



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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April 12, 2018

LETTER OPINION

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The Honorable John H. Rust, Jr.
4084 University Drive, Suite 102
Fairfax, VA 22030
Commissioner of Accounts for the Fairfax Circuit Court

Re: *City of Fairfax v. Wards, Inc., et al.*
Case No. CL-2017-4677

Dear Counsel:

This cause comes before the Court for ruling on the City of Fairfax's ("City") limited objection to the report of the Commissioner of Accounts for the Fairfax Circuit Court ("Commissioner of Accounts") on the necessity of ascertaining liens against properties to be sold at or before the time of entry of the decree of confirmation of sale of tax delinquent

OPINION LETTER

realty. Where the specific provisions of Virginia Code § 58.1-3967 do not expressly overrule the general requirements of a creditor's bill, those conventions remain in full force and effect. Consequently, and for the reasons as more fully stated herein, the Court holds that in a judicial proceeding to sell tax delinquent realty the liens against properties subject to sale must be determined at or before the time of entry of the decree of confirmation of sale. The limited objection of the City to the Commissioner of Accounts' report is thus overruled.

BACKGROUND

Upon the petition of the City of Fairfax, Virginia, this Court appointed a Special Commissioner of Sale ("Special Commissioner") to sell certain real estate parcels pursuant to Virginia Code § 58.1-3969, in order to satisfy liens for real estate taxes held by the City. This Court appointed Taxing Authority Consulting Services, PC, as Special Commissioner. On November 9, 2017, the Special Commissioner offered the subject properties for sale at public auction. Prior to the auction, the Special Commissioner published notice of the auction sale in a newspaper of general circulation for two consecutive weeks. By request of this Court, on December 4, 2017, the Commissioner of Accounts held a hearing to address whether this Court should approve the Special Commissioner's sale of the subject properties. The Commissioner of Accounts provided notice of said hearing to interested parties more than ten days prior to the hearing. A number of interested persons appeared. At the hearing, the Commissioner of Accounts received the report of the Special Commissioner. The Commissioner of Accounts found the notice and advertisement of the sale proper, the sale and bidding conducted fairly,

and the prices received reasonable when scaled against the assessed value of the properties. The Commissioner of Accounts further found the proposed distribution of proceeds to be reasonable and appropriate, and recommended the Court enter its decree of confirmation. The dispute in issue arose from the City's limited objection to the report of the Commissioner of Accounts finding that before the decree of confirmation is entered, the value of all liens on the subject properties must be ascertained. This Court in turn evaluates the merits of such objection.

ANALYSIS

Article 4 of Chapter 39 of Title 58.1 of the Virginia Code sets forth the statutory scheme for a bill in equity for sale of tax delinquent realty. Virginia Code § 58.1-3965 delineates when land and structures thereon may be sold for delinquent taxes, the notice provision, and the owner's right of redemption. Virginia Code § 58.1-3967 directs how proceedings are to be conducted and the proceeds distributed. The taxing locality must publish a list of the real estate offered for sale in a local newspaper at least 30 days prior to commencing the proceedings. The owner has an opportunity to redeem or enter into a payment agreement at any time before the sale. All necessary parties must be joined as defendants, including either the trustee or the beneficiary of any deed of trust the property secures, and most claims must be advanced in a timely manner:

Any party with an interest in such real estate, including a lienor or person with a claim of title, but not including a person whose interest in the real estate is secured by a deed of trust properly recorded, shall file his claim within 90 days after notice of such proceedings. Failure to timely file shall bar any such claims.

