Circuit Court for Anne Arundel County
Case No. 02-C-09-147515

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1698

September Term, 2017

PACIFIC WESTERN BANK S/B/M/W
CAPITALSOURCE BANK

v.

WELDON SOLLERS, ET AL.

Wright,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: September 19, 2019

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Two previous panels of this Court (the "First Appeal"[1] and the "Second Appeal"[2]) held that an investment entity could be compelled to complete the foreclosure proceedings that had been initiated against Weldon Sollers's ("Sollers") property in Anne Arundel County, following a tax sale in 2009. This appeal arises from the lingering uncertainty as to which lending institutions, if any, may also be responsible for that judgment.

The players in this saga are: Aeon Financial, LLC ("Aeon"), a financial entity that invests in tax liens; CapitalSource Bank ("CapitalSource"), Aeon's lender; and Pacific Western Bank ("PacWest"), the successor-by-merger to CapitalSource. The crux of the confusion stems from the fact that Aeon and CapitalSource's loan agreement required that the tax sale certificate for Sollers's property be titled in the name "CapitalSource Bank, FBO Aeon Financial LLC" ("CapitalSource FBO Aeon")—a putative entity that, according to Aeon (on the previous two appeals) and, now, PacWest, does not actually exist. Instead, Aeon and PacWest have each asserted (Aeon on the previous two appeals, PacWest on the present appeal) that despite use of the term "CapitalSource FBO Aeon," the relevant real party in interest was always just *Aeon*, a distinct entity from CapitalSource.

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[1] *Aeon Financial, LLC v. Weldon Sollers, et al.*, No. 969, 2012 Term (filed Nov. 25, 2013), *cert. denied*, 437 Md. 423 (2014).

[2] *CapitalSource Bank FBO Aeon Financial, LLC v. Weldon Sollers*, No. 1240, 2014 Term (filed June 18, 2015), *cert. denied*, 445 Md. 19 (2015).

On this appeal, PacWest argues that because CapitalSource never entered an appearance in the previous litigation, personal jurisdiction was not obtained over PacWest (as the successor to CapitalSource) prior to Sollers's attempt, in April 2016, to enforce the earlier judgment against *PacWest*. PacWest also contends that the Circuit Court for Anne Arundel County has not sufficiently articulated whether PacWest can be liable for the underlying judgment against Aeon.[3]

[3] PacWest presents two questions for our review:

1. Did the Circuit Court err in denying PacWest's Motion to Vacate the underlying judgment when the undisputed *and only* evidence before the court showed that PacWest a) did not receive notice of or participate in the litigation prior to entry of that judgment, and when b) the only interest of PacWest in the Sollers Property tax certificate was merely that of secured lender and not owner?
2. Did the Circuit Court err by failing to make findings of fact and conclusions of law in its Order denying Appellant's Motion to Vacate, thereby leaving the parties without guidance as to the effect of that Order?

Sollers's brief, in response, presents the questions on appeal as:

1. Should the Court of Special Appeals dismiss this Appeal on the basis of the law of the case doctrine, having previously decided that CapitalSource was the holder of the tax lien certificate and a "real party in interest" in the underlying action to foreclose Sollers' right of redemption?
2. Did the trial court reasonably conclude that PacWest failed to prove, by clear and convincing evidence, that the Circuit Court lacked *in personam* jurisdiction over CapitalSource?
3. Did the trial court abuse its discretion when it declined to supplement its Order denying PacWest's Motion to Vacate or Alter Judgment with findings of fact and conclusions of law?

We agree with PacWest that personal jurisdiction over it was not obtained before Sollers attempted to enforce the judgment against PacWest in April 2016. Because we further agree that the Circuit Court for Anne Arundel County has not yet resolved whether the judgment against Aeon can be enforced against PacWest, we remand for the circuit court to make that determination in the first instance.

BACKGROUND & PROCEDURAL HISTORY[4]

In June 2009, Aeon successfully bid on Sollers's home, located at 999 Mt. Zion Marlboro Road, Lothian, at a tax sale auction in Anne Arundel County. The County issued a tax sale certificate to Aeon that same day. Six months later, pursuant to § 14-833(a) of the Tax-Property Article ("TP"), Md. Code (2012 Repl. Vol., 2018 Cum. Supp.), Aeon sought to foreclose Sollers's right of redemption; Sollers and the County both filed answers, consenting to the relief.[5] As the panel put it in the First Appeal: at that point in the proceedings, "everyone was on the same page[.]" Slip op. at 2.

As time went on, however, Aeon never actually completed the full process of acquiring Sollers's property: *i.e.*, despite having successfully bid at the tax sale auction, and despite having foreclosed Sollers's right of redemption, Aeon never then completed

[4] To recount the background facts and procedural history of this case, we draw heavily upon the opinions in the First and Second Appeals.

