



# New Jersey Superior Court Holds Condominium Association Was Not Entitled to Redeem Tax Sale Certificate on Condominium

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The Superior Court of New Jersey, Hudson County, Chancery Division-General Equity Part recently held that a condominium association's attempt to redeem a tax sale certificate on a condominium on which it held a lien was not valid because it was neither a mortgagee nor the owner of the property. See JNH Funding Corp. v. Ayed et al., F-8704-14 (N.J. Ch. Div. March 21, 2017). In the case, plaintiff purchased a tax sale certificate on the subject property in 2006. In 2013, the association recorded a lien for unpaid assessments against the property. In 2014, both parties initiated foreclosure actions and in September 2016, after plaintiff was awarded final judgment, the parties' attorneys began discussing whether one party was willing to pay off the other party's lien. Plaintiff's attorney later admitted that he was negotiating under the mistaken impression that the association had the right to redeem the tax sale certificate. When negotiations reached a standstill, the association redeemed the certificate. Plaintiff refused to accept the payment and refused to surrender the certificate. The association was then awarded final judgment in its foreclosure action and, in February 2017, the property went to a sheriff's sale in the association's action and the association purchased the property. Plaintiff claimed that it was not notified of the sale.

Plaintiff then filed this motion to vacate the association's redemption of the tax sale certificate, arguing that the redemption is null and void because the association is not eligible to redeem the certificate under N.J.S.A. 54:5-54. Under the statute, either a mortgagee or the owner has the right to redeem the certificate. The association opposed the motion, arguing that a foreclosing condominium association is essentially a mortgagee under the statute and, regardless, that the motion is moot because the association is now the owner of the property. In support of its mootness argument, the association cited Caput Mortuum, L.L.C. v. S & S Crown Servs., Ltd., 366 N.J. Super. 323, 331 (App. Div. 2004), in which the Appellate Division held that the question of whether a judgment

creditor had the right to redeem was rendered moot after the creditor obtained title to the property and was allowed to redeem as the owner.

After a hearing, the Court granted plaintiff's motion. First, it held that a foreclosing association is not a mortgagee under the statute. It found that courts should interpret N.J.S.A. 54:5-54 narrowly, and "it would be improper to declare a condominium association lien holder to be a mortgagee, . . . as both have definitively different legal definitions." Second, it held that the association's acquisition of title in February 2017 did not render the issue moot. It distinguished Caput Mortuum because there, the creditor had never attempted to redeem the tax sale certificate, and the issue of whether it could do so became moot once it became the owner. Here, the association redeemed the certificate before becoming the owner. Thus, the Court rejected the association's argument and held that its September 2016 redemption was null and void because it was not the owner at that time. However, the Court noted that it "does not make any finding on [the association's] legal ability to redeem the tax sale certificate at any point in the future[.]"

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