Virginia Code § 58.1-3967. The section provides that “*proceedings shall be held in accordance with the requirements, statutory or arising at common law, relative to effecting the sale of real estate by a creditor's bill in equity to subject real estate to the lien of a judgment creditor. . . .*” Virginia Code § 58.1-3967 (emphasis added). The surplus of sale is paid to the clerk of the court. The former owner is entitled to the surplus received net of taxes, attorney’s fees, costs and “any liens chargeable thereon.” If the owner makes no claim or if an unknown beneficiary of a lien makes no claim to such surplus within two years after confirmation of the sale, the amount secured by the lien of the unknown beneficiary, the surplus, or both is paid to the taxing locality. In the discretion of the taxing locality, such parties may recover the funds from the locality upon a showing of a prior entitlement thereto. *Id.*

The Commissioner of Accounts asserts, given the language of Virginia Code § 58.1-3967, before a court may grant a decree of sale, the court must ascertain, settle and determine “what encumbrances are chargeable on the property, the amounts thereof respectively, and the order in which they are so chargeable. . . .” *Shickel v. Berryville Land & Improvement Co.*, 99 Va. 88, 94-95, 37 S.E. 813, 815 (1901). The Commissioner of Accounts maintains, “[a] fundamental proposition of creditor’s bills and judicial sales generally is that one must ascertain the liens upon the property and the relative priority of such liens prior to the entry of the decree of sale.” (Commissioner of Accounts’, hereinafter “CA’s”, Report at 8). He continues that numerous cases hold “[w]here it does not appear by the pleadings or evidence that all the liens are set forth in the bill and proceedings, and therefore cannot be ascertained and determined by decree without order of reference to a commissioner, it has been settled by repeated decisions that it is

error to decree a sale of land before taking an account of liens thereon." *Gemmell v. Powers*, 170 Va. 43, 49, 195 S.E. 501, 503 (1938) (citations omitted).

The City disagrees with the Commissioner of Accounts, urging this Court find such case law and practice applies only for general creditors' bills in equity, but not for tax delinquent realty sales conducted pursuant to Virginia Code § 58.1-3965, *et seq.* In support of its contention, the City cites the following statutory provision:

The court shall have the option, for good cause shown after proper objection made by any party respondent, to refer the case to a commissioner in chancery for hearing and report, in which case, the order of reference shall be to a commissioner in chancery or special master other than the attorney (or any attorney practicing in the same firm as the attorney) employed to subject the real estate to the lien of any taxes. Upon (i) receipt of proper service of process on all parties defendant, a written real estate title certificate and the written report of a licensed real estate appraiser where there is no dispute as to title or value, (ii) the receipt of the report of the commissioner in chancery, or (iii) where the assessor for the locality files an affidavit with the court of value and the value is averred to not exceed \$100,000, the court may appoint a City to sell the properties and execute the necessary deeds when a sale is found necessary or advisable. The court may designate the attorney employed by the governing body of the locality to bring the suit.

Va. Code Ann. § 58.1-3969. The City avers the previously mentioned provision suggests a procedural exception to the prerequisite of liquidation of all liens as is otherwise the case for general creditors' bills in equity. "Where a general statute and a special statute concern the subject matter and are in apparent conflict, the special statute supersedes the general statute." *Eagles Court Condo. Unit Owners Ass'n v. Heatilator, Inc.*, 239 Va. 325, 330, 389 S.E.2d 304, 306 (1990) (internal citations omitted). The City thus posits the tax sale statute is a special provision exception to the general governing rule to the extent of the conflict.

The City advances all parties with an interest, except for a properly recorded deed of trust holder, must file a claim within 90 days of notice of proceedings to sell the real estate, or their failure to do so “shall bar any such claims.” Va. Code § 58.1-3967. “The title conveyed to the purchaser at the judicial sale . . . shall be free of all claims of any creditor, person, or entity, including those claims of beneficiaries under any deed of trust or mortgage, provided that notice was given or the creditor, person, or entity was made a party defendant.” Va. Code Ann. § 58.1-3967. As deed of trust holders may claim sale proceeds in a tax sale matter even if no answer is filed on their behalf during the pendency of the proceedings, the City warns that requiring it “to force the lienholders to answer the matter in order to liquidate their claims places an extraordinary, extra-statutory burden on the taxing authority to prove amounts due the junior lienholders, and on the junior lienholders to submit proof of their interest in real estate, incurring potentially unnecessary additional costs in cases where there may not be any funds available from the judicial sale of the property, or where the property redeems prior to sale.” (City’s Objection at 3-4).

