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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

IN RE APPLICATION OF)	Appeal from the Circuit Court
THE COUNTY TREASURER and EX-)	of Lake County.
OFFICIO COUNTY COLLECTOR OF)	
LAKE COUNTY, ILLINOIS FOR)	
JUDGMENT AND ORDER OF SALE)	
AGAINST REAL ESTATE RETURNED)	
DELINQUENT FOR THE NON-)	
PAYMENT OF GENERAL TAXES AND)	
SPECIAL ASSESSMENT FOR THE)	
YEAR 2009 and PRIOR YEARS)	No. 12-TD-564
)	Gen. Case No. 10TX1
(Bank of America, N.A., petitioner-)	Honorable
appellant, v. FINA IP, LLC, respondent-)	John J. Scully,
appellee).)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court lacked *in rem* jurisdiction over the land at issue in this tax case where county treasurer instituted the action in violation of a bankruptcy court's automatic stay; as no effective relief could be granted, appeal was dismissed.

¶ 2 I. INTRODUCTION

¶ 3 Bank of America, N.A. (petitioner), appeals an order of the circuit court of Lake County denying its motion to stay the proceedings in case No. 12-TD-546 (tax-deed case), in which

FINA IP, LLC, (respondent), petitioned the trial court to direct the county clerk to issue it a tax deed to certain real property located in Lake County. Bank of America sought the stay to allow the trial court to rule on its section 2-1401 petition (735 ILCS 5/2-1401 (West 2010)) in which it sought to have the original order for judgment and sale, entered in case No. 10-TX-1, declared void. Case No. 10-TX-1 (collector's case) was brought by the Lake County Treasurer to collect delinquent property taxes. Bank of America also asserts that the trial court lacked jurisdiction to enter the order of judgment and sale and that the subsequent tax sale at which FINA bought the property is void as well. We granted the treasurer's request to intervene. He contends that the order of judgment and sale is not properly before this court and moves to strike portions of Bank of America's brief addressing them. We grant the treasurer's motion, and we dismiss this appeal.

¶ 4

II. BACKGROUND

¶ 5 The events leading to this appeal began on November 18, 2010 when the treasurer instituted an action for judgment and sale of certain real property that was delinquent for 2009 real estate taxes. On that same day, the trial court entered an order for judgment and sale, and a tax sale was held on November 29, 2010. The judgment included property identified by PIN number 05-12-008 (PIN 008). At the time of the judgment, PIN 008 was assigned to vacant land (commonly known as 25010 W. Caine Road, Ingleside, Illinois). Also at the time of the judgment, PIN number 05-12-003 (PIN 003) was assigned to a single family residence (commonly known as 36440 N. Westmoor Avenue, Lake Villa, Illinois), which was adjacent to the vacant land. PIN 003 was not included in the judgment. The owners of record in 2009 (Richard and Jill Schwartz, who also owned the vacant land) had paid the property tax for 2009 for PIN 003. At the tax sale, FINA bought the lien attached to the vacant land, which was then

identified as PIN 008. At the time of both the judgment and sale, a bankruptcy petition filed by the Schwartzes was pending in the Bankruptcy Court of the Northern District of Illinois. On December 18, 2012, FINA filed a petition for a tax deed.

¶ 6 Lake Villa Assessor, Jeffrey Lee executed an affidavit stating that, while reviewing aerial maps on June 7, 2013, he noted that PIN 008 actually identified the single family residence that was being referred to as PIN 003. He therefore “switched the real property associated with Lake County PINS 05-12-008 *** by moving and carrying over the Improved House *** to [PIN 008] for the 2013 tax year forward in the Lake County Assessor’s internal property data system and valued the vacant land *** to [PIN 003] for the tax year 2013 forward.” He explained that this resulted in “said PINS identif[y]ing different real property than they had prior to my moving the valuation and exemption information in the Lake County Assessor’s internal property data system.” He further averred that for the years 2009 to 2012, PIN 003 referred to the single family residence and PIN 008 referred to the vacant land. From 2013 forward, PIN 003 referred to the vacant land and PIN 008 referred to the single family residence.

¶ 7 On August 2, 2013, FINA filed an application for a tax deed. The application states that the property FINA was seeking the tax deed for contains a vacant house. At a hearing held on the application at which only counsel for FINA was present, counsel informed the trial court that while they originally believed they had an interest in the vacant lot, after further inspection, it was in the house. The trial court entered an order of possession.

