

2016 IL App (1st) 142089-U
No. 1-14-2089

FIFTH DIVISION
Order filed January 22, 2016
Modified upon denial of rehearing March 11, 2016

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

DENMAX CORPORATION,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	
)	
EQUITY ONE MANAGEMENT COMPANY, LLC,)	
CHICAGO TITLE LAND TRUST NO. 8002356753;)	
1719-1729 WEST AUGUSTA BOULEVARD LAND)	
TRUST, VOLODEVELOPMENT, INC., JOHN BRIDGE,)	
LINCOLNWAY COMMUNITY BANK, FAIR DEAL OF)	
ILLINOIS, INC., HILARY B. WILSON, JR.,)	No. 12 CH 35707
CHRISTOPHER E. STEELE, KEVIN D.)	
VOGELSINGER, AMY VOGELSINGER, LAURA B.)	
SCHMIDT, SARA R. SCHMIDT, AMY TELPNER,)	
JACOB SCHWIMMER, DAMIEN J. HAWCROFT,)	
MARK HEMMER, DAVID S. HEMMER, ROBERT R.)	
WARNOCK, IV, EMILY N. WARNOCK,)	
CHRISTOPHER HOFFMAN, MELANIE GONZALEZ,)	
BENJAMIN ILHARDT, JESSICA ILHARDT, ART)	
KUYAKANON, DIVA NEIMS, DOMINIC PATAWRAN,)	
BENJAMIN U. FISHER, and JENNIFER R. FISHER,)	Honorable
)	Leroy K. Martin, Jr.,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the dismissal of plaintiff's complaint seeking specific performance of a contract for the purchase of real estate, ruling the tax deed issued for the property extinguished any interest the plaintiff acquired prior to the issuance of the tax deed.

¶ 2 Plaintiff, Denmax Corporation (Denmax), appeals from orders of the circuit court of Cook County dismissing his claims for specific performance against defendants Equity One Management Company, LLC (Equity), Chicago Title Land Trust No. 8002356753 (CTLT), 1719-1729 West Augusta Boulevard Land Trust (Augusta Trust), Volodevelopment, Inc. (Volo), John Bridge (Bridge), Lincolnway Community Bank (Lincolnway), Fair Deal of Illinois, Inc. (Fair Deal), Hilary B. Wilson, Jr. (Wilson), John Stamm (Stamm), Kevin D. and Amy Vogelsinger (Vogelsingers), Laura B. and Sara R. Schmidt (Schmidts), Amy Telpner (Telpner), Jason Schwimmer (Schwimmer), Damien J. Hawcroft (Hawcroft), Mark and David S. Hemmer (Hemmers), Robert R. Warnock, IV and Emily Warnock (Warnocks), Christopher Hoffman (Hoffman), Melanie Gonzalez (Gonzalez), Benjamin and Jessica Ilhardt (Ilhardts), Art Kuyakanon (Kuyakanon), Diva Neims (Neims), Dominic Patawaran (Patawaran), and Benjamin U. and Jennifer R. Fisher (Fishers). The circuit court ruled Denmax's claim to the property in which defendants have interests was barred by the issuance of a tax deed regarding the property. On appeal, Denmax contends: (1) the tax deed did not extinguish its interest in the property; (2) defendants are equitably estopped from asserting Denmax's interest in the property was extinguished by the tax deed; and (3) defendants' alternative defenses, based on the terms and purported abandonment of a contract Denmax negotiated regarding the property, also fail. For the following reasons, we affirm the orders of the circuit court.

¶ 3

BACKGROUND

¶ 4

The Initial Complaint

¶ 5 On September 21, 2012, Denmax filed a verified complaint against Equity, Bridge, CTLT, the Augusta Trust, Volo, and Lincolnway. Denmax sought specific performance of a contract with CTLT (contract) for the sale of 1719-1727 West Augusta Boulevard in Chicago (Augusta property). Equity allegedly owned and held title to the Augusta property. Bridge was alleged to be a manager of Equity. The Augusta Trust was alleged to be an affiliate of Equity. Lincolnway allegedly held a mortgage on the Augusta property made by Volo.¹

¶ 6 On January 30, 2013, Equity, the Augusta Trust, and Bridge filed a motion to dismiss Denmax's verified complaint pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2010)). These defendants argued that none of them: (1) were parties to the contract; nor (2) had an interest in the Augusta property until Equity was issued a tax deed by the circuit court on November 14, 2011. The motion noted tax deeds are generally incontestable under the Property Tax Code (see 35 ILCS 200/22-55 (West 2010)).²

¹ The initial complaint does not identify any relationship between CTLT and the other defendants.