The City further argues this Court should consider its interpretation of the statutory provisions in harmony with the “general public policy requirement” that “[t]he prompt collection of taxes by a governmental unit is . . . vitally necessary to the discharge of its functions.” *Pollard & Bagby v. City of Richmond*, 181 Va. 181, 186, 24 S.E.2d 564, 567 (1943). “Legislative recognition of this is evidenced by the several statutory methods, some of which are quite drastic (e.g., right of distress), which are provided for the collection of taxes.” *Pollard*, 181 Va. at 187, 24 S.E.2d at 567. The City further

summarizes its public policy arguments for the Court to sustain its objection to the report of the Commissioner of Accounts:

Requiring that lien amounts be liquidated prior to the award of a decree of sale would unnecessarily add delay should a recalcitrant or dilatory lienholder not timely participate in the proceedings.

Unlike in a general creditor's bill in equity, when land is being offered for sale at a real estate tax sale, there are no possible superior lienholders to the local government's real estate taxes. . . . The public policy of speedy recovery of the monies for the public purse should negate any undue delay in those recoveries. Furthermore, there is no correlating prejudice occasioned upon any holder of a deed of trust in not requiring the liquidation of values of a deed of trust holder. The holder has a right to participate in the proceedings to which they are made parties or are otherwise notified. Their claims to excess proceeds from the delinquent tax sale do not abate for failure to participate, and bidders are not discouraged because title passes free and clear.

(City's Objection at 4-5).

Virginia Code § 58.1-3967 provides former owners or unknown deed of trust lien beneficiaries may lay claim to sale proceeds "in excess of the taxes, penalties, interest, reasonable attorneys' fees, costs and any liens chargeable thereon." The City contends that therefore "recorded deeds of trust are not prejudiced and bidding is not chilled despite the fact that the lien amounts are not liquidated prior to sale." (City's Objection at 5). The City suggests "properly recorded deeds of trust are not barred despite a failure to file a claim, which protects deed of trust holders' interests, yet that the title conveyed shall be free of all claims, negating any potential chilling effect on bidders, and finally that only surplus in excess of amounts due to the locality and liens not otherwise barred, may be paid to the former owner, protecting any unliquidated lienholders' claims against the proceeds of the sale." (City's Objection at 5). The City states its view obviates the need for deed of trust holders to expend resources in participation in sale proceedings prior to

determining whether there will be funds available to satisfy their liens. Liquidation of the deed of trust liens, the City maintains, is only necessary upon petition of a former or unknown lien beneficiary making a claim against surplus funds. Virginia Code § 58.1-3969 states:

Upon (i) receipt of proper service of process on all parties defendant, a written real estate title certificate and the written report of a licensed real estate appraiser where there is no dispute as to title or value, (ii) the receipt of the report of the commissioner in chancery, or (iii) where the assessor for the locality files an affidavit with the court of value and the value is averred to not exceed \$100,000, the court may appoint a special commissioner to sell the properties and execute the necessary deeds when a sale is found necessary or advisable.

The City concludes there is no specific requirement of claims liquidation in Virginia Code §§ 58.1-3967 (dealing with lienholders) and -3969 (allowing for the appointment of a commissioner of sale), and therefore there “is no reasonable public policy that can be stated to apply an arbitrary requirement upon the locality to ascertain amounts due a junior deed of trust holder to that of the taxing authority.” (City’s Objection at 6).

