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New Jersey Appellate Division Holds No Reimbursement of Municipal Taxes for Undisclosed Conservation Easement.

In a decision approved for publication, the New Jersey Appellate Division recently held that the holder of a tax lien who, upon attempting to foreclose on the property, learns that it is encumbered by a previously undisclosed conservation easement, is unable to recoup municipal taxes paid on the property in the absence of bad faith on the part of the Township. *Garden State Investment & Isadore H. May v. Township of Brick*, 2020 WL 7250904 (N.J. Super. Ct. App. Div. Dec. 10, 2020).

Plaintiffs were the purchasers of tax sale certificates on vacant lots in Brick Township. Before purchasing the certificates, the parties “physically inspected the properties and examined the assessment records and tax map,” but did not obtain a title search. When the Plaintiffs commenced a tax foreclosure, they discovered that the properties were encumbered by a conservation easement arising out of a 2001 settlement with the Department of Environmental Protection. This easement prevented the “disturbance,” and thus, the development, of the property. A deed recording this easement was recorded in the Ocean County Clerk’s Office, but the Township’s Tax Collector never received notice of the easement, nor was the easement ever indicated on the tax assessment card, nor reflected by a reduction in the encumbered lots’ assessed values. Plaintiffs then filed suit “seeking recession of their tax sale certificate purchases and reimbursement of taxes they paid on the properties.” On cross-motions for summary judgment, the trial court held that Plaintiffs were not entitled to equitable relief concerning the taxes paid and denied recession of the purchases.

The Appellate Division affirmed. In holding that plaintiffs had no right to rescission of the tax sale purchases, nor the refunding of any municipal taxes paid between the tax sale purchase and the foreclosure action, the Court stated that “[t]he township tax assessor was unaware of the conservation easement. While its existence was ascertainable to all – since deeds containing the easement had been recorded in the County Clerk’s Office – plaintiffs, by engaging in this form of investment, had a greater interest in learning of any limitations on the property than the township did.” In doing so, the Appellate Division distinguished this case from *Township of Middletown v. Simon*, 193 N.J. 228 (2008), affirming in part, 387 N.J. Super. 65 (App. Div. 2006). In *Middletown*, the Appellate Division allowed the rescission of a tax sale purchase upon a municipality’s belated declaration that the property was intended for public use. The New Jersey Supreme Court affirmed and allowed equitable relief as again, the Township filed an action to have the lot dedicated for public use and adopted an ordinance accepting the lot for public use. In *Garden State*, however, the Township did not “[play] an active role in seeking to deprive [buyer] of his investment.” Additionally, “plaintiffs had every reason to uncover all material circumstances about their investments,” and their “failure to act more diligently in ascertaining any defects in or limitations on their investments bars their claim for equitable relief, particularly against the township, which acted passively and innocently throughout.”

This case is important because it illustrates that the purchase of a tax sale certificate requires some minimum due diligence, and that a title search may be advisable before purchasing any tax sale certificate for a substantial sum. Here, although the encumbrance rendered the property non-developable, and was not disclosed in the municipal tax records, the lack of wrongdoing on the part

of the township, as well as the court's judgment of the lienholders as failing to do proper due diligence on their investment, left the certificate holder with a worthless property for its investment.

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