² The motion to dismiss includes an overview of the tax sale and tax deed system. Illinois law provides that when a property owner is delinquent in paying real estate taxes for a certain amount of time, the county may sell the property at a public auction (tax sale) in order to recover the delinquent taxes. See 35 ILCS 200/21-75, 21-110 (West 2010). A tax sale purchaser does not immediately gain title to the property; rather, the purchaser receives a certificate of purchase. See 35 ILCS 200/21-250 (West 2010). Within 4 months and 15 days, the tax sale purchaser must provide the county clerk with a notice of the sale to be given to the last assessee of the property. 35 ILCS 200/22-5 (West 2010). This section 22-5 notice urges the assessee to redeem the property. *Id.* The property owner has the right to "redeem" the property by paying to the county clerk the delinquent taxes, as well as costs, fees, and interest, generally within two years of the date of the sale. See 35 ILCS 200/21-345, 21-350, 21-370 (West 2010). "If the owner makes a valid redemption, then title to the property remains with the owner, and the tax purchaser is entitled to the redemption money only." *In re County Treasurer*, 378 Ill. App. 3d 842, 846 (2007).

"However, if the owner does not redeem the property within the designated period, then

Volo, Lincolnway, and CTLT subsequently filed motions to join in the motion to dismiss.

¶ 7 On May 31, 2013, the circuit court entered an order granting the motion to dismiss. The circuit court reasoned that the issuance of the tax deed extinguished any interest or right Denmax had in the Augusta property. The circuit court, however, granted Denmax leave to file an amended complaint. On June 26, 2013, Denmax filed a motion to reconsider the circuit court's ruling dismissing the complaint for specific performance. On June 28, 2013, the circuit court denied the motion for reconsideration.

¶ 8 The Verified First Amended Complaint

¶ 9 On July 25, 2013, Denmax filed its verified first amended complaint against defendants named in the initial complaint. Denmax also added Fair Deal, Wilson, Steele,³ the Vogelsingers, the Schmidts, Telpner, and Schwimmer as defendants.

¶ 10 The verified first amended complaint alleged Equity and Fair Deal were tax sale "scavengers." On September 23, 2008, the Cook County Clerk issued a certificate of purchase to Fair Deal for the Augusta property. On January 23, 2009, Fair Deal filed a petition for a tax deed regarding the Augusta property, noting the redemption period for the property would expire on June 26, 2009. The circuit court subsequently extended the redemption period for the Augusta property to December 17, 2010. Four days after the end of the redemption period, Fair Deal filed an application for an order directing the county clerk to issue a tax deed.

the tax purchaser may petition the court for the deed to the property (tax deed)." *Id.* "Notice of filing the petition and the date on which the petitioner intends to apply for an order on the petition that a deed be issued if the property is not redeemed shall be given to occupants, owners and persons interested in the property ***." 35 ILCS 200/22-30 (West 2010); see 35 ILCS 200/22-25 (West 2010). If a tax deed petitioner fails to obtain and record the deed within a year of the expiration of the redemption period, the certificate of purchase and sale will be deemed absolutely void, without any right of reimbursement. See 35 ILCS 200/22-85 (West 2010). A properly issued tax deed, however, is generally incontestable, except as prescribed by law. See 35 ILCS 200/22-45 (West 2010).

³ Steele is defendant Stamm's predecessor. Steele is later substituted by Stamm as defendant.

