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TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-001928-MR

FAYETTE COUNTY CLERK

APPELLANT

v. APPEAL FROM CALLOWAY CIRCUIT COURT  
HONORABLE DENNIS R. FOUST, JUDGE  
ACTION NO. 15-CI-00221

KINGS RIGHT, LLC

APPELLEE

AND

NO. 2016-CA-001240-MR

FAYETTE COUNTY CLERK

APPELLANT

v. APPEAL FROM CARLISLE CIRCUIT COURT  
HONORABLE TIMOTHY A. LANGFORD, JUDGE  
ACTION NO. 15-CI-00035

DOT CAPITAL INVESTMENTS, LLC

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: CLAYTON, DIXON, AND THOMPSON, JUDGES.

DIXON, JUDGE: In these consolidated cases, Appellant, the Fayette County Clerk (“Clerk”), appeals from orders of the Calloway Circuit Court and Carlisle Circuit Court ruling that the Kentucky Board of Tax Appeals erred in upholding Appellant’s refusal to refund the purchase price of certificates of delinquency to Appellees, King’s Right, LLC and Dot Capital Investments, LLC. For the reasons set forth herein, we reverse and remand for further proceedings.

Appellees are both third-party purchasers of delinquent tax bills on real property. On July 28, 2014, Kings Right purchased 2013 Certificate of Delinquency Bill Number 12830 from Appellant. The certificate listed the taxpayer as the Commonwealth of Kentucky Transportation Cabinet Department of Highways and provided that the owner of the property located at 615 De Roode Street in Fayette County, Kentucky, on the January 1, 2013, assessment date was Robert P. Brown.<sup>1</sup> Similarly, on July 28, 2014, Dot Capital Investments purchased 2013 Certificate of Delinquency Bill Number 40013 from Appellant. The certificate listed the taxpayer as the Commonwealth of Kentucky FBO

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<sup>1</sup> Brown apparently died shortly after the January 1<sup>st</sup> assessment date and on February 13, 2013 his heirs conveyed the property to the Transportation Cabinet.

Transportation Cabinet and provided that the owner of the property located at 555 Merino Street on the January 1, 2013, assessment date was William E. Hagan.<sup>2</sup>

Subsequently, Appellees contacted the Transportation Cabinet to initiate collection on the certificates. In a letter dated November 6, 2014, the Cabinet responded,

Please be advised that the Cabinet relies on *City of Harlan v. Blair*, 64 S.W.2d 434, 436 (Ky. 1933), for the proposition that even if a valid lien existed at the time of the Cabinet's acquisition, such a lien was extinguished, based on sovereign immunity, by the Commonwealth's acquisition for a public purpose. The court in the *City of Harlan* case held that "Where property, subject to the lien of a tax is acquired by the state or any of its agencies for a public purpose, it thereby becomes freed from such lien, and further steps to enforce it are without effect."

Accordingly, Appellees thereafter applied for refunds on the certificates pursuant to KRS 134.551. Noting that the "tax bills were not paid prior to the sale" and that the deeds were available for public inspection prior to the tax sale, Appellant concluded that there was no statutory basis for a refund in either case.

Appellees then appealed to the Kentucky Board of Tax Appeals ("KBTA"), arguing that at the time they purchased the certificates of delinquency, a lien could not be pursued against the state as a property owner and, as such, the "tax liability represented by the certificate of delinquency was satisfied prior to the purchase of the certificate of delinquency," entitling them to a refund pursuant to

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<sup>2</sup> A lis pendens notice regarding a condemnation action filed by the Cabinet on the property had been recorded by the Clerk on August 27, 2012. On February 18, 2013, Hagan conveyed the property to the Cabinet.

KRS 134.551(2)(a). Following oral arguments in April 2015, the KBTA entered orders<sup>3</sup> upholding Appellant's refusal to issue refunds. Therein, the KBTA noted,

[W]hile the Appellant cannot stand in the shoes of the state and enforce the tax lien against the state, it still has the ability to enforce the certificate of delinquency against the January 1 owner. It is clear that "the tax liability represented by the certificate of delinquency" was not satisfied prior to the purchase of the certificate of delinquency, but remains outstanding against the original owner. The Appellant has the ability to pursue any of the remedies listed in KRS 134.546 against the delinquent taxpayer.

Appellees then filed timely appeals in separate circuit courts. On November 18, 2015, the Calloway Circuit Court entered an order reversing the decision of the KBTA in the Kings Right matter. Therein, the trial court stated,

The fact that the Appellant may have other remedies against a delinquent taxpayer is irrelevant to the ruling at hand. What is relevant is that the Commonwealth of Kentucky purported to sell something to an individual or an LLC which did not and does not fit within the statutory scheme of KRS Chapter 134 with respect to collection of delinquent property taxes.