The Commissioner of Accounts responds, citing case law that the rationale for determining the monetary amount of the liens before a court grants a decree of sale is to prevent creditors from being discouraged from bidding. “[W]ithout first removing a cloud from the title and adjusting and settling rights in dispute, and without previously ascertaining and determining the liens and encumbrances, the amounts, and priorities,” creditors may be discouraged from bidding. *Shickel*, 99 Va. at 94-95, 37 S.E. at 815.

The City answers contending an apparent countervailing distinction:

[U]nder a creditor’s bill in equity sale where the liens have not been determined or the lien amounts have not been liquidated, the underlying disincentive for bidding is that there could be a cloud on the title. Thus, a creditor could be the high bidder only to find that another creditor still has

a superior lien that must be paid. *Under the tax sale statutory framework, tax liens on real estate are superior to any other lien. See Va. Code § 58.1-3340.*

(City's Objection at 6-7; emphasis added). "The title conveyed to the purchaser at the judicial sale . . . shall be free of all claims of any creditor, person, or entity, including those claims of beneficiaries under any deed of trust or mortgage, provided that notice was given or the creditor, person, or entity was made a party defendant." Va. Code Ann. § 58.1-3967; *see also* Va. Code § 8.01-98 (stating the tax on real estate should be deemed satisfied upon the judicial sale of the tax delinquent realty regardless of whether all outstanding tax amounts are covered by the proceeds of the sale).

As already discoursed, Virginia Code § 58.1-3967 provides realty tax sale proceedings are to be held in accordance with the requirements of a creditor's bill. In a creditor's bill, as the Commissioner of Accounts points out, it is fundamental to the relief that no sale occur "without first ascertaining, settling and determining what encumbrances are chargeable to the property, the amounts thereof respectively, and the order in which they are so chargeable." *Shickel*, 99 Va. at 94-95, 37 S.E. at 815. The rationale for such rule is to remove impediments to bidding in order to make a fair sale. The logic is that without a determination of liens chargeable on the property, *creditors* may be discouraged from bidding upon property. *Id.* (emphasis added). The City responds that unlike in a normal foreclosure, the bidding creditor does not take subject to any liens. Only proceeds of the sale are available to the unliquidated lienholders, and therefore the failure to determine liens is of no consequence to whether creditors may bid on the subject property.

The City's position, however, ignores a number of reasons bidding is deterred when the amounts of all liens on property are not liquidated. Unless deed of trust creditors can be sure they are in first priority after the tax lien is satisfied, they are left uncertain of all competing undetermined liens, and whether their credit bids protect the value of their lien or will instead be subject to the priority claims of such other deed of trust lienholders participating in sale proceeds. In addition, if the subject property has been previously the object of foreclosure by a junior deed of trust lienholder in a case with a multiplicity of mortgages, it may not always be readily apparent which deed of trust liens remain on the property because of the possibility of lien subordination creating a circuitry of liens, in which loans junior to that of the foreclosing creditor nevertheless remain secured in the aftermath of the normal mortgage foreclosure process. See *Atl. Tr. Servs., L.L.C. v. Cortez*, No. CL-2017-8414, 2018 Va. Cir. LEXIS 26 (Cir. Ct. Feb. 27, 2018). Other buyers could also be dissuaded by the existence of undetermined deed of trust lien amounts from participating in the bidding process at all, uncertain of the amount of funds that would be needed to compete with credit bids at auction. The amount of unascertained liens may further be of some import to the exercise of the Court's duty to determine whether the sale price is fair in contemplation of entry of the decree of confirmation.

While "the requirement to file a claim and the bar of non-participating creditors provides significant assistance in the ascertainment of liens against the property to be sold . . . such requirement does not obviate the necessity . . . [of] ascertainment of liens chargeable to the property." (CA's Report at 7). The interests of creditors, debtors and owners of the subject properties is promoted by encouraging a fair and transparent process of bidding that yields the best obtainable price under the circumstances. *Federal*

Land Bank v. Parks, 170 Va. 240, 242, 196 S.E. 627, 628 (1938); see *Schweitzer v. Stroh*, 182 Va. 842, 848-849, 30 S.E.2d 689, 692 (1944) (encouraging public bidding).