¶ 11 On March 22, 2011, Denmax and Fair Deal executed the contract at issue in this case, designating CTLT as the seller. The beneficial interest of CTLT allegedly belonged to Fair Deal and its owners: Gregory Reiter (Reiter), Terry Carter (Carter), and Jocelyn Stoller (Stoller).⁴ The contract set a \$660,000 purchase price for the Augusta property. The contract also generally obligated CTLT to convey the Augusta property to Denmax by special warranty deed and to close the transaction by May 15, 2011, or by the date to which the time may be extended by the parties. A rider to the contract provided:

"Within ten (10) days of executing this contract, the respective attorneys for the Seller and Purchaser may propose written modifications to the Contract on matters other than the Purchase Price, broker's compensation and dates. Any proposed modifications that are set forth in writing and accepted by the other party shall become terms of this Contract as if originally set forth in this Contract. If within the Attorney Modification period the Seller and Purchaser cannot agree regarding the proposed modifications, then at any time after the Attorney Modification Period, either Seller or Purchaser may terminate this Contract by written notice to the other. In that event, this Contract shall be null and void and the earnest money shall be returned to the Purchaser."

Denmax alleged that from March to August 2011, attorneys for the parties negotiated terms of the contract. On April 14, 2011, pursuant to the terms of the contract, Denmax tendered \$5,000 in earnest money. On September 28, 2011, Denmax tendered an additional \$15,000 in earnest money.

¶ 12 On May 3, 2011, Denmax inquired of Reiter regarding the status of the tax deed petition.

⁴ Exhibits attached to the pleading indicate the beneficiary was Frontline Properties, LLC.

Reiter informed Denmax the matter had been heard and a court-ordered tax deed could issue within seven days. On August 22, 2011, however, Reiter claimed to exercise his right to terminate the contract. On August 24, 2011, Denmax informed Reiter it intended to proceed under the contract. Denmax subsequently recorded the contract with the Cook County Recorder of Deeds.⁵

¶ 13 On October 6, 2011, Reiter allegedly confirmed to Denmax that Fair Deal and CTLT were clearing title to the Augusta property through the tax deed proceeding "such that Denmax could take title to the property." On October 21, 2011, Carter, one of Fair Deal's owners, emailed Reiter:

"I don't want to do this dance with them anymore. They are not in good faith. Because of their delay, the entire contract needs to be reworked, (date wise) we are prejudiced as another month has gone by. AND they want us to pay all the subs!! Screw them. I want to make the most money we can on this even if it means selling it to John Bridge."

The same day, Carter emailed Bridge with an attachment titled "Certificate Agreement – Augusta.doc," requesting that Bridge examine it. Denmax alleged the attachment was a draft agreement for Bridge's purchase of Fair Deal's interest in the Augusta property.

¶ 14 On November 3, 2011, Fair Deal and Equity executed an agreement for the sale of Fair Deal's interest in the Augusta property. On November 9, 2011, Carter executed an assignment of Fair Deal's interest to Equity. On November 14, 2011, Equity was substituted as the tax deed purchaser in the tax deed proceeding and the circuit court directed the issuance of the tax deed to Equity. On November 22, 2011, the tax deed was recorded with the Cook County Recorder of

⁵ This allegation in the first amended complaint relied upon three exhibits attached to the pleading, none of which indicates the date upon which Denmax recorded the contract.

Deeds. No one appealed from the November 14, 2011, order.

¶ 15 In early December 2011, Equity offered to sell property, including the Augusta property, to Denmax for an amount greater than the purchase price set forth in the contract. Denmax rejected the offer. In March 2012, Equity conveyed title for the Augusta property to the Augusta Trust. On June 5, 2012, the Augusta Trust conveyed the Augusta property to Volo, at which time Lincolnway also obtained interests in the property. Volo commenced developing the Augusta property with the construction of two multiple-unit buildings, resulting in the sale of units to Wilson, Steele, the Vogelsingers, the Schmidts, Telpner and Schwimmer.

¶ 16 Denmax further alleged that in reliance on Fair Deal's representations that the Augusta property would be deeded to Denmax after obtaining title through the tax deed proceeding, it retained funds to close the Augusta property transaction. Thus, Denmax alleged it did not obtain profits from other opportunities to purchase real estate in the Chicago metropolitan area.

¶ 17 The verified first amended complaint included 20 counts. Denmax repleaded its claims for specific performance against Volo and Lincolnway from its initial complaint (counts I and II). Denmax also asserted claims for specific performance against Wilson, Steele, the Vogelsingers, the Schmidts, Telpner and Schwimmer (counts III through VII). Denmax further asserted a claim for breach of contract by CTLT (count VIII). In addition, Denmax asserted claims for promissory estoppel and equitable estoppel against both Fair Deal and CTLT (counts IX through XII). Moreover, Denmax asserted claims of tortious interference with contract and tortious interference with prospective business advantage against Equity, Bridge, the Augusta Trust, and Volo (counts XIII through XX).