This Court has generally not been overly sympathetic to third party purchasers of certificates of delinquency. However, the Kentucky Legislature in its infinite wisdom deemed it appropriate to provide such a mechanism. In so doing, the Court finds nowhere which would suggest that it intended to allow the state to do what it could not otherwise do, which is to collect taxes which could not be collected in the first place.

This Court finds that because the facts certainly indicate that this tax liability was satisfied in a manner which would fit within the provisions of KRS

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<sup>3</sup> Although the KBTA entered separate orders, it appears as though the cases were argued together and the language of the orders is virtually identical.

134.551(2)(a)(1)(b), that the Board of Tax Appeals should have ordered the Fayette County Clerk to refund the purchase price of the certificate of delinquency.

. . . [I]n this instance, equity, if nothing else, screams for the state to “do the right thing” and not attempt to collect taxes to which it is not entitled.

The Carlisle Circuit Court also subsequently entered an opinion reversing the KBTA in the Dot Capital Investments matter. The court adopted the language of the Calloway Circuit Court’s order and noting that this is an issue of first impression in this Commonwealth, further added,

With regard to the Appellant’s Certificate of Delinquency, Appellee correctly states on page 7 of its Memorandum, “the liability was extinguished against the Commonwealth.” It is undisputed that the Commonwealth was represented on the certificate of delinquency in question, as the “taxpayer.” As the Commonwealth has no liability, common sense would seem to cry out that Appellant’s certificate is a satisfied, unenforceable, refundable delinquent tax bill.

. . .

KRS 134.546 states that in an action to collect the amount due on a certificate of delinquency, “[a] third party purchaser may,” among other things, “[i]nstitute an action to enforce the lien . . . against the . . . property.” In other words, they can foreclose. The Appellant herein *cannot* foreclose against the property. Yet, Appellee insists that Appellant’s lien should not be construed as unenforceable/refundable under KRS 134.551. This statutory interpretation places the laws of our State at odds.

If “satisfied” in KRS 134.551 is construed as meaning “paid,” then KRS 134.546 is essentially unworkable. KRS 134.546 dictates that third party purchasers can foreclose. Yet, all third-party purchasers in situations such as Appellant, cannot foreclose.

...

As this appears to be an issue of first impression in Kentucky, Common Law should be given due weight. The Revised 4<sup>th</sup> Edition of Black's Law Dictionary defines the doctrine of "satisfaction in equity" as separate and distinct from "performance in equity." 1509 (1968). It states, "satisfaction is always something given either in whole or in part as a substitute or equivalent for something else, and not (as in performance) something that may be construed as the identical thing covenanted to be done."

In this situation, transfer of the subject property to the Commonwealth satisfied payment, i.e., it was something given in whole or in part as a substitute or equivalent for payment. "Performance," on the other hand, would be payment, "the identical thing covenanted to be done." Adopting this common law definition of satisfaction allows KRS 134.551 and KRS 134.546 to co-exist harmoniously.

Appellees thereafter appealed to this Court as a matter of right. By order of this Court entered September 13, 2016, the two cases were consolidated.

Additional facts are set forth in the course of this opinion.

Judicial review of the KBTA's decisions is governed by KRS Chapter 13B.

*Louisville Edible Oil Products, Inc v. Revenue Cabinet Commonwealth of Kentucky*, 957 S.W.2d 272, 273 (Ky. App. 1997). KRS 13B.150(2) provides:

The court shall not substitute its judgment for that of the agency as to the weight of the of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is:

- (a) In violation of constitutional or statutory provisions;

- (b) In excess of the statutory authority of the agency;
- (c) Without support of substantial evidence on the whole record;
- (d) Arbitrary, capricious, or characterized by abuse of discretion;
- (e) Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing;
- (f) Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to KRS 13B.040(2); or
- (g) Deficient as otherwise provided by law.

Further, where there are no actual disputes, the question for the reviewing court becomes one solely of statutory interpretation, which requires a *de novo* review.

*Department of Revenue, Finance & Administration Cabinet v. Cox Interior, Inc.*, 400 S.W.3d 240, 242 (Ky. 2013). With respect to the rules of statutory construction, our Supreme Court has explained,

In construing statutes, our goal, of course, is to give effect to the intent of the General Assembly. We derive that intent, if at all possible, from the language the General Assembly chose, either as defined by the General Assembly or as generally understood in the context of the matter under consideration. We presume that the General Assembly intended for the statute to be construed as a whole, for all of its parts to have meaning, and for it to harmonize with related statutes. We also presume that the General Assembly did not intend an absurd statute or an unconstitutional one.

