

# Real Property

The newsletter of the Illinois State Bar Association's Section on Real Estate Law

## Tax sale purchase deemed fraudulent transfer

BY MEGAN G. HEEG, EHRMANN GEHLBACH BADGER LEE & CONSIDINE, DIXON, IL

In a decision that could have a chilling effect on the Illinois real estate tax buying process, earlier this year the Seventh Circuit held that a tax buyer was liable to a debtor in bankruptcy for a prior Illinois real estate tax sale on the basis that the tax sale was a fraudulent transfer. In the case of *Smith v. Sipi, LLC*, 811 F.3d 228 (7th Cir. 2016), Will County, Illinois, delinquent real estate taxes in excess of \$4,000 had been sold to a tax buyer and were not timely redeemed;

and after expiration of the statutory time period, the tax buyer recorded its tax deed then sold the property to a third party for \$50,000. Almost two years after the third party purchased the real estate, the prior property owner filed both a bankruptcy petition and a bankruptcy adversary complaint against the original tax buyer and the subsequent third party purchaser, seeking to avoid the tax sale as a fraudulent transfer.

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## Convenience, speed and ethics

BY MICHAEL J. MASLANKA

To discharge our ethical duty to keep our clients reasonably informed as to the status of their cases, we often send them email correspondence, attaching copies of court orders and pleadings. Sometimes we cover the court call when the opposing attorney cannot be there, and then send the opposing attorney correspondence and a copy of the court order. For convenience and speed, we may

"cc" the client, who then receives a copy of the letter to the other attorney, as well as a copy of the court order, which apprises the client of what is going on in his or her case. A problem may arise, however, if somewhere down the line an attorney clicks "reply all" and includes not only the other attorney, but the other attorney's client, on email correspondence. That

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## Tax sale purchase deemed fraudulent transfer

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The Bankruptcy Court found that debtor had proven a fraudulent transfer against the tax buyer because the transfer to the tax buyer was not for a reasonably equivalent value. Upon appeal, the District Court reversed, holding that, because the tax sale process complied with state law, both the tax buyer and the subsequent third party buyer acquired the property in good faith and for value, and therefore, each could use the “bona fide purchaser defense” to defeat the debtor’s claim. However, disagreeing with the District Court and affirming the Bankruptcy Court, the Seventh Circuit found that, because the State of Illinois real estate tax sale process does not involve competitive bidding, the transfer was not deemed to be for a reasonably equivalent value and, therefore, the bona fide purchaser defense was not available to the tax buyer. It should be noted, however, debtor was only allowed to recover from the tax buyer (not the subsequent third party purchaser) and only for the sum of \$15,000, representing the amount of debtor’s Illinois homestead exemption claim.

At this time, the ripple effects of this case are unknown. For example, the debtor in this case was limited to recovery of \$15,000, which amount was equal to debtor’s allowable homestead exemption. However, if the avoidance action had been pursued by a bankruptcy trustee, instead, arguably the \$15,000 homestead limitation would not apply. Also, in this case, the subsequent third party buyer was a good faith purchaser who purchased the property for \$50,000, but what if the tax buyer had sold or transferred the property to a family member for little or nothing. Arguably, in such a case, the bona fide purchaser defense would not apply to protect the third party buyer.

Interestingly, for those looking for a way to iron out the wrinkles caused by this case, the court gave examples of forced sale systems that could survive a fraudulent transfer challenge. First, it cited *BFP v. Resolution Trust Corp.*, 511 U.S. 531 (1994), a case in which a mortgage foreclosure sale

survived a challenge, to acknowledge that the standard market conditions required to make a fair market value determination do not apply in a forced sale situation, and property sold at a forced sale is “simply worth less.” The court then discussed the three standard methods for collecting delinquent property taxes: the overbid method, the interest rate method, and the percentage ownership method, stating that, unlike the overbid method where the “fair market value of the property is at least in theory the ceiling for amounts that might be bid,” the Illinois interest rate method sells the tax lien to the lowest bidder, and this “tax sale method is not designed to produce bids that could fairly be called ‘reasonably equivalent value.’” ■



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## Convenience, speed and ethics

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may be inappropriate, as communicating with another party who is represented by counsel. That may happen in some cases, including transactional law matters, since many parties need to communicate with each other. For example, an attorney may wish to communicate with the other party's attorney and both realtors who might be involved in a real property transaction. Additionally, a seller's attorney may communicate with a buyer's lender, the realtors, and the other attorney. Any one of the recipients of such correspondence can at any time, add one of the parties to the list of addressees, thus making it more risky to just click "reply all" when responding to the sender of such an email. It behooves the attorney to each and every time, make

sure that the opposing party is deleted from the email correspondence that is going to be sent. Sending copies to the other party's lender and both realtors, perhaps, may not be inappropriate, however, adding the opposing party should be avoided.

