NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

Argued October 2, 2008

Before Judges Stern, Lyons and Waugh.

Cherrystone Bay, LLC, appeals from the judgment of the Chancery Division, General Equity Part, denying its application to intervene in this tax-sale foreclosure action. Cherrystone also appeals the trial court's refusal to vacate the final judgment of foreclosure and dismiss the action for defective service of process. We affirm.

I.

The following factual background is found in the record. On November 3, 2000, Jack R. Sangle, Jr., transferred title to the residential property located at 26 Jefferson Avenue in Pompton Lakes to J&S Management Enterprises, Inc., which was a closely-held corporation. It appears that the sole purpose of J&S was to hold title to the Jefferson Avenue property, which was Jack's residence.

Jack died in September 2002.[1] It appears that he left no will and no one sought to administer his estate. Jack was divorced at the time of his death. He had one child, Colleen Sangle, who resided with her mother, Pamela Sangle, in California. Pamela was aware that Jack owned the Jefferson Avenue property. Following a discussion with an attorney in California after Jack's death, Pamela made the decision not to pursue any interest that her minor daughter might have in the property. It appears that she did not know that title was held through a corporation.

Following Jack's death, no one occupied or maintained the Jefferson Avenue property. In addition, the property taxes were not paid. On April 8, 2003, the Borough of Pompton Lakes held a tax sale on the property for unpaid taxes dating from 2002. Plaintiff B&B Realty Associates, LLC, purchased the tax-sale certificate for $5,726.77.

On July 14, 2004, B&B filed a complaint to foreclose the tax-sale certificate, alleging that the property was "abandoned" within the meaning of N.J.S.A. 55:19-81. B&B specifically relied upon the provisions of N.J.S.A. 54:5-86(b), which permit the filing of a tax-sale foreclosure action with respect to an "abandoned property" at any time.

In August of 2004, counsel for B&B attempted to serve Jack as the registered agent for J&S. R. 4:4-4(a)(6). When service on Jack could not be effectuated, counsel served the New Jersey Department of Treasury on behalf of J&S. N.J.S.A. 2A:15-30.1.

The foreclosure action proceeded as an uncontested matter and an order was entered on November 22, 2004, setting the amount, time, and place of redemption for the property. The amount of redemption was set at $18,926.91, plus any additional interest and taxes incurred prior to the close of the redemption period on January 10, 2005.

Cherrystone, which is in the business of buying properties subject to foreclosure, became interested in the Jefferson Avenue property and employed Sterling Investigative Services to locate Jack's relatives. Sterling located Pamela and Colleen. By contract dated January 10, 2005, Cherrystone entered into an agreement with Pamela, as the natural guardian of her minor daughter Colleen, for the purchase of Colleen's interest in the property.[2] The total purchase price was to be $105,000. Pamela, working through an attorney recommended by Cherrystone, attempted to effectuate the redemption of the property on January 10, 2005. The redemption funds, which came directly from Cherrystone, were an advance on the purchase price for Colleen's interest in the Jefferson Avenue property.

In a letter dated January, 11, 2005, the tax collector informed B&B that the property had been redeemed. B&B challenged the redemption, arguing that the funds had not come from a party to the foreclosure action. See R. 4:64-6(b). The tax collector agreed with B&B and denied the redemption. On January 21, 2005, a final judgment was entered, divesting J&S of all rights to redeem the Jefferson Avenue property and awarding B&B a fee simple interest.

Pamela filed an order to show cause on February 28, 2005, seeking to intervene for the purposes of vacating the final judgment and redeeming the Jefferson Avenue property. The trial judge issued the order to show cause on February 28, 2005. The matter was heard on April 15, 2005; and the resulting order was entered on May 2, 2005. The trial judge stayed the final judgment and allowed forty-five days for discovery.

Cherrystone moved to intervene on April 27, 2005. The trial judge denied Cherrystone's motion to intervene without prejudice, by order dated May 16, 2005. However, she allowed Cherrystone to remain in the case as a "proposed intervenor."

There were case management conferences in June and September 2005. On November 17, 2005, the trial judge appointed a member of the bar to serve as guardian ad litem for Colleen. In October 2005, B&B and Cherrystone filed motions for summary judgment. The trial judge deferred resolution of the motions to allow for further discovery. By letter dated, April 13, 2006, she advised counsel that the matter would have to be tried, implicitly denying the motions for summary judgment.

When the case was called for trial on June 19, 2006, Colleen's guardian ad litem and Cherrystone entered into a consent settlement agreement. The agreement provided for the conveyance of Colleen's rights in the property to Cherrystone, in exchange for $130,000, minus all outstanding taxes and costs. The agreement also provided that Cherrystone would be subrogated to all of Colleen's rights in the foreclosure action.