*Shawnee Telecom Resources, Inc. v. Brown*, 354 S.W.3d 542, 551 (Ky. 2011)

(citations omitted).

In this Court, Appellant argues that the circuit courts erroneously found that the transfer of the property to the Commonwealth satisfied the tax liabilities represented by the certificates and, as such, Appellees were entitled to a refund under KRS 134.551(2)(a)(1)(b). Appellant points out, however, that it is undisputed that the tax liabilities have never been paid. Appellant contends that to adopt the circuit courts' view that a tax liability is satisfied when property is sold to the Commonwealth is contrary to the taxation statutes. We agree with the circuit courts that this is an issue of first impression. However, we conclude that the circuit courts' interpretation of KRS 134.551 is erroneous and that Appellees are not entitled to a refund.

The levy and assessment of property taxes are governed by KRS Chapter 132. KRS 132.220, which addresses the liability for property taxes, provides, in relevant part:

(3) The holder of legal title . . . on the assessment date as provided by law shall be liable for the taxes thereon . . . .

(4) All persons in whose name property is properly assessed shall remain bound for the tax, notwithstanding they may have sold or parted with it.

Such premise is again stated in KRS Chapter 134, entitled "Payment, Collection, and Refund of Taxes." Specifically, KRS 134.015(4) states, "All taxes due under this section and all fees, penalties, and interest thereon are a personal debt of the taxpayer on the assessment date, from the time the tax becomes due until paid."

Similarly, KRS 134.504(4)(a)(2)(b) states, "The amounts due are a personal



obligation of the taxpayer on the assessment date . . .” Finally, in a suit for tax liability, “the purchaser of the property shall be made a defendant if the judgment is to affect his or her interest in the property, and as between them the delinquent taxpayer shall be responsible.” KRS 134.546(2)(c).

However, “[t]o combat tax delinquency, our General Assembly enacted legislation permitting the sale of long-delinquent tax bills, known as ‘certificates of delinquency’ (tax certificates) to private, third-party purchasers.” *Farmers National Bank v. Commonwealth*, 486 S.W.3d 872, 875 (Ky. App. 2015). Unpaid property tax bills may be sold by the county sheriff to become certificates of delinquency in the hands of the purchaser. Third-party purchasers then pay the counties and local governments the full delinquent amount owed at the time of purchase (including all accrued interest, penalties, and fees). *Id.*; see KRS 134.127(1)(b) and KRS 134.128.

The holder of a certificate of delinquency may, after a one-year period, institute a collection action or a tax lien foreclosure action, or both, against the delinquent taxpayer. In *Flag Drilling Co., Inc. v. Erco, Inc.*, 156 S.W.3d 762 (Ky. App. 2005), a panel of this Court found that third-party purchasers “stand in the shoes of the state, county, city, or taxing district in whose name the lien has been imposed. By doing so, the statute gives the private owner of a certificate of delinquency a feasible means of recovering its tax claims.” *Id.* at 767. Specifically, KRS 134.546 provides, in pertinent part,

(1) Any action to collect any amount due on a certificate of delinquency or personal property certificate of delinquency may be brought at any time after the passage of one (1) year from the date the taxes became delinquent, and shall be brought within eleven (11) years of the date when the taxes became delinquent.

(2) A third-party purchaser may:

(a) Institute an action against the delinquent taxpayer to collect the amount of the certificate of delinquency and any other certificates of delinquency subsequently issued to the same third-party purchaser against the same delinquent, and shall have all the remedies available for the enforcement of a debt;

(b) Institute an action to enforce the lien provided in KRS 134.420, represented by the certificate of delinquency and those certificates subsequently held by the same third-party purchaser against the same delinquent or property; or

(c) Institute one (1) action including both types of actions mentioned in paragraphs (a) and (b) of this subsection, and the joinder of actions shall not be defeated if the delinquent taxpayer has disposed of any property covered by the lien, but the purchaser of the property shall be made a defendant if the judgment is to affect his or her interest in the property, and as between them the delinquent taxpayer shall be responsible.

The General Assembly further provided a remedy for third-party purchasers if a certificate of delinquency is unenforceable. KRS 134.551 provides, in relevant part,

(2) (a) If a certificate of delinquency held by a third-party purchaser who paid the certificate of delinquency to the county clerk:

1. Is unenforceable because:

- a. It is a duplicate certificate of delinquency;
- b. The tax liability represented by the certificate of delinquency was satisfied prior to the purchase of the certificate of delinquency;
- c. All or a portion of the certificate of delinquency is exonerated; or
- d. The property to which the certificate of delinquency applies was not subject to taxes as a matter of law as certified by the property valuation administrator;

...

the third-party purchaser may apply to the county clerk for a refund.