"The rule is well settled that it is error to decree a sale of land for the payment of the liens thereon until there has first been an account of such liens and their relative priorities. . . ." *Kirby v. Booker*, 122 Va. 290, 94 S.E. 775, 776 (1918). Such requirement has been sustained because failure to ascertain the liens upon the subject property discourages creditors from bidding. *Steinman v. Clinchfield Coal Corp.*, 121 Va. 611, 640-641, 93 S.E. 684, 693 (1917) (citations omitted).

While it is accurate that Virginia Code § 58.1-3967 addresses the timely submittal of claims and that failure to do so may bar unsubmitted claims, a plain and ordinary reading of this provision yields that it merely assists in the determination of liens, and controls over the common law associated with creditor's bills. *Eagles Court Condo. Unit Owners Ass'n v. Heatilator, Inc.*, 239 Va. 325, 330, 389 S.E.2d 304, 306 (1990). Virginia Code § 58.1-3967 explicitly, however, *excludes* from its mandated claims procedures "a person whose interest in the real estate is secured by a deed of trust properly recorded." Claims provisions under Virginia Code § 58.1-3967 simply do not apply to deeds of trust, which consequently must be determined in another manner. This exclusion is in harmony with the general rule in Virginia that a deed of trust remains secured upon its subject property until the debt is satisfied. *Stimpson v. Bishop*, 82 Va. 190 (1886). See also *C.B. Van Nostrand & Co. v. Virginia Zinc & Chemical Corp.*, 126 Va. 131, 101 S.E.65 (1919); *Artrip v. Rasnake*, 96 Va. 277, 31 S.E. 4 (1898).

One need look no further than in the instant case for the wisdom and reason for application of the requirement to ascertain the monetary amount of deed of trust liens,

prior to tax sale confirmation. The Commissioner set forth the factual scenario in his report:

The title examination of the Subject Properties revealed four claimants to liens against the property: Community Bank of Northern Virginia, PNC Bank, the Internal Revenue Service, and Judicial Court Condominium Association. Community Bank of Northern Virginia and PNC Bank failed to respond to notices that the City sent pursuant to Virginia Code § 58.1-3965.

The claims of Community Bank of Northern Virginia and PNC Bank relate to the same debt. On April 26, 2001, Wards, Inc. entered into a deed of trust conveying the Subject Properties to George H. Ragland, Jr., and David P. Summers, Trustees, to secure to Community Bank of Northern Virginia a promissory note from Wards, Inc. to Community Bank of Northern Virginia in the amount of \$200,000.00. This deed of trust remains unreleased of record. Mercantile Potomac Bank acquired Community Bank of Northern Virginia. PNC subsequently acquired Mercantile Potomac Bank. On June 23, 2008, PNC Bank, successor in interest to Mercantile Potomac Bank and Community Bank of Northern Virginia, took judgment against Wards, Inc. pursuant to the April 26, 2001 deed of trust promissory note for \$166,090.03, plus post-judgment interest of \$3,843.34, late charges of \$249.69, attorneys' fees of \$24,9133.50 (sic), and costs of \$211.00, plus post judgment interest at the legal rate.

(CA's Report at 9-10). As the Commissioner of Accounts notes, in this situation, "pursuing judgment under the deed of trust note is no impediment to enforcing the lien of the deed of trust." (CA's Report at 10). Consequently, a creditor may pursue avenues for relief of *both* the judgment and the secured debt. See *Gibson v. Green's Adm'r*, 89 Va. 524, 16 S.E. 661 (1893); accord, *Didlake v. Wachovia Bank*, 454 B.R. 349 (W.D. Va. 2011); *Benkahla v. White*, 82 Va. Cir. 1 16 (Fairfax 2011). "A creditor having two different securities, or two sets of obligors bound for his debt, may proceed against both at the same time, although he is entitled to but one satisfaction." *Miller v. Byers*, 99 Va. 163, 166 (1901) (*citing Asberry v. Asberry*, 74 Va. (33 Gratt.) 463 (1880)). The failure of PNC Bank to file a claim for its judgment lien within 90 days after notice bars any claim to the proceeds of sale pursuant to its judgment lien under the provisions of Virginia Code