[5] Under the tax sale statute, Sollers "would receive the balance between his tax obligation and the purchase price" upon ratification of the tax sale. First Appeal, Slip op. at 2. As the Second Appeal described Sollers's consenting to foreclosure of the right of redemption at this stage of the proceedings: "[U]nlike real property owners who do not want to lose their property for nonpayment of taxes, Sollers did not want to keep the Property." Slip op. at 4.

the sale. *See* TP § 14-844(b) (When a court enters a final order, "the judgment vests in the plaintiff an absolute and indefeasible title in fee simple in the property[.]"). In the First Appeal, Sollers sought to compel Aeon to follow-through and complete the purchase process. The panel held that Aeon could be compelled to proceed to final settlement and make good on its agreement to buy Sollers's property.

A critical detail that has complicated all three appeals is that the loan agreement between Aeon and CapitalSource required that any tax sale certificate acquired with funds from the CapitalSource loan be titled in the name "CapitalSource FBO Aeon." As such, the nominal entity listed on the tax sale certificate for Sollers's property was "CapitalSource FBO Aeon," and "CapitalSource FBO Aeon" was named as the plaintiff in the action seeking to foreclose Sollers's right of redemption. Despite the fact that it was Aeon and CapitalSource's loan agreement that established and required this dynamic, Aeon emphasized in the previous two appeals that no entity named "CapitalSource FBO Aeon" actually exists. In that same vein, PacWest now contends that any previous appearance by "CapitalSource FBO Aeon" was in fact *Aeon*, and not CapitalSource. For the reasons that we will explain further in this opinion, we agree that "CapitalSource FBO Aeon" truly refers to Aeon, as a distinct entity. (And this is why we have referred to *Aeon* acquiring the tax sale certificate and foreclosing Sollers's right to redemption.). This understanding is consistent with the holdings of the previous panel decisions, as well as the positions taken by the entities throughout all three appeals. For instance, the opinion in the First Appeal expressly noted that while "CapitalSource Bank

FBO Aeon Financial, LLC" was the "nominal plaintiff at the circuit court level," *Aeon* filed the appeal on the basis that Aeon was "the real party in interest." Slip op. at 1 n. 1.

In the Second Appeal, Aeon advanced two contentions, both related to the naming convention just described above. First, Aeon sought to have this Court remand the case to the circuit court to enter judgment against Aeon and to strike any reference to CapitalSource in the judgment: Aeon asserted that "CapitalSource should not be a judgment debtor because it is not a real party in interest." Slip op. at 13. Alternatively, Aeon sought to have the original tax sale (or judgment) declared void on the basis that although the certificate holder was "CapitalSource FBO Aeon," there was never an actual organization, corporation, or entity named "CapitalSource FBO Aeon" that could have legally bid at the tax sale. Slip op. at 13. The panel did not grant Aeon the relief it sought. Noting that under TP § 14-836(a) a plaintiff in an action to foreclose the right of redemption "shall be" the certificate holder, the panel concluded that because "CapitalSource FBO Aeon" was both the certificate holder and the plaintiff in the complaint to foreclose the right of redemption, the circuit court had not erred by entering judgment against "CapitalSource FBO Aeon." Slip op. at 15. Notably, however, the panel opinion specifically acknowledged that CapitalSource could pursue further action in the circuit court if it wished to argue that it had never entered an appearance. *Id*.

This brings us to the current appeal. In April 2016, Sollers attempted to enforce the judgment against PacWest (as the successor-by-merger to CapitalSource) in

Montgomery County.[6] PacWest filed a "Motion to Vacate or Alter the Montgomery County Judgment"; after a hearing, the Circuit Court for Montgomery County concluded that the original money judgment had to be challenged in Anne Arundel County before the Montgomery County judgment could be challenged in Montgomery County. Accordingly, PacWest moved to vacate or alter the money judgment in Anne Arundel County on the basis that (1) personal jurisdiction had never been obtained over CapitalSource,[7] and (2) Aeon was the proper judgment debtor. After an evidentiary hearing, the Circuit Court for Anne Arundel County summarily denied the motion to vacate or alter the money judgment in an order dated May 2, 2017.[8] PacWest moved for clarification or reconsideration, which the circuit court also summarily denied, following a hearing, in an order dated October 10, 2017.

PacWest appealed the denial of its motions.

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[6] PacWest claims that "[t]he matter finally came to [its] attention when, on April 5, 2016, its resident agent received service copies of written discovery in aid of enforcement and a petition for writ of garnishment of property from Sollers with respect to the Montgomery County Judgment."