Including your own client as a "cc" recipient of your correspondence to someone else involved in the case or transaction, is also risky inasmuch as the opposing attorney may send something embarrassing or belittling back to you at some point, and inadvertently include your client on the correspondence. Some correspondence between attorneys may be delicate and attorneys may feel they do not need to disclose the contents of such to their clients, which may bring up an

entirely different ethical question.

In any event, don't just click away when sending your email correspondences. Be sure to instruct your paralegals, law clerks, and other staff members to also watch out for the same trap, as attorneys are responsible for the actions of their employees and assistants.

If an opposing attorney includes your client on an email, you should immediately advise him or her to not do so any more, and vice versa, should you inadvertently send an email to the opposing party, you should mention to the opposing party's attorney what occurred and that steps will be taken to not repeat the sending. ■



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Illinois Mechanics Liens**

by Howard M. Turner



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– Stanley Sklar, Esq., *Dispute Resolution Services, Northbrook, Illinois*

Published with the cooperation of the Society of Illinois Construction Attorneys (SOICA), *Turner on Illinois Mechanics Liens* is sure to be the new authoritative text on the law of Illinois mechanics liens. It is authored by mechanics lien expert Howard M. Turner, who has been practicing, teaching, writing, and drafting legislation on mechanics lien law for over 50 years.

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## August

**Tuesday, 08/02/16- Teleseminar**—Due Diligence in Real Estate Acquisitions. Presented by the ISBA. 12-1 pm.

**Wednesday, 08/03/16- Teleseminar LIVE REPLAY**—2016 UCC Update – Secured Transactions, Notes, Leases, Sales & More. Presented by the ISBA. 12-1 pm.

**Thursday, 08/04/16- Webinar**—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

**Monday, 08/08/16- Teleseminar LIVE REPLAY**—Post-Closing Adjustments & Issues in Business Transactions. Presented by the ISBA. 12-1 pm.

**Tuesday, 08/09/16- Teleseminar**—Charging Orders in Business Transactions. Presented by the ISBA. 12-1 pm.

**Wednesday, 08/10/16- Teleseminar**—Role of Public Benefits in Estate Planning. Presented by the ISBA. 12-1 pm.

**Thursday, 08/11/16- Webinar**—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

**Tuesday, 08/16/16- Teleseminar**—Real Estate Finance, Part 1. Presented by the ISBA. 12-1 pm.

**Wednesday, 08/17/16- Teleseminar**—Real Estate Finance, Part 2. Presented by the ISBA. 12-1 pm.

**Tuesday, 08/23/16- Teleseminar**—Drafting Employment Separation Agreements. Presented by the ISBA. 12-1 pm.

**Wednesday, 08/24/16- Teleseminar**—Sales of Family Businesses: An Interdisciplinary Approach, Part 1. Presented by the ISBA. 12-1 pm.

**Thursday, 08/25/16- Teleseminar**—Sales of Family Businesses: An Interdisciplinary Approach, Part 2. Presented by the ISBA. 12-1 pm.

**Thursday, 08/25/16- Webinar**—Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

**Friday, 08/26/16- CRO (ABCDE)**—Deliver Great Presentations and CLE. Part of ISBA's Law Ed Faculty Development Series. 9:00 a.m. – 4:30 p.m.

**Wednesday, 08/31/16- Teleseminar**—Lawyer Ethics and Disputes with Clients . Presented by the ISBA. 12-1 pm.

## September

**Thursday, 09/01/16- Webinar**—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm

**Thursday, 09/08/16- Webinar**—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

**Thursday, 09/08/16- Webcast**—Monetizing Intellectual Property. Presented by IP. 12:30 p.m. – 2:15 p.m.

**Friday, 09-09-2016- Webcast**—Telemedicine: Diagnosing the Legal Problems. Presented by Health Care. 9:00

a.m. – 11:00 a.m.

**Wednesday, 09/14/16- Webcast**—Hot Topic: Union Dues/Fair Share—Friedrichs v. California Teachers Association. Presented by Labor and Employment. 10:00 a.m. – 12:00 p.m.