¶ 18 Motions to Dismiss

¶ 19 On September 10, 2013, CTLT filed a motion to dismiss Denmax's breach of contract

claim (count VIII) pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)), arguing Denmax's lost profits were not available as damages as a matter of law and that Denmax's own exhibits established the contract was properly terminated. Volo also filed a section 2-615 motion to dismiss Denmax's claims of tortious interference with contract and tortious interference with prospective business advantage (counts XVI and XX),⁶ arguing that:

- (1) Denmax alleged Volo's knowledge of the contract upon information and belief; and
- (2) Denmax's allegations established Volo did not have any involvement with the Augusta property until after CTLT's alleged breach of the contract. On January 13, 2014, the circuit court granted CTLT's motion to dismiss with prejudice. The circuit court also granted Volo's motion to dismiss without prejudice.

¶ 20 On October 25, 2013, Lincolnway filed a motion to dismiss the claim for specific performance against Lincolnway (count II) based on section 2-619 of the Code. Lincolnway asserted it was repaid on its mortgage and it had already released the mortgage and assignment of rents upon which Denmax based its claim for specific performance. The motion was supported by an affidavit from a Lincolnway officer and copies of release deeds. On November 5, 2013, the circuit court entered an order granting Lincolnway's motion to dismiss.

¶ 21 On February 5, 2014, Denmax filed a motion for a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) and a stay of the litigation that would allow Denmax to appeal the circuit court's prior orders dismissing Denmax's claims for specific performance based on the issuance of the tax deed. The circuit court denied Denmax's motion on the following day.

¶ 22 Further Amendment and Dismissal

¶ 23 On February 13, 2014, Denmax filed a motion seeking leave to name additional

⁶ This motion to dismiss is not included in the record on appeal, but the record includes Volo's reply in support of the motion, filed on December 6, 2013.

defendants and add additional counts to the verified first amended complaint. Specifically, Denmax proposed to add Hawcroft, the Hemmers, the Warnocks, Hoffmann, Gonzalez, the Ilhardts, Kuyakanon, Neims, Patawaran, and the Fishers as defendants because they bought units developed by Volo. Denmax sought to add claims for specific performance against these defendants (counts XXI through XXVIII). Denmax also sought to replead the claims for specific performance against CTLT, Equity, and Bridge included in its initial complaint (counts XXIX through XXXI), as well as to assert claims for specific performance against Fair Deal and the Augusta Trust (counts XXXII and XXXIII). On February 27, 2014, the circuit court granted Denmax's motion.

¶ 24 On June 2, 2014, Denmax, Equity, Bridge, the Augusta Trust, and Volo filed a joint motion to dismiss the claims of tortious interference with contract and prospective business advantage against them (counts XIII, XIV, XV, XVII, XVIII and XIX). On the same date, Denmax filed motions to substitute Stamm for Steele as a defendant and to voluntarily dismiss Wilson as a defendant.

¶ 25 On June 6, 2014, the circuit court entered orders granting Denmax's motion to substitute Stamm as a defendant in count IV of the verified first amended complaint, and dismissing count III, thereby dismissing Wilson as a defendant. On the same date, the circuit court entered an order granting defendants' oral motion to dismiss Denmax's remaining claims for specific performance and estoppel (counts I, IV, V, VI, VII, IX, X, XI, XII, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII), again reasoning the issuance of the tax deed extinguished any interest or right Denmax had in the Augusta property. On July 3, 2014, Denmax filed a notice of appeal to this court.

¶ 26

ANALYSIS

¶ 27 On appeal, Denmax contends the circuit court erred in dismissing its claims for specific performance and estoppel pursuant to section 2-619 of the Code. 735 ILCS 5/2-619 (West 2010). The statute's purpose is to dispose of issues of law and easily proved issues of fact at the outset of litigation. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). The moving party "admits the legal sufficiency of the complaint, but asserts an affirmative defense or other matter to defeat the plaintiff's claim." *Id.*

¶ 28 Under subsection (a)(9) of section 2-619,⁷ the Code of Civil Procedure permits involuntary dismissal where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." *Id.*; 735 ILCS 5/2-619(a)(9) (West 2010). An " 'affirmative matter,' in a section 2-619(a)(9) motion, is something in the nature of a defense which negates the cause of action completely ***." *Van Meter*, 207 Ill. 2d 359 at 367. The court views the pleadings and any supporting documentary evidence " 'in the light most favorable to the nonmoving party.' " *Id.* at 368 (quoting *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 189 (1997)).