[7] A failure to obtain personal jurisdiction would raise due process concerns. *See, e.g., World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) ("Due process requires that the defendant be given adequate notice of the suit, and be subject to the personal jurisdiction of the court[.]") (Citations omitted).

[8] The circuit court did, however, order that "the Civil Clerk's Notice of Recorded Judgment (issued, and docketed on 08/05/14) identifying the judgment debtor as 'CapitalSource Bank' is hereby corrected *nunc pro tunc* to the date of its entry so as to identify the judgment debtor as "CapitalSource Bank fbo Aeon Financial LLC."

DISCUSSION

PacWest maintains on appeal that as the successor to CapitalSource, neither it nor CapitalSource ever received notice or entered an appearance in the previous litigation involving "CapitalSource FBO Aeon." Additionally, PacWest argues that by summarily denying its motion to vacate as well as its motion for clarification, the Circuit Court for Anne Arundel County did not sufficiently articulate (or resolve) whether PacWest is liable for the money judgment against Aeon.

We review the circuit court's denial of both of PacWest's motions for an abuse of discretion. *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 674-75 (2008); *Bland v. Hammond*, 177 Md. App. 340, 346 (2007). "[I]t is an abuse of discretion for a court to base a decision on an incorrect legal standard." *Rodriguez v. Cooper*, 458 Md. 425, 437 n. 9 (2018). Additionally, "[t]he abuse of discretion standard requires a trial judge to use his or her discretion soundly and the record must reflect the exercise of that discretion. Abuse occurs when a trial judge exercises discretion in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law." *Kusi v. State*, 438 Md. 362, 385 (2014) (Internal quotation marks and citation omitted).

I. The "Law of the Case" is That the Tax Sale Obligations Remain Valid Only Against Aeon.

To avoid any potential confusion, we begin our discussion by briefly noting that our decision here does not affect the continuing validity of the underlying tax sale certificate, as held by Aeon. Tax sales and redemption foreclosure actions are *in rem* proceedings, and *in rem* proceedings have their own rules concerning personal

jurisdiction. *PNC Bank, Nat'l Ass'n v. Braddock Props.*, 215 Md. App. 315, 327-28 (2013); *Lippert v. Jung*, 366 Md. 221, 230-31 (2001) ("[G]enerally, tax sales, so long as they are properly conducted, relate to titles in land, as opposed to rights of persons in possession of land when such rights have not ripened into title interests."). CapitalSource was not a necessary defendant to the tax sale in question, *see* TP § 14-836(b)(1), and so the issue of whether CapitalSource ever knew about the tax sale is immaterial to the validity of the tax sale certificate that was awarded to Aeon.

Moreover, an understanding that the tax sale remains valid with respect to Aeon—*i.e.*, that "CapitalSource FBO Aeon" was always meant to refer to Aeon itself, a distinct entity from CapitalSource—is entirely consistent with our previous two decisions. As mentioned above, the opinion in the First Appeal not only held that Aeon could be compelled to consummate its purchase of Sollers's property, but the opinion specifically explained that while the nominal plaintiff in the circuit court was "CapitalSource Bank FBO Aeon Financial, LLC," only "Aeon Financial, LLC" appealed, due to Aeon's position that it was "the real party in interest." Slip op. at 1 n. 1. Nothing in the Second Appeal altered this determination.[9] Moreover, during the Second Appeal, not only did Aeon reiterate its previous position,[10] but *Sollers's* counsel at the time filed a motion to

[9] The opinion in the Second Appeal observed that there was nothing about the use of the "FBO" designation that would *inherently* make Aeon a real party in interest, or CapitalSource a non-party. Slip op. at 15. The Second Opinion did not hold that Aeon was not *actually* the real party in interest.

[10] The Second Appeal described in considerable detail how, throughout the circuit court proceedings, counsel for Aeon argued that Aeon "was the real party in interest in

(Continued…)

dismiss, partly on the basis that "neither CapitalSource Bank, nor its legal successor, Pacific Western Bank, [wa]s represented by counsel" in the appeal.[11]

Nonetheless, Sollers now attempts to argue that the law of the case is that *CapitalSource* was a real party in interest represented by the title "CapitalSource FBO Aeon," and that the Second Appeal "determined that CapitalSource had submitted to the jurisdiction of the Circuit Court when it filed the action to foreclose Sollers' right of redemption." In making this argument, however, Sollers is, in effect, simply attempting to transform any previous reference to "CapitalSource FBO Aeon" into reverse-shorthand

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the action[,]" and asked the circuit court to leave Aeon as the sole judgment debtor. Slip op. at 8. Similarly, in the course of the proceedings related to the Second Appeal, Aeon had submitted an affidavit by the CEO of Axis Capital (Aeon's portfolio manager) that attested that Aeon was the "certificate holder, real party in interest and sole owner" of the tax sale certificate in question. Second Appeal, Slip op. at 9.