¶ 8 On April 10, 2014, pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)), Bank of America filed a motion—in the tax deed proceeding—to have the tax deed declared void *ab initio* based on the trial court lacking jurisdiction to enter the order of judgment and sale on November 18, 2010. It based its claim on the real estate taxes having been paid on

the single family house in 2009. On March 6, 2015, the trial court in the tax deed proceeding denied a summary judgment motion brought by Bank of America. It stated that though it did not believe there was a genuine issue of fact, it nevertheless could not ascertain “whether it was switched and why.” The trial court believed further discovery was necessary to illuminate this issue. The parties filed several additional motions and amendments; however, at least as of the time of the filing of the briefs in this appeal, no hearing had been held or ruling made as to whether the November 18, 2010, order was void.

¶ 9 On April 1, 2015, Bank of America filed another section 2-1401 petition in the collector’s case (10-TX-01) attacking the November 18, 2010 order as void. It also filed a motion to stay the proceedings in the tax-deed case (12-TD-564). Bank of America believed the resolution of its petition in the collector’s case would be dispositive in the tax-deed case. It claimed it would be “severely prejudiced and subject to conflicting decisions” if both cases were allowed to proceed.

¶ 10 The trial court denied Bank of America’s request for a stay, citing several reasons. The trial court stated that “judicial economy alone would dictate that the [tax-deed case and collector’s case] both *** move along.” It explained that it could “control at least conceivably any conflicting orders” as it was hearing both cases. Moreover, FINA had established that it was subject to expenses based on the delay (maintenance of the property, property taxes, and such), and though Bank of America had had most of its discovery answered, the same was not true for FINA. Finally, it noted that it would be able to stay the case a few months later should a stay become appropriate.

¶ 11 Bank of America then filed this interlocutory appeal in accordance with Illinois Supreme Court Rule 307(a)(1) (eff. February 26, 2010).

¶ 12

III. ANALYSIS

¶ 13 On appeal, Bank of America asserts two main issues. First, it contends that the trial court abused its discretion in denying its motion for a stay. Second, it argues that the original order for judgment and sale of November 18, 2010, and the subsequent sale were void *ab initio*, as the trial court never acquired *in rem* jurisdiction over the parcel containing the single family home and, moreover, both were done in violation of the automatic stay of the bankruptcy court. See 11 U.S.C. §362(a) (2006). Regarding the second issue, FINA responds that it is not properly before this court. Further, we granted a petition by the treasurer to intervene, and he moves to strike those portions of Bank of America’s brief addressing the order of November 18, 2010, and the sale. However, we note a more fundamental problem; namely, the trial court lacked jurisdiction in the matter below.

¶ 14 In a tax-deed proceeding, the trial court’s jurisdiction is *in rem*. *In re Application of the County Treasurer and Ex Officio County Collector of Cook County*, 386 Ill. App. 3d 906, 909 (2008). *In rem* jurisdiction exists when a cause of action is related to property subject to the trial court’s jurisdiction. *In re Commissioner of Banks & Real Estate*, 327 Ill. App. 3d 441, 463-64 (2001). The trial court acquires jurisdiction when the county collector makes an application for judgment and an order of sale. *Application of the County Treasurer and Ex Officio County Collector of Cook County*, 386 Ill. App. 3d at 909. Here, the treasurer instituted an action in November 2010 seeking an order of judgment and sale for property identified by PIN 008, which, at that time, was assigned to the vacant land. When a trial court acquires jurisdiction in this manner, it continues beyond effectuating the sale through the issuance of the tax deed. *Vulcan Materials Co. v. Bee Construction*, 96 Ill. 2d 159, 165 (1983) (“Here the court, in the tax case, acquired jurisdiction over the shopping center property in 1976 when the county collector

filed his application for judgment and order for sale. It retained jurisdiction to issue all necessary orders, not only to effectuate the sale, but to order issuance of tax deeds.”); see also *Wilder v. Finnegan*, 267 Ill. App. 3d 422, 425 (1994) (“Even where the finding that the required notices had been given is in error, it does not divest the court of jurisdiction to issue the tax deed, which jurisdiction the court acquired when the county collector made an application for judgment and order of sale of the property.”). Hence, the trial court’s jurisdiction to order the issuance of the tax deed in the tax-deed case derived from the treasurer making the application for an order of judgment and sale in the collector’s case.