**Wednesday, 09-14-16—Webinar**—2016 Military Law Overview. Presented by Military Affairs. 12:00 p.m. – 1:15 p.m. (maybe later)

**Thursday, 09/15/16- CRO**—Family Law Table Clinic Series (Series 1). Presented by Family Law. 8:30 am – 3:10 pm.

**Friday, 09-16-06- CRO and Live Webcast**—The Fear Factor: How Good Lawyers Get Into (and avoid) Bad Ethical Trouble. Master Series Presented by the ISBA—WILL NOT BE RECORDED OR ARCHIVED. 9:00 a.m. – 12:15 p.m.

**Wednesday, 09-21-16—Webcast**—Restorative Practice in Illinois: Practical and Creative Alternatives to Resolve Civil and Criminal Matters. Presented by Human Rights. Part 1- 10:00 a.m. – 12:00 p.m. Part 2- 1:00 p.m. – 3:00 p.m.

**Thursday, 09-22-16- Webcast**—Family Law Changes and Mediation Practice. Presented by Women and the Law. 11:00 a.m. – 12:00 p.m.

**Thursday, 09/22/16- CRO and Webcast**—Recent Developments in E-Discovery in Litigation. Presented by Antitrust. 1:00- 5:15 pm.

**Thursday, 09/22/16- Webinar**—Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

**Monday, 09/26/16- Friday, 09/30/16—CRO**—40 Hour Mediation/Arbitration Training Master Series. Presented by the ISBA. 8:30 am – 5:45 pm each day

**Friday, 09-30-16—DoubleTree Springfield**—Solo and Small Firm Practice Institute Series. Title TBD. Presented by GP, SSF. ALL DAY.

## October

**Wednesday, 10-05-16—CRO**—Cybersecurity: Protecting Your Clients and Your Firm. Presented by Business Advice and Financial Planning; co-sponsored by IP (tentative). 9:00 a.m. – 5:00 p.m.

**Thursday, 10/06/16- Webinar**—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

**Thursday, 10-06-16—Webcast**—Nuts and Bolts of EEOC Practice. Presented by Labor and Employment. 11:00 a.m. – 12:30 p.m.

**Monday, 10-10-16—CRO and Fairview Heights, Four Points Sheraton**—What You Need to Know to Practice before the IWCC. Presented by Workers Compensation. 9:00 a.m. – 4:00 p.m.

**Thursday, 10/13/16- Webinar**—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

**Thursday, 10-13-16—IPHCA, Springfield**—Open Meetings Act: Conducting the Public's Business Properly. Presented by Government Lawyers. 12:30 – 4:00 p.m.

**Thursday, 10-13-16—CRO**—Limited Scope Representation: When Less is More. Presented by Delivery of Legal Services. 1:00 p.m. – 5:00 p.m.

**Wednesday, 10-19-16- CRO and Live Webcast**—From Legal Practice to What's Next: The Boomer-Lawyer's Guide to Smooth Career Transition. Presented by Senior Lawyers. 12:00 p.m. to 5:00 p.m.

**Thursday, 10/20/16- Webinar**—Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm

**Friday, 10/21/16- Galena, Eagle Ridge Resort**—Obtaining a Judgement and Collections Issues. Presented by: Commercial Banking, Collections, and Bankruptcy. 8:50 am - 4:30 pm.

**Wednesday, 10-26-16—Webcast**—Federal Rule of Civil Procedure 56—Summary Judgement a Refresher Course. Presented by Federal Civil Practice. 12:00 – 2:00 p.m.

**Wednesday, 10-19-16—DoubleTree Bloomington 10-27-16—Holiday Inn, Bloomington**—Real Estate Law Update 2016. Presented by Real Estate. 8:15 a.m. – 4:45 p.m.

**Friday, 10-28-16—CRO**—Solo and Small Firm Practice Institute Series. Title TBD. Presented by GP, SSF. ALL DAY.

## November

**Wednesday, 11-02-16—Linder Conference Center, Lombard**—Real Estate Law Update 2016. Presented by Real Estate. 8:15 a.m. – 4:45 p.m.

**Thursday, 11/03/16- Webinar**—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

**Thursday, 11/10/16- Webinar**—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm

**Friday, 11-11-16—CRO and live Webcast**—Motion Practice from Pretrial through Post Trial. Presented by Civil Practice and Procedure. 8:50 a.m. - 4:00 p.m.

**Thursday, 11/17/16- CRO**—Family Law Table Clinic Series (Series 2). Presented by Family Law. 8:30 am – 3:10 pm.

**Thursday, 11/17/16- Webinar**—Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm. ■

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