[11] Nevertheless, Sollers still maintained that CapitalSource *was* a judgment debtor and real party in interest.

Given that this motion to dismiss argued that the Chicago-based counsel in question (alternatively referred to throughout the litigation as the Tax Lien Law Group or Schwartz & Associates, LLP) "has admitted that [its] only client [in the litigation] is Aeon Financial, LLC[,]" we find it unavailing for Sollers to now argue on the current appeal that that counsel was actually entering appearances for CapitalSource when entering those previous appearances. This is particularly significant given that Schwartz & Associates is listed throughout the record as the counsel—and mailing address—for "CapitalSource FBO Aeon." (Throughout all three appeals, the Tax Lien Law Group and Schwartz & Associates had the same mailing address in Chicago: 27 North Wacker Drive #503.).

Moreover, contrary to Sollers's argument, Section 6.20 of Aeon and CapitalSource's loan agreement does not establish, by itself, that Aeon's counsel (*i.e.*, the Tax Lien Law Group or Schwartz & Associates) would necessarily represent *CapitalSource* in any particular litigation; all the provision says is that Aeon would pay any legal fees owed to Schwartz & Associates "as and when [they] become due and payable."

for CapitalSource. For the reasons explained elsewhere in this opinion, we disagree. Though the panel opinion in the Second Appeal did state that "[t]here is nothing in the designation 'FBO' that makes Aeon the real party in interest and CapitalSource . . . a non-party," and did suggest that the use of the term "CapitalSource FBO Aeon" would seem to indicate that CapitalSource had entered an appearance, Slip op. at 15, that was not conclusive: in the very same breath, the opinion expressly stated that CapitalSource could seek relief in the circuit court to argue that it had never entered an appearance. *Id*. In short, the Second Appeal did not settle whether CapitalSource was a real party in interest. Rather, the proceedings and panel opinions in both the First and Second Appeals point in one direction: that Aeon was the party entering appearances under the name "CapitalSource FBO Aeon."

II. On the Record Before Us, Personal Jurisdiction Over PacWest Was Not Obtained Before April 2016.

PacWest's essential argument on appeal is that because CapitalSource was a distinct entity from Aeon, and because CapitalSource never received notice or entered an appearance prior to this current round of litigation, PacWest (as the successor to CapitalSource) cannot be held responsible for the judgment against Aeon. We agree that CapitalSource, as a distinct entity from Aeon, did not appear and was not represented by counsel during the prior appeals before this Court. Additionally, the record before us does not reflect that CapitalSource had notice of the proceedings involved in the First and

Second Appeals.[12] Apparently, PacWest first became aware of the proceedings in April 2016, when Sollers sought to enforce the judgment in Montgomery County and sent PacWest's resident agent service copies of written discovery in aid of enforcement and a petition for writ of garnishment. Thus, we agree with PacWest that personal jurisdiction had not been obtained over it in the underlying action before it ripened into a judgment. *See Lohman v. Lohman*, 331 Md. 113, 130 (1993) ("There can be no judgment nor decree *in personam* unless the defendant has been notified of the proceedings by proper summons . . . or is waived by a voluntary appearance by the defendant, either personally or through a duly authorized attorney.").

III. The Circuit Court for Anne Arundel County Should Resolve Whether the Judgment Against Aeon is Enforceable Against PacWest.

Nonetheless, the precise moment of when personal jurisdiction may have first been obtained over PacWest does not determine whether the judgment against Aeon may be enforceable against PacWest *now*. For the reasons we have described above, the underlying tax sale certificate remains valid against Aeon. Whether the terms of Aeon and CapitalSource's loan agreement, the scope of Aeon and CapitalSource's relationship, or other principles mean that the judgment against Aeon can now be enforced against PacWest, as a successor to CapitalSource, is a matter more appropriate for the circuit court to resolve in the first instance. We agree with PacWest that the Circuit Court for

[12] We do note, however, that the loan agreement between Aeon and CapitalSource required Aeon to inform CapitalSource of certain litigation stemming from the CapitalSource loan—including litigation of the type that was involved in the previous two appeals.

Anne Arundel County has not resolved whether PacWest is liable for the money judgment against Aeon. We further agree with PacWest that a remand would be appropriate, to allow the circuit court to do so. Of course, the circuit court may conduct further proceedings and take further evidence as might be useful in aiding its determination.

ORDERS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, DATED MAY 2, 2017 AND OCTOBER 10, 2017, ARE VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.