(b) The application for refund filed with the county clerk shall include written proof that one (1) of the situations described in paragraph (a) of this subsection exists with regard to the certificate of delinquency for which a refund is sought.

(c) 1. Upon acceptance and approval of the application for refund, the county clerk shall approve a refund of the amount paid to the county clerk by the third-party purchaser in satisfaction of the certificate of delinquency. The refunded amount shall not include any filing fees paid by the third-party purchaser to the county clerk.

2. Amounts refunded to the third-party purchaser shall be deducted from amounts in the hands of the county clerk due to the state, county, taxing districts, sheriff, county attorney, and the county clerk on a pro rata basis, if the county clerk has sufficient funds in his or her hands to make the refund.

Herein, it is uncontroverted Appellees have neither instituted an action against the delinquent taxpayers (assessment date owners) to collect the amount of the certificates nor instituted an action to enforce the liens. Rather, it is Appellees' position that they are entitled to a refund because the tax liabilities represented by the certificates were "satisfied prior to the purchase of the certificate of delinquency," and thus the certificates were unenforceable. Agreeing with Appellees' position, the Carlisle Circuit Court reasoned that if "satisfied" in KRS 134.551 is construed as meaning "paid," then KRS 134.551 is rendered unworkable because it "dictates that third-party purchasers can foreclose," which is clearly not an option in situations such as that presented herein. The circuit court instead applied the common law doctrine of "satisfaction in equity," which provides that "satisfaction is always something given either in whole or in a part as a substitute equivalent from something else . . ." *Black's Law Dictionary*, 1509 (4<sup>th</sup> ed. 1968). As such, the circuit court concluded that the transfer of the subject property to the Commonwealth satisfied payment in that it was "given . . . as a substitute or equivalent from something else." In other words, the transfer of the real property to the Commonwealth satisfied the tax liabilities represented by the certificates of delinquency.

The fallacy in such position is that it fails to recognize that the transportation cabinet is but one entity of the Commonwealth and does not encompass the Commonwealth as a whole. As Appellant correctly points out, the other

governmental entities represented on the certificates of delinquency as being owed the delinquent taxes, i.e. school, county, city, etc., received no benefit from the transfer of the subject property to the transportation cabinet. Accordingly, we are of the opinion that it is an erroneous proposition to state that the tax liability due to each of the various governmental entities was “satisfied” by the transfer of property solely to the transportation cabinet.

KRS 132.220 clearly dictates that the owners of real property on the assessment date remain liable for the tax “notwithstanding they may have sold or parted with it.” As such, to conclude, as the circuit courts did, that the tax liabilities herein were “satisfied” when the property was sold to the transportation cabinet would render the language of KRS 132.220 meaningless. Statutes should be construed, if possible, so that no part is meaningless and ineffectual, *Hardin County Fiscal Court v. Hardin County Board of Health*, 899 S.W.2d 859, 661-62 (Ky. App. 1995), and this Court must refrain from construing a statute in a manner that would effectively abolish it. *Commonwealth v. Wirth*, 936 S.W.2d 78 (Ky. 1996).

KRS 134.551(2) provides for a refund to a third-party purchaser only under specific limited circumstances. The inability to institute an action to enforce the lien as provided for in KRS 134.546(2)(b) is not a circumstance warranting a refund. We agree with the rationale of the Board of Tax Appeals that,

while [Appellees] cannot stand in the shoes of the state and enforce the tax lien[s] against the state, [they] still have the ability to enforce the certificate[s] of

delinquency against the January 1 owner[s]. It is clear that ‘the tax liability represented by the certificate of delinquency’ was not satisfied prior to the purchase of the certificate of delinquency, but remains outstanding against the original owner.

Finally, we would be remiss if we did not point out that although KRS 134.551 authorizes a refund under limited circumstances, it does not in any way alleviate a third-party purchaser’s responsibility to perform due diligence in researching the property subject to the certificate of delinquency. Appellees herein are experienced in this area and, in fact, make a business of buying certificates of delinquency. Minimal research would have revealed that the property owner on the assessment date and the current taxpayer listed on each certificate were different. The property deeds, notice of lis pendens and the certificates all listing the transportation cabinet were available to Appellees at the time they purchased the certificates. Unquestionably, Appellees were aware at that time they could not pursue an action against an entity of the Commonwealth. The appropriate remedy herein is not a refund from Appellant but rather an action against the delinquent taxpayer who owned the property on the assessment date and remains bound for the tax “from the time [it] becomes due until paid.” KRS 134.015(4).

For the reasons set forth herein, the opinion and orders of the Calloway Circuit Court and Carlisle Circuit Court are reversed and these matters are remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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