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FIRST DIVISION
September 12, 2016

No. 1-15-1712
2016 IL App (1st) 151712-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

DEIVIDAS KIRKLIAUSKAS,	)	
Plaintiff,	)	Appeal from the Circuit Court of Cook County.
JURGA SVABAITE, and REDAS IVANAUSKAS,	)	
Plaintiffs-Appellants,	)	No. 12 L 12945
v.	)	Honorable John P. Callahan, Jr., Judge Presiding.
VERNOR MORAN, LLC and NICHOLAS C. KEFALOS,	)	
Defendants-Appellees.	)	

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justice Cunningham and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Summary judgment in favor of defendants was improper in a legal malpractice action brought by former property owners against their former attorneys where genuine issues of material fact existed as to whether plaintiffs had standing to challenge the entry of the tax deed order, whether the tax deed recipient's notice was proper under section 22-5 of the Property Tax Code, and whether plaintiffs could have successfully collaterally challenged the tax deed order under the limited circumstances permitted under section 22-45 of the Property Tax Code.

¶ 2 Plaintiffs, Redas Ivanauskas and Jurga Svabaite (plaintiffs), filed a complaint alleging legal malpractice against defendants Vernor Moran, LLC and Nicholas C. Kefalos (defendants).[1] The lawsuit alleged that defendants committed professional negligence after plaintiffs sought their legal advice concerning a tax deed issued against 224 S. Thurlow Street, Hinsdale, Du Page County, Illinois (Property). The circuit court granted defendants' motion for summary judgment, which plaintiffs now appeal. Plaintiffs claim the circuit court erred in granting summary judgment because: (1) plaintiffs had standing to redeem the Property and vacate the tax deed order entered June 19, 2012, conveying the Property to Sabre Ventures, LLC (Sabre), (2) the notice provided by Sabre pursuant to section 22-5 of the Property Tax Code (Code) (35 ILCS 200/22-5 (West 2010)) was deficient, and (3) the June 19, 2012, tax deed order was not void. For the reasons that follow, we reverse the judgment of the circuit court and remand the matter for further proceedings.

¶ 3 BACKGROUND

¶ 4 Plaintiffs, a married couple, acquired the Property in 2008 under Svabaite's name. In 2010, Ivanauskas went into business with Deividas Kirkliauskas, and the two of them became co-owners of a company named D&R Logistics. On August 16, 2010, Svabaite conveyed the Property by quitclaim deed to Kirkliauskas as collateral for Ivanauskas's share of the company.

¶ 5 In their depositions, Svabaite, Ivanauskas, and Kirkliauskas agreed that there was an "oral agreement" pursuant to which Kirkliauskas became the owner of the Property solely to make him and Ivanauskas equal partners in the business. Svabaite explained that "[t]his was not literally giving a house to [Kirkliauskas], *** all three [of them] underst[ood] this very well." Although all three were under the impression that the Property belonged to plaintiffs, and that

[1] The complaint originally included a third plaintiff, Deividas Kirkliauskas, whose claim was dismissed by the trial court on August 25, 2014, and who is not a party to this appeal.

legal title would return to plaintiffs once the business between Kirkliauskas and Ivanauskas ended, there was no written document memorializing this understanding. During the time Kirkliauskas held title to the Property, plaintiffs, not Kirkliauskas, collected rent from the building's tenants. Svabaite also testified that, in June 2012, the Property was vacant because she and her husband were remodeling it. On July 23, 2012, Kirkliauskas transferred title of the Property via quitclaim deed to Ivanauskas.[2]

¶ 6 Meanwhile, the 2008 real estate taxes for the Property went unpaid. Kirkliauskas testified that he did not pay taxes for the Property after it was conveyed to him, and plaintiffs each testified that they had no knowledge about whether those taxes were paid. On or about November 23, 2009, DuPage County sold a tax lien certificate for the Property's 2008 taxes to Sabre, which is not a party to this litigation. On February 26, 2010, Sabre mailed a notice pursuant to section 22-5 of the Code (35 ILCS 200/22-5 (West 2010)) to Svabaite (who, at that time, held title to the Property) at the Property's address, advising the recipient that "THIS PROPERTY HAS BEEN SOLD FOR DELINQUENT TAXES." On the following line, it stated: "Property Located at DOWNERS GROVE TWP in DUPAGE County, Illinois," and under that provided the Property's legal description and permanent index number.[3] The notice informed the recipient of the following important information related to redeeming the Property: how to

[2] When asked during her deposition why the Property was originally in her name but was later transferred from Kirkliauskas to her husband, Svabaite explained that it did not matter which of them was the owner because "[w]e're a family." Nor does it matter to us, for purposes of this appeal, whether the Property was originally purchased by Ivanauskas or Svabaite, or which of the two later acquired title from Kirkliauskas, as both are parties to this litigation and both claim to have been represented by defendants. To simplify this matter and avoid confusion, we refer to the transfer of the Property throughout this decision as being "from plaintiffs" and "to plaintiffs."

[3] The current version of the statute went into effect on July 1, 2012, and includes minor changes not relevant for purposes of this appeal. Pub. Act 97-557, § 5 (eff. July 1, 2012).

redeem it, how much redemption would cost, when the redemption period would expire, and the risk of losing title to the Property if redemption was not made.