B&B and Cherrystone argued their respective positions before the trial judge on June 23, 2006. The trial judge issued a letter opinion on August 7, 2006. She rejected Cherrystone's argument that the foreclosure action was premature, finding: (1) that, at the time the foreclosure action was commenced, there was no requirement in N.J.S.A. 54:5-86(b) that a public official certify that the property was in fact "abandoned"; and (2) that the Jefferson Avenue property was "abandoned" within the meaning of N.J.S.A. 55:19-81. She next determined that, because Cherrystone had not sought to intervene prior to either the attempted redemption or the close of the redemption period, it was not entitled to intervene. She also denied the application to vacate the final judgment of foreclosure.

Finally, the trial judge determined that, as a court of equity, she had an obligation to protect the interests of the minor child whose surviving parent had not pursued her rights in the Jefferson Avenue property. Consequently, the trial judge imposed a constructive trust on B&B for the benefit of Colleen. The trust provided for a payment to Colleen under the same terms as the agreement between Cherrystone and Colleen's guardian ad litem.

Final judgment was entered on September 8, 2006. Cherrystone appeals, arguing that the trial court erred in denying its motion to intervene. It contends that the trial judge's negative view of Cherrystone's activities, "the worst kind of heir hunting to face a court," is inconsistent with the views expressed by our Supreme Court in Simon v. Cronecker, 189 N.J. 304 (2007), which was decided four months after the trial court's ruling. Cherrystone also argues that the foreclosure action was premature and that the service of process on J&S was defective. Although B&B has noted its disagreement with the trial judge's decision to impose the constructive trust for the benefit of Colleen, it has not cross-appealed and has indicated its intention to comply with that requirement.

II.

Cherrystone correctly points to Cronecker, supra, as representing a significant change from the Supreme Court's earlier views concerning "heir hunters," entities which seek to purchase the rights of heirs to land that is subject to tax-sale or other foreclosures. 189 N.J. 328-33. See also Simon v. Rondo, 189 N.J. 339 (2007). In Bron v. Weintraub, 42 N.J. 87, 95 (1964), the Court had found "no social value or contribution in the activities" of such "heir hunters," which activities the Court described as "traffic in the misfortune of others."

In reaction to Bron, the Legislature amended N.J.S.A. 54:5-89.1 to preclude intervention in a tax-sale

foreclosure by anyone who obtained an interest in property for "nominal consideration." In Wattles v. Plotts, 120 N.J. 444, 453 (1990), a case in which an interest in the property had been purchased for more than nominal consideration, the Supreme Court nevertheless refused to permit the "heir hunter" to benefit from the redemption, finding that, "[a]s in Bron, to the extent . . . the heir hunter's efforts are designed to thwart the utility of tax sales and to reap windfall profits, they advance no social value".

In Cronecker, a case in which Cherrystone was the "heir hunter," the Court took an entirely different view of the social utility of Cherrystone's activities:

We are presented with commercial competitors, one [the purchaser of the tax sale certificate] claiming to advance society's interest in collecting taxes from tax-dormant properties and the other [Cherrystone] claiming to champion the right of owners to freely sell their properties. These sophisticated investors are clearly capable of looking after their own interests. See Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Ctr. Assocs., 182 N.J. 210, 230 (2005) ("We are not eager to impose a set of morals on the marketplace. Ordinarily, we are content to let experienced commercial parties fend for themselves. . . ."). In pursuing their self-interests to maximize their profits, the parties make possible the achievement of socially desirable objectives. Provided the parties comply with the dictates of the Tax Sale Law and other relevant laws, this Court is loath to intervene in the self-regulating forces of the marketplace, particularly when competition will result in protecting a property owner's interest from forfeiture.

[Cronecker, supra, 189 N.J. at 330.]

The Court's opinion in Cronecker set forth the procedure to be followed in such cases, holding that the provisions of N.J.S.A. 54:5-98 and Rule 4:64-6(b) require any "heir hunter" involved, directly or indirectly, in the redemption of tax-sale certificates to intervene in the pending foreclosure action before any redemption takes place. Id. at 335-38.

III.

In Malinowski v. Jacobs, 189 N.J. 345, 352 (2007), the Supreme Court held that Cronecker is to be applied retroactively. Consequently, we must determine whether Cherrystone's actions in this case comply with Cronecker's requirements concerning payment of more than "nominal consideration" and timely intervention. The trial judge was clearly satisfied with the amount offered by Cherrystone for Colleen's interest in the Jefferson Avenue property, inasmuch as she required B&B to make the same payment by virtue of the constructive trust. However, Cherrystone's attempt to intervene was patently untimely pursuant to Cronecker. Cherrystone did not seek to intervene until after redemption had been refused, the redemption period had ended, and final judgment had been entered, whereas Cronecker requires intervention prior to any attempt at redemption. Cherrystone conceded as much at oral argument.