¶ 15 However, the treasurer’s application for judgment and sale was a nullity. Records from the United States Bankruptcy Court for the Northern District of Illinois indicate that the Schwartzes filed a bankruptcy petition on March 18, 2010, and the bankruptcy case was not terminated until December 9, 2010. As noted, the treasurer’s application for judgment and sale was filed on November 18, 2010. Section 362(a) of the Bankruptcy Code states, in pertinent part, as follows:

“(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate.” 11 U.S.C. §362(a) (2006).

The filing by the treasurer of his application for judgment and sale would fall within these provisions, particularly subsection (3). See *In re County Treasurer and Ex Officio County Collector of Cook County*, 308 Ill. App. 3d 33, 40-41 (1999) (holding that a tax sale definitely violates subsection (3) and arguably violates all of these subsections). Any action taken in violation of the automatic stay is void. *Id.* at 43 (holding that the appeal of an order invalidating a tax sale violated the automatic stay and was void); see also *In re Application of County Collector for Judgment and Sale Against Lands and Lots*, 367 Ill. App. 3d 34, 38-39 (2006) (holding that an order directing the county clerk to issue a tax deed was void); *In re Application of County Collector for Delinquent Taxes*, 291 Ill. App. 3d 588, 591 (1997) (holding that a tax-sale held while the automatic stay was in effect was void). Therefore, as it pertained to the vacant lot and, assuming *arguendo*, that it applied to the parcel with the residence, the treasurer’s application violated the automatic stay and is void. As the treasurer’s application was a necessary component of the trial court’s jurisdiction in the tax-deed case (*Vulcan Materials Co.*, 96 Ill. 2d at 165), the trial court lacked jurisdiction in the proceeding below.

¶ 16 This brings us to the question of what remedy we should order. On appeal is the denial of a motion for a stay. Reversing this order based on the trial court’s lack of jurisdiction would not make sense, as it would purport to put into effect a stay for which the trial court lacked jurisdiction. Vacating it would be meaningless, since by denying the stay, the trial court, in

effect, ordered nothing. Finally, affirming a void act would be odd indeed. Thus, we are unable to order effective relief in this appeal. Under such circumstances, we must dismiss this appeal. *George W. Kennedy Construction Co., Inc. v. City of Chicago*, 112 Ill. 2d 70, 76 (1986) (“ It is well established that a reviewing court will dismiss a pending appeal where the court has notice of facts making it impossible to grant effective relief to either party.”).

¶ 17 Finally, we will briefly address the treasurer’s motion to strike portions of Bank of America’s brief. He asks that we strike those portions of Bank of America’s brief arguing that the November 18, 2010, order and sale are void, asserting that they are part of the collector’s case and that case is not properly before this court. It is true that a void order may be attacked at any time in any court. *JoJan Corp. v. Brent*, 307 Ill. App. 3d 496, 502 (1999). However, for this rule to apply, the order must be properly before the court. *Universal Underwriters Insurance Co. v. Judge & James, Ltd.*, 372 Ill. App. 3d 372, 383 (2007). The treasurer points out that there had been no final order entered or notice of appeal filed in the collector’s case.

¶ 18 We agree with the treasurer that the November 18, 2010, order and sale are not properly before us. We note that this appeal was taken pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. February 26, 2010). Under this rule, our review is somewhat limited. Generally speaking, review under Rule 307 is limited to whether there was a sufficient showing in the proceedings below “to sustain the trial court’s order granting or denying the relief sought.” *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1027 (2003). An appeal pursuant to this rule “does not open the door to a general review of all orders entered by the trial court up to the date of the order that is appealed.” *Estate of Bass ex rel. Bass v. Katten*, 375 Ill. App. 3d 62, 73 (2007). Neither the November 18, 2010 order nor the sale fall within our scope of review under Rule 307. Accordingly, we grant the treasurer’s motion to strike

¶ 19 In sum, we hold that the trial court lacked jurisdiction in the proceeding below, and, in light of the bank's argument, likely also lacks jurisdiction in the collector's case. Given the posture of this case, we are unable to order any sort of meaningful relief. We dismiss this appeal, and we also grant the treasurer's motion to strike for reasons set forth above.

¶ 20 Appeal dismissed.