that upon issuance of the Tax Deed, Plaintiff or its assigns would hold an absolute and indefeasible estate in fee simple in the Property.

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Daniel A. Grosso ... due to Plaintiffs failure to bring this action” against or to serve the personal representative.”<sup>8</sup> Furthermore, the PR argues, Plaintiff “failed to provide the Estate’s personal representative with the statutorily required pre and post suit notices required in an action to foreclose the right of redemption.”

Plaintiff opposed the motion to intervene/vacate [DE #39]. According to Plaintiff, it fully complied with its obligations under the TP Article, and engaged in an exhaustive process to ensure that notice was given of the tax sale foreclosure, including to the parties who were at all times the record title holders of the Property – Doris Sweet and Daniel Grosso. Moreover, says Plaintiff, the PR waived any argument about jurisdiction in filing an Answer/Counterclaim/Third-Party Claim,<sup>9</sup> therefore this court had/has jurisdiction to act. Furthermore, according to plaintiff, the problem here resulted not from actions taken by Plaintiff, but rather from the PR’s failure to take necessary action to become appointed and to pursue the estate administration. Plaintiff posits that had the PR acted diligently, and pursued appointment, the PR would have been the proper defendant. According to Plaintiff, the PR should not now be heard to complain.

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8. The PR was first appointed in January 2020. Md. Code. Est. & Trusts, §6-101 imposes as conditions to appointment the filing of “(a) a statement of acceptance of duties of the office, (b) any required bond, and (c) a written consent to personal jurisdiction ...”

9. While the PR’s motion mentions that such a pleading was attached to his motion, the court has been unable to locate one, and the docket entries fail to identify any such pleadings as having been filed.

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A hearing was held on July 29, 2020, following which the court took the matter under advisement. Subsequently, the court requested additional memoranda on the applicability and effect, if any, of TP § 14-836(b)(8) to the instant dispute. Both sides filed memoranda and replies as requested. The issues have been fully briefed, and as indicated above, the court will deny the PR's motion to vacate the judgment foreclosing the right of redemption.

**IV. Discussion**

TP §14-845(a) provides in part that “[a] court in the State may not reopen a judgment rendered in a tax sale foreclosure proceeding except on the ground of lack of jurisdiction or fraud in the conduct of the proceedings to foreclose ...” Through this section, “the legislature has declared that the public interest in marketable title to property purchased at tax sales outweighs considerations of individual hardship in every case, except upon a showing of lack of jurisdiction or fraud in the conduct of the foreclosure.” *Thomas v. Kokler*, 195 Md. 470, 475 (1950). *See also Arnold v. Carafides*, 282 Md. 375, 377 (1978). At the same time, the tax sale statutory scheme is to be “construed to ensure a balance between: (1) the due process and redemption rights of persons that own or have an interest in property sold at a tax sale; and (2) the public policy of providing marketable title to property that is sold at a tax sale through the foreclosure of the right of redemption.” TP §14-832.<sup>10</sup>

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10. Section 14-832 was amended in 2008. Formerly, it provided that the statute “shall be liberally construed as remedial legislation to encourage the foreclosure of rights of redemption

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As an initial observation, the arguments made by the PR here, although couched only in terms of jurisdiction,<sup>11</sup> go to both the “fraud” and the “jurisdiction” prongs of TP § 14-845(a) for “the failure to give a required statutory notice has been considered constructive fraud,” *Royal Plaza Community Ass’n v. Inc. v. Bonds*, 389 Md. 187, 205 (2005) (internal citations omitted), and “when notice is not properly sent to a necessary party defendant, the court lacks personal jurisdiction to proceed against that defendant’s interest.” *Bonds v. Royal Plaza Community Ass’n, Inc.*, 160 Md. App. 445, 455 (2004), *aff’d* 389 Md. 187 (2005).

According to the PR, no action could be taken against Daniel Grosso’s interest because Mr. Grosso was, at the time such action was taken, deceased,<sup>12</sup> and under Md. Code, Est. & Trusts (“ET”), §1-301, all interest in the property passed directly to the personal representative. Plaintiff disagrees. Aside from the fact that a personal representative had not been appointed more than 2 years

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by suits in the circuit courts and for the decreeing of marketable titles to property sold by the collector.”