We also reject Cherrystone's argument that the municipal tax collector improperly refused the attempt to redeem the property on behalf of Colleen. Cronecker clearly applies to indirect attempts to redeem by parties who have not intervened in the foreclosure action.

By forbidding an interested investor, who is not a party to the foreclosure action from "indirectly" seeking redemption, we intend to interdict the myriad machinations that a creative mind might devise to elude the Tax Sale Law. For example, a third-party investor who does not intervene in the action, but who enters into a contract to purchase the subject property, fronts the funds necessary to redeem a tax certificate, and schedules the closing for after the redemption date violates N.J.S.A. 54:5-89.1. Because the investor upon entering into a contractual arrangement has an equitable interest in the property, he must intervene in the foreclosure action to allow a judicial determination that more than nominal consideration was paid for the property. [Cronecker, supra, 189 N.J. at 336.]

See also Phoenix Funding, Inc., v. Krute, ____ N.J. Super. ____, No. A-1706-07T3 (App. Div. Oct. 10, 2008). The record before us demonstrates that Cherrystone "fronted" the funds that were tendered on behalf of Colleen. In addition, at the time of redemption, neither Cherrystone, Pamela, or anyone else on behalf of Colleen had sought to intervene in the foreclosure action.

Cherrystone's contention that the foreclosure action itself was premature is also without merit. Cherrystone points to the fact that no public official had determined that the Jefferson Avenue property was "abandoned." As the trial judge correctly determined, at the time the foreclosure complaint was filed, N.J.S.A. 54:5-86(b) merely provided that the holder of a taX sale certificate could file a foreclosure action at any time on property that "meets the definition of abandoned property as set forth in [N.J.S.A. 55:19-81], either at the time of the tax sale or thereafter." The statute was intended to bypass the two-year waiting period required by N.J.S.A. 54:5-86(a). The 2005 amendment to N.J.S.A. 54:5-86(b), requiring that the plaintiff attach to the complaint a copy of either (1) a certification concerning abandonment from a municipal official or (2) notice to the municipal official of an application to the court to proceed under the statute, was simply not applicable at the time B&B commenced the present action. The trial court found as fact that the Jefferson Avenue property met the basic definitional requirements of N.J.S.A. 55:19-81(c), i.e., no legal occupation for six months and unpaid property taxes. Indeed, we do not understand Cherrystone to argue to the contrary.

Finally, we reject Cherrystone's argument that service of process on J&S was defective. Although he originally owned the Jefferson Avenue property directly, Jack chose to transfer title to a corporation that he controlled. After his death, his former wife, Pamela, was aware of the property and of her daughter Colleen's likely right to inherit Jack's interest in the property through intestacy. Pamela chose not to pursue Colleen's interest.[3] Consequently, J&S became a defunct corporation; and no one maintained the Jefferson Avenue property or paid the property taxes on its behalf.

The record reflects that B&B complied with the requirements of Rule 4:4-4(a)(6), which provides for service of process on a corporation "by serving a copy of the summons and complaint . . . on any

officer, director, trustee or managing or general agent, or any person authorized by appointment or by law to receive service of process on behalf of the corporation, or on a person at the registered office of the corporation in charge thereof." B&B first attempted to serve Jack directly, as registered agent. For obvious reasons, it was unable to do so. It then served the New Jersey Department of Treasury. See N.J.S.A. 2A:15-30.1; N.J.S.A. 14A:4-5. We are satisfied that there was good service on J&S.

Cherrystone argues that B&B had a duty, of constitutional dimension, to seek the heirs of the deceased stockholder of J&S.

It is, however, well settled that a corporation is a separate entity from its stockholders. Lyon v. Barrett, 89 N.J. 294, 300 (1982). None of the cases cited by Cherrystone suggest that such a duty exists with respect to the heirs of the deceased stockholder of a closely-held corporation.

In summary, we conclude that Cherrystone's motion to intervene was untimely, that the foreclosure action was not premature, and that service of the foreclosure complaint was not defective under the circumstances of this case. Consequently, we affirm the judgment of the General Equity Part.

Affirmed.

1. Because three of the individuals involved in this case share the same last name, they will be referred to by their first names for the sake of convenience.

2. In a January 26, 2005, letter to the Superior Court of the State of California, Colleen nominated her mother to be guardian of her estate. Under California probate law, a minor over the age of fourteen may nominate his or her own guardian, subject to approval by the court. Guardianship of Kentera, 262 P. 2d 317, 319 (Cal. 1953).

3. Shortly after the tax sale on April 8, 2003, Pamela received letters from two individuals who expressed an interest in purchasing the property, including one letter from a purported employee of the Pompton Lakes tax collector. She had some conversations with those individuals, but the discussions never came to fruition. However, she learned from the Pompton Lakes employee that there were taxes owed on the property. On a subsequent visit to New Jersey, she drove past the house, so she had the opportunity to see that it was abandoned. She never took action to administer the estate or claim her daughter's interest in the property.