¶ 29 This court reviews *de novo* a dismissal pursuant to section 2-619. *Van Meter*, 207 Ill. 2d at 368. *De novo* consideration means we perform the same analysis that a trial court would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). Moreover, "[a] dismissal order may be affirmed 'if it is justified in the law for any reason or ground appearing in the record regardless of whether the particular reasons given by the trial court, or its specific findings, are correct or sound.' " *BDO Seidman, LLP v. Harris*, 379 Ill. App. 3d 918, 923 (2008)

⁷ Denmax's brief does not specifically state the circuit court erred in dismissing its claims pursuant to subsection 2-619(a)(9) of the Code. However, based on the discussion in Denmax's brief and the court's judgment, it is evident that Denmax's claim on appeal is pursuant to section 2-619(a)(9) of the Code.

(quoting *Natural Gas Pipeline Co. of America v. Phillips Petroleum Co.*, 163 Ill. App. 3d 136, 142 (1987)).

¶ 30 In this case, the circuit court ruled Denmax's claims were defeated by the issuance of the tax deed. The Property Tax Code (35 ILCS 200/1-1 *et seq.* (West 2010)) governs the issuance of tax deeds. "Pursuant to the Property Tax Code, '[t]he legislature intended a tax deed, once it is issued, to be virtually incontestable.'" *Excalibur Energy Co. v. Rochman*, 2014 IL App (5th) 130524, ¶ 17 (quoting *S.I. Securities v. Powless*, 403 Ill. App. 3d 426, 429 (2010)). " 'The legislature's intent was to provide a tax buyer with a new and independent title, free and clear from all previous titles and claims of every kind, and assurance to the tax buyer that his title and rights to the property would be unimpaired.'" *Excalibur Energy Co.*, 2014 IL App (5th) 130524, ¶ 17 (quoting *S.I. Securities*, 403 Ill. App. 3d at 429). The purpose of the legislation is also to provide a method for obtaining merchantable title. *In re Application of Olmstead*, 269 Ill. App. 3d 821, 822 (1995). While merchantable title is not perfect record title, it is title that is readily transferred and reasonably secure against litigation or flaws decreasing market value. *Id.* at 823. " 'The legislature drafted the Property Tax Code in this manner because, prior to 1951, there was an alarming increase in the rate of tax delinquencies, and 'almost any defect or deficiency, no matter how minute, in a tax deed proceeding that led to the issuance of a tax deed made a deed suspect and generally void.'" *Excalibur Energy Co.*, 2014 IL App (5th) 130524, ¶ 17 (quoting *S.I. Securities*, 403 Ill. App. 3d at 429); see also *Killion v. Meeks*, 333 Ill. App. 3d 1188, 1191 (2002)).

¶ 31 Accordingly, a party's ability to set aside a tax deed is very limited. *In re County Treasurer*, 2013 IL App (3d) 120999, ¶ 23; see 35 ILCS 200/22-45, 22-55 (West 2010). Under section 22-45 of the Property Tax Code, (35 ILCS 200/22-45 (West 2010)), there are only three

ways in which a party may challenge a tax deed: (1) by filing a direct appeal from the order directing the issuance of the deed; (2) by filing a motion for relief under section 2-1203 of the Code (735 ILCS 5/2-1203 (West 2010)); (3) or by filing a petition for relief under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)). *In re County Treasurer*, 2013 IL App (3d) 120999, ¶ 23.

¶ 32 In this case, the order directing the issuance of the disputed tax deed to Equity was entered on November 14, 2011, and recorded on November 22, 2011. No one appealed from the November 14, 2011, order. Therefore, the only vehicles for challenging Equity's tax deed were sections 2-1203 and 2-1401 of the Code. 735 ILCS 5/2-1203 (West 2010); 735 ILCS 5/2-1401 (West 2010)); *S.I. Securities*, 403 Ill. App. 3d at 430. Denmax, however, never filed for relief under sections 2-1203 or 2-1401 of the Code.