§ 58.1-3967, *but does not bar its claim*, flowing from its predecessor in interest, Community Bank of Northern Virginia, *under its deed of trust*. "A mortgage secures a debt, and not the note or bond, or other evidence of it. No change in the form of the evidence, or the mode or time of payment-nothing [sic] short of actual payment of the debt, or an express release-will [sic] operate to discharge the mortgage." 2 JONES ON MORTGAGES § 924, *cited with approval in Hancock Fabrics, Inc. v. Ruthven Assocs. LP*, 2007 U.S. Dist. LEXIS 11835 (E.D. Va. Feb. 20, 2007). *See also, C.B. Van Nostrand & Co. v. Virginia Zinc & Chemical Corp.*, 126 Va. 131, 138, 101 S.E. 65, 67 (1919); *Artrip*, 96 Va. at 284, 31 S.E. at 6. The failure of PNC Bank to file a claim under its deed of trust lien does not disrupt its ability to maintain its lien. Under the City's position, such lien would remain undetermined in amount at the time of sale. However, the City ignores that in this very case failure to ascertain the lien of the deed of trust, which is by operation of law second only in priority to the lien for real estate taxes, creates a cloud over the sale. Uncertainty in the quantum value of liens in priority to those of bidding creditors is of necessity a deterrent to bidding a best obtainable price for what would otherwise be a more easily determinable value for the property. Creditors are dis-incentivized from bidding when they are unable to determine with certainty whether their credit bid will protect their interest, or instead will be subject to those of others in priority secured by a deed of trust entitled to claim sale proceeds. Thus,

a sale without first removing a cloud from the title, and adjusting and settling rights in dispute, and without previously ascertaining and determining the liens and encumbrances, the amounts, and priorities, tends to a sacrifice of the property -- as to creditors, by discouraging them from bidding, when they probably would have bid, for the protection of their own interests, if the rights of all parties had been previously ascertained and fixed with reasonable certainty.

Shickel, 99 Va. at 94-95, 37 S.E. at 815 (1901) (quoting *Horton v. Bond*, 69 Va. (28 Gratt.) 815, 822 (1877)).

The specific provisions of Virginia Code § 58.1-3967 do control over the common law associated with creditors' bills. See *Eagles Court Condo. Unit Owners Ass'n*, 239 Va. at 330, 389 S.E.2d at 306. However, the General Assembly did not direct that such provisions override the "requirements . . . relative to effecting the sale of real estate by a creditor's bill." Va. Code Ann. § 58.1-3967. "The rules of statutory interpretation argue against reading any legislative enactment in a manner that will make a portion of it useless, repetitious, or absurd. On the contrary, it is well established that every act of the legislature should be read so as to give reasonable effect to every word. . . ." *Jones v. Conwell*, 227 Va. 176, 181, 314 S.E.2d 61, 64 (1984). "[E]very part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary." *Hubbard v. Henrico Ltd. P'ship*, 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998). The City counsels that failure to sustain its objection could (if such ruling were adopted by other courts) unduly cost governmental entities much time and treasure. The Commissioner of Accounts, however, correctly avers that the burden on the City (or on any taxing locality) is attenuated, succinctly setting forth a road map how the process may unfold in determination of liens applicable:

The requirement to file a claim with the petitioner obviates the need to address claimants who fail to respond. The petitioner may present a schedule of proper lien claims against the tax property when one presents the decree of sale. The decree may contain a provision adopting and approving the amount and priority of such liens. The court may likely determine any disputes among lien claimants as to the amount or priority of the liens against the property as matters of law, based upon argument or brief evidence taken *ore tenus*. Only in the most complex matters would the

Court require submission of the matter to a commissioner to ascertain the liens upon the property.