11. The issue is one of personal jurisdiction, as the court clearly has subject matter jurisdiction. The Court of Special Appeals decision in *Bonds* explains how the issue of personal jurisdiction enters into what is otherwise an *in rem* or *quasi in rem* proceeding. 160 Md. App. at 454.

12. The PR cites to *Burhet v. Aldridge*, 241 Md. 423, 430 (1966) for the proposition that “an action brought against a dead man is a nullity.” That case, however, arose from an auto accident and did not involve a tax sale or the statutory provisions at issue in this case.

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after Mr. Grosso's death, Plaintiff emphasizes (correctly) that the TP Article is not concerned with "legal title" as may be relevant under ET §1-301. Rather, TP §14-836(b) (1) is concerned with the "*record title holder*" as disclosed through the required title examination of the land records, the register of wills and the circuit court. In this instance, after conducting that required examination and following up on any information revealed therefrom, the "record title holder" as far as Plaintiff could tell was Daniel A. Grosso, who Plaintiff, through its investigation, believed to still be alive.

The court agrees with Plaintiff and finds that Plaintiff satisfied the statutory requirements to foreclose the right of redemption. Contrary to the PR's suggestion that "nail and mail" notices were insufficient, the actions taken by Plaintiff here were not mere gestures. Instead, the actions taken and notices given were reasonably calculated to provide notice to anyone interested in the Property, and were sufficient related to Mr. Grosso as a properly named individual defendant under the statute and the circumstances existing here. In addition to the newspaper publication and the courthouse postings, there were repeated mailings to the Property, as well as the required actual posting on the Property's door.

When Plaintiff discovered information that suggested that Ms. Sweet and/or Mr. Grosso may have died, Plaintiff pursued those leads and reasonably concluded that Mr. Grosso was alive. Other than the name Daniel A. Grosso, the Register of Wills records in late 2018/early 2019 provided no helpful information, and certainly did not disclose either a personal representative (because none

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had been appointed) or anything to indicate that the decedent was even the same Daniel A. Grosso who was an owner of the Property. While the estate had been opened, the records at the time showed that the estate had been closed without the appointment of a personal representative. Plaintiff pursued the matter further and had a skip trace performed by Clear/Thompson Reuters. The Clear Report suggested that a Daniel A. Grosso had died on March 1, 2018 (a date of death different from that identified in the opened/closed Register of Wills Case No. W92902.

The Clear Report also revealed that a Doris Sweet may have died on October 1, 2018, a date which was *after* either the September 25, 2017 date of death from the Register of Wills record in Case No. W92902 related to Daniel Grosso, or the March 1, 2018 date of death for a Daniel Grosso (from the Clear Report). Plaintiffs pursued the issue further by retaining an attorney, Joshua Zuckerberg, to potentially open an estate for Doris Sweet;<sup>13</sup> however, Mr. Zuckerberg concluded after engaging the services of Accurint by Lexis Nexis, that Daniel Grosso was still alive, with a possible address of 14400 Homecrest Road, Apt. 106, Silver Spring, Maryland 20906. Thereafter, notices were also sent to Mr. Grosso at the Homecrest address. During all this time, no action was taken by the personal representative of Mr. Grosso's estate. And, apparently, no one was going to the Property, retrieving mail and the like.

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13. While the PR has suggested that Plaintiff was required to open an estate for either Ms. Sweet or Mr. Grosso, the PR has cited to no statutory authority, including under the TP Article, imposing that obligation.

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As indicated above, the court requested post-hearing briefing on how, if at all, TP §14-836(b)(8) affects the outcome of this dispute. Plaintiff and the PR provided memoranda and reply memoranda.

Subsection (b)(8) was added to TP §14-836 in 2017, and established procedures related to tax sale foreclosure redemption practices where a person required to be named as a defendant is deceased or believed to be deceased. Section 14-836(b)(8)(i) provides that if the person required to be “named as a defendant is deceased and the plaintiff knows of a personal representative, the plaintiff *shall* join the personal representative as a defendant.” (Emphasis added). That was not the case here. While the individual defendants were deceased (although that fact was not known to Plaintiff), there was no personal representative for plaintiff to “know.”