¶ 33 Further, to be treated as a motion or petition for relief from judgment directing issuance of the tax deed, such motion or petition must be "filed in the same proceeding in which the order or judgment was entered." 735 ILCS 5/2-1401(b) (West 2010). Denmax's complaint for specific performance was not filed in the same proceeding in which the order directing the issuance of the tax deed was entered and thus cannot be treated as a motion or petition for relief from the order. *Excalibur Energy Co.*, 2014 IL App (5th) 130524, ¶ 26. Accordingly, the trial court properly dismissed Denmax's complaint.

¶ 34 Denmax also argues it should be considered in the position of a purchaser *pendente lite* because its interest in the Augusta property arose after the notice period specified in the Property Tax Code, but prior to the issuance of the tax deed. Denmax relies on Illinois Supreme Court decisions issued in the 19th century. *Hammond v. Carter*, 155 Ill. 579, 586 (1895); *Gonzalia v. Bartelsman*, 143 Ill. 634, 639 (1892); *Taylor v. Wright*, 121 Ill. 455, 467 (1887). Denmax

overlooks that the 1951 amendments to the Property Tax Code were designed to make tax deeds incontestable and prevent them from being voided based on minor defects. See *Excalibur Energy Co.*, 2014 IL App (5th) 130524, ¶ 17. Indeed, the 1951 amendments "represented 'the final action in a long battle between the court and the legislature as to the merchantability of land titles derived from annual tax sale proceedings.'" *Killion*, 333 Ill. App. 3d at 1191 (quoting *Crawford v. Love*, 243 Ill. App. 3d 977, 979 (1993)). Given that history, in *Excalibur Energy Co.*, the appellate court rejected the plaintiff's attempt to rely on *Glos v. Patterson*, 195 Ill. 530, 533-34 (1902), to assert that a tax deed can be negated in an action in ejectment. *Excalibur Energy Co.*, 2014 IL App (5th) 130524, ¶¶ 24-25 (plaintiff's reliance on *Glos* appears anachronistic in light of the clear language of sections 22-45 of the Property Tax Code and 2-1401 of the Code, along with the courts' construction of these sections and their predecessors since 1902).

¶ 35 Indeed, since the 1951 amendments to the Property Tax Code, this court has consistently ruled the proper issuance of a tax deed extinguishes prior interests in the property. For example, in *Killion*, the appellate court held the proper issuance of a tax deed extinguished the claims of adverse possessors. *Killion*, 333 Ill. App. 3d at 1193. The appellate court has also concluded a claim under existing leases of the property is extinguished by a tax deed. *Olmstead*, 269 Ill. App. 3d at 823. Similarly, a prior mortgage lien is extinguished by the proper issuance of a tax deed. *Lincoln Park Federal Savings & Loan Ass'n v. DRG, Inc.*, 175 Ill. App. 3d 176, 178 (1988). Moreover, in *City of Bloomington v. John Allan Co.*, 18 Ill. App. 3d 569 (1974), the appellate court affirmed a dismissal of the plaintiff city's suit to foreclose its lien for improvements that was recorded two days before the issuance of a tax deed. *Id.* at 581.

¶ 36 Denmax argues the appellate court decisions are distinguishable from this case because,

in each of the cases cited by defendants, the party barred from claiming an interest had obtained such interest prior to the tax deed proceeding and the statutory notice period. Denmax, however, overlooks that although its interests arose after the tax deed proceeding and the statutory notice period, its interest existed prior to the issuance of the tax deed.