However, in light of the exclusion of liens under a deed of trust from the claim procedures under Virginia Code § 58.1-3967, if the deed of trust holder fails to appear and prosecute its claim, as occurred in the instant matter, it will be necessary to determine the amount due and priority of the deed of trust in the decree of sale regardless whether the deed of trust holder appears in the proceeding. Where the deed of trust holder is known, as is the case in the instant proceeding, the petitioner can obtain such information through the subpoena process. Where the deed of trust holder is unknown, and the petitioner cannot determine the balance due, the statute expressly contemplates that the surplus proceeds shall be paid to the clerk, to be held pending a claim to such surplus "made by an unknown beneficiary of such lien." To the extent that there are competing lien claims or claims of the former owner to such surplus, the court must determine in the decree of sale an amount sufficient to address the claim of the unknown lien claimant, which is to be paid to the clerk prior to satisfying any claims to the surplus of lesser priority lien claimants or of the former owner.

(CA's Report at 13-14). As detailed, the burdens of compliance with the requirements to determine lien amounts is not onerous, and in any event, cannot be excused by mere policy arguments for those do not allow this Court to ignore the plain and ordinary reading of the statutory scheme:

The primary rule is that a statute is to receive that meaning which the ordinary reading of its language warrants, words not technical being taken in their ordinary, familiar acceptation, with regard to their general and popular use; and the meaning thus arrived at must be adopted when it involves no absurdity, *if from a view of the whole law and other laws in pari materia no different legislative intent is apparent.*

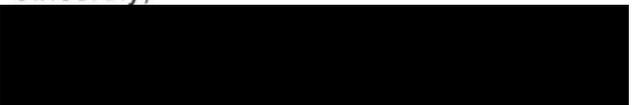
Jones v. Rhea, 130 Va. 345, 390-91, 107 S.E. 814, 830 (1921) (internal citation omitted; emphasis added). Where the specific provisions of Virginia Code § 58.1-3967 do not expressly overrule the requirements of a creditor's bill, those requirements remain in full force and effect, the General Assembly having expressed no language extinguishing such obligations governing judicial real estate sales in satisfaction of tax delinquencies.

CONCLUSION

The Court has considered the limited objection of the City of Fairfax to the report of the Commissioner of Accounts for the Fairfax Circuit Court on the necessity of ascertaining liens against properties to be sold, at or before the entry of the decree of sale of tax delinquent realty.¹ Where the specific provisions of Virginia Code § 58.1-3967 do not expressly overrule the requirements of a creditor's bill, those conventions remain in full force and effect. Consequently, and for the reasons as more fully stated herein, the Court holds that in a judicial proceeding to sell tax delinquent realty the liens against properties subject to sale must be determined at or before the time of the entry of the decree of confirmation of sale. The limited objection of the City to the Commissioner of Accounts' report is thus overruled.

The Court having entered a decree of confirmation of sale, shall enter a further order incorporating its ruling herein and until such time, THIS CAUSE CONTINUES.

Sincerely,

A solid black rectangular box redacting the signature of the judge.

David Bernhard
Judge, Fairfax Circuit Court

¹ Ideally, all liens should be ascertained before properties are sold at auction, subject to later confirmation by the Court. The Court cannot, however, prescribe a timeline not mandated by statute. The point where the Court determines whether liens have been properly identified is at the time the petitioner seeks a decree of confirmation of sale. It is at such juncture the Court enforces the requirement of lien ascertainment in application of the statutory scheme. To the extent liens are not liquidated by such time, the Court has in its legal quiver, the remedial arrow of ordering rebidding at a new auction after all liens are properly determined.