Subpart (ii) of Section 14-836(b)(8) provides that “[i]f an individual required to be named as a defendant is deceased, or is believed by the plaintiff to be deceased, and the plaintiff knows of no personal representative, the plaintiff shall state those facts in an affidavit filed with the complaint.” Here, at the time the Complaint was filed, plaintiff was unaware that defendant was deceased, although the Affidavit of Search prepared by Mortiles, LLC and filed with the Complaint identified a possible Estate of an individual named “Daniel A. Grosso” from two years before which had been closed, unprobated, and with no personal representative appointed. Even assuming for argument that the information possessed by Plaintiff was sufficient to trigger the obligation to file the Affidavit



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referenced in subpart (ii),<sup>14</sup> Plaintiff satisfied its obligation by including the information about the possible Estate in the Affidavit of Search. In any event, even if subpart (ii) applied and Plaintiffs knowledge was sufficient to “believe” that Mr. Grosso was deceased, the consequence of that as described in subpart (iv) [14-836(b)(8)(iv)] was simply to enable Plaintiff permissively<sup>15</sup> to “join the individual [Mr. Grosso] as a defendant,” and to permissively “also join “the testate and intestate successors of \_\_\_\_\_ (naming the individual), believed to be deceased.” Interestingly, subpart (iv) expressly countenances the naming of the “individual” as a defendant under the circumstances identified even if it ultimately turns out (as it did here) that the individual was deceased.<sup>16</sup>

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14. The knowledge possessed by Plaintiff at the time the Complaint was filed in this case, however, did not amount to either “knowing” that the individuals were deceased or to “believing” that they were deceased. Rather, at the time of the Complaint’s filing, Plaintiff had inconclusive information as detailed in the Affidavit of Search.

15. Subpart (ii), in contrast to subpart (i) uses “may” rather than “shall” and is permissive, rather than mandatory. *See Fleishman v. Kremer*, 179 Md. 536, 541 (1941) (describing how “may” is generally deemed permissive).

16. Subpart (iv) also permits the naming of the testate and intestate successors, etc. all of whom would necessarily receive notice by way of publication or other alternate forms of service consistent with that required in an *in rem* or *quasi in rem* case. Here, Plaintiff did include as defendants “[a]ll other persons that have or claim to have any interest in the property 15107 Interlochen Dr. Condo Unit:2-924, Silver Spring, MD 20906-5634, Parcel No. 13-02478886” and “any unknown owner of the property .... the unknown owner’s heirs, devisees, and personal representatives

*Appendix C***IV. Conclusion**

In conclusion, § 14-836(b) of the TP Article requires that the “defendants in any action to foreclose the right of redemption shall be (i) the *record title holder* of the property as disclosed by a search performed in accordance with generally accepted standards of title examination of the land records of the county, of the records of the register of wills of the county, and of the records of the circuit court for the county ....” Plaintiff’s title search of those statutorily required sources identified the “record title holder” as Doris Sweet and Daniel Grosso. Nothing in the public records indicated that the record title holder was anyone else.

Plaintiff satisfied its obligations under the statute to provide required notice, and indeed went above and beyond its required obligations and performed additional searches, which led it to conclude that Mr. Grosso was still alive. *See* TP 14-839(a)(2) (“This subsection does not require the plaintiff or the attorney for the plaintiff to make any investigations or to search any other records or sources of information other than those stated”).

While it is now clear that neither Mr. Grosso nor Ms. Sweet were in fact alive, Plaintiff nevertheless satisfied its required obligations under the statute.

Accordingly, while the PR’s request to intervene is granted, the motion to vacate the court’s July 2, 2019

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and their or any of their heirs , devisees, executors, administrators, grantees, assigns or successors in right, title and interest.”

*Appendix C*

Order Foreclosing Rights of Redemption is denied. An Order consistent with these findings will be entered contemporaneously herewith.

/s/ \_\_\_\_\_  
Harry C. Storm, Judge  
Circuit Court for Montgomery County, Maryland