¶ 37 A petition for tax deed is a public record and is discoverable by any person who takes an interest after its filing. *Application of County Collector*, 220 Ill. App. 3d 933, 939 (1991). A careful inspection of the public records would have revealed both the sale of the property for back taxes and the application for a tax deed. *Id.* Further, the Property Tax Code provides that "once the statutory requirements are complied with and tax purchasers are issued a valid tax deed, they acquire merchantable title under the [Property Tax] Code *** free and clear from all previous titles and claims of every kind and character." *Killion*, 333 Ill. App. 3d 1188 at 1193. The *Killion* court found the proper issuance of a tax deed had extinguished claims of an adverse possessor who had otherwise satisfied all adverse possession requirements. *Id.* The *Killion* court noted, "[t]here is nothing in the [Property Tax] Code that carves out an exception for the interests of an adverse possessor, and this court is not the place to conduct such a carving." *Id.* Similarly, there is nothing in the Property Tax Code that carves out an exception for Denmax's interest acquired after the tax deed proceeding and the statutory notice period but before the issuance of the tax deed. *Id.*

¶ 38 Denmax relies on *Application of County Treasurer & Ex-Officio County Collector of Cook County*, 4 Ill. App. 3d 243, 248 (1972) and *Terra-Nova Investments v. Rosewell*, 235 Ill. App. 3d 330, 335 (1992), to argue Denmax's rights cannot be extinguished by the tax deed because it had never been a party to the tax deed proceeding. Those cases, however, are distinguishable as the two courts addressed a different issue—whether a party could be bound by

the judgment and order of sale where it was not a party to the proceeding. Rather, the issue here is whether Denmax's claim survived the issuance of the tax deed and may be enforced against subsequent transferees. Also, unlike in Denmax's case, no tax deed was ever issued in either case. Accordingly, Denmax's reliance on the two cases fails.

¶ 39 In its reply brief, Denmax reframes its argument, contending it is not contesting the tax deed, as the contract (and thus any claim for specific performance thereof) necessarily rested on the issuance of a tax deed to the seller. As previously discussed, section 22-45 of the Property Tax Code was intended to provide a tax buyer with a new and independent title, free and clear from all previous titles and claims of every kind. *Excalibur Energy Co.*, 2014 IL App (5th) 130524, ¶ 17; 35 ILCS 200/22-45 (West 2010). The interest Denmax asserts in this case arose prior to the issuance of the tax deed. The essence of Denmax's claim is that its purported interest survived the issuance of the tax deed and may be enforced against subsequent transferees. Denmax's lawsuit thus represents a collateral attack on the merchantability of title to the Augusta property. Accordingly, any interest Denmax acquired prior to the issuance of the tax deed is extinguished by the issuance of the tax deed pursuant to section 22-45. 35 ILCS 200/22-45 (West 2010). Thus, we conclude the circuit court did not err in dismissing Denmax's claims on this basis.

¶ 40 Denmax further contends on appeal that the doctrine of equitable estoppel precludes defendants' reliance upon the tax deed proceedings as a defense to specific performance. Defendants respond that Denmax "never pleaded equitable estoppel in its initial Complaint, and that was the Complaint which the court dismissed on the merits." According to defendants, Denmax's "attempt to piggyback" on principles of equity "is ineffective as a matter of law, since those concepts were neither pleaded in the Complaint nor presented to the court."

¶ 41 Assuming *arguendo* that Denmax's argument was pleaded in the trial court and properly preserved for purposes of appeal, we nonetheless reject its contention. On appeal, Denmax relies on cases that address generic notions of estoppel and privity to argue that defendants are "equitably estopped from now relying upon the Tax Deed Proceeding and the tax deed to defeat Denmax's interests in the Augusta Property." None of the cases Denmax cites to, however, involve tax deeds or related proceedings. Further, Denmax contends that representations or promises made by CTLT/Fair Deal resulted in its expending funds and forgoing various opportunities. Regardless of such alleged reliance, however, Denmax's position runs contrary to this court's consistent ruling that the proper issuance of a tax deed extinguishes prior interests in the property (*Killion*, 333 Ill. App. 3d at 1193; *Olmstead*, 269 Ill. App. 3d at 823; *Lincoln Park Federal Savings & Loan Ass'n v. DRG, Inc.*, 175 Ill. App. 3d at 178) and the legislature's intent for a tax deed to provide a method for obtaining merchantable title that is free and clear from all previous claims of every kind (*Excalibur Energy Co.*, 2014 IL App (5th) 130524, ¶ 17).

¶ 42 Given our disposition of this appeal, we do not reach defendants' additional contractual defenses.

¶ 43 CONCLUSION

¶ 44 For all of the aforementioned reasons, we affirm the orders of the circuit court dismissing Denmax's verified first amended complaint.

¶ 45 Affirmed.