¶ 7 On February 7, 2012, Sabre filed a petition for tax deed in DuPage County circuit court. That petition requested a court order stating, effectively, that Sabre had performed all required actions to acquire the tax deed for the Property, and that if redemption was not made by the deadline, Sabre was entitled to the Property's title in fee simple. Immediately following that, on February 15, 2012, Sabre sent another notice to eight separate addresses: to "Denidas [*sic*] Kirkliauskas" (who, at that time, held title to the Property) at the Property's address as well as an address in Lake Zurich, Illinois; to four other individuals and "Occupant," each at the Property's address; and to the DuPage County clerk. The February 15, 2012, notices informed the recipients that "THIS PROPERTY HAS BEEN SOLD FOR DELINQUENT TAXES" and explained that the redemption period would expire on June 15, 2012. The notice further explained that a petition for title had been filed, that title to the Property would transfer if redemption was not made by the deadline, and that the matter was set for hearing on June 19, 2012. The notice provided a specific time and address for that hearing, and contact information for the DuPage County clerk's office. No action was taken by the notice recipients or any other party to redeem the Property by the expiration of the redemption period. On June 19, 2012, the DuPage County circuit court entered an order directing the DuPage County clerk to transfer title to the Property to Sabre (Tax Deed Order).

¶ 8 In their depositions, Svabaite, Ivanauskas, and Kirkliauskas explained how, after the Tax Deed Order was entered, plaintiffs became aware of the tax deed proceedings and sought legal representation for this matter. Svabaite stated that, on or about June 20, 2012, plaintiffs were doing remodeling work on the Property when someone from Sabre came to the Property and

informed them of "some kind of judgment" against them causing them to lose ownership of the Property. "[W]ithin a couple days" of speaking with the individual from Sabre, Svabaite contacted defendant Kefalos, who, at the time, already represented plaintiffs in an unrelated matter concerning the foreclosure of a different property owned by plaintiffs.[4] Svabaite testified that, throughout June and July, she spoke with Kefalos on multiple occasions regarding the tax deed judgment. Svabaite, Ivanauskas, and Kirkliauskas testified that, although only Svabaite communicated with Kefalos and arranged payment for his services, each understood that Kefalos had been retained to provide legal representation to all three of them.

¶ 9 Svabaite additionally testified that she spoke directly with an individual from Sabre who told her that she would have to pay $86,000 to get the Property back. After plaintiffs discussed what she was told, Svabaite relayed this information to Kefalos in June 2012, speaking with him multiple times that same day. According to Svabaite, Kefalos advised plaintiffs not to pay that amount, said "I will take care of it," and explained that plaintiffs had 60 days to "get it resolved." Kirkliauskas's testimony reflects that Svabaite relayed Kefalos's advice to him and he had the same understanding that Kefalos would take care of the tax deed issue and that plaintiffs had "60 days to take care of this problem."

¶ 10 On July 23, 2012, Kirkliauskas transferred title of the Property via quitclaim deed to plaintiffs. The testimony of all three individuals indicated there were two reasons for the July 23, 2012 transfer: (1) the business between Ivanauskas and Kirkliauskas was coming to an end and it had always been understood that the Property would return to plaintiffs after the business ended; and (2) the discovery of the tax lien on the Property necessitated its return to plaintiffs because "it wasn't [Kirkliauskas's], it was [plaintiffs'] property to begin with." Kirkliauskas testified that

[4] The complaint alleges Svabaite contacted Kefalos about the tax deed matter on June 27, 2012, but this discrepancy is immaterial to our analysis.

he knew the tax deed issue was not yet resolved at the time he transferred the Property back to plaintiffs. Svabaite stated that "[w]hen we found out about [the tax deed judgment], we need [*sic*] to take care of it sooner or later, but there was no reason to do it right away when Kefalos told us we have 60 days," and that the Property belonged to her and her husband and was going to be returned to them even without the existence of the tax deed issue due to the business shutting down.

¶ 11 Svabaite testified that, after speaking to Kefalos multiple times on that day in June 2012, she did not speak with him again until "about a month later," on or about July 30, 2012. On that date, Kefalos called her and said that "he probably [was] not going to be able to do anything" about the tax deed issue, and referred her to another lawyer, Judd Harris. Svabaite stated that Kefalos reiterated what he had told her in June, that plaintiffs had 60 days to take action on the tax deed issue, meaning they "still ha[d] time, [they] still ha[d] another month." Within a couple days after that conversation, Svabaite contacted and retained Harris, who in turn referred her to other lawyers Svabaite identified as "Jeff and John."

¶ 12 On November 15, 2012, Svabaite, Ivanauskas, and Kirkliauskas filed a legal malpractice claim against Kefalos and his employer, the law firm Vernor Moran, LLC. The allegations in the complaint were generally consistent with plaintiffs' deposition testimony: that Svabaite contacted Kefalos on June 27, 2012, retained defendants "to represent [plaintiffs] in vacating the [Tax Deed Order] and challenging the underlying Petition for tax deed," and was informed that Kefalos "believed [plaintiffs] had 60 days to challenge the [Tax Deed Order]." However, defendants "failed to take any action as to the representation to seek to vacate the [Tax Deed Order] other than to refer the case to another attorney, Judd Harris, on or about July 30, 2012." The complaint alleged that, pursuant to section 2-1203 of the Code of Civil Procedure (735 ILCS

5/2-1203 (West 2012)), plaintiffs had the right to challenge the Tax Deed Order within 30 days of final judgment and, had they timely acted, their challenge would have been successful because Sabre's section 22-5 notice was deficient. By failing to challenge the Tax Deed Order during the 30-day window that commenced on June 19, 2012, plaintiffs lost their ability to vacate the order and reclaim title to the Property. Plaintiffs alleged that defendants "breached their duty to exercise reasonable care, skill, competency, and knowledge" in their representation of plaintiffs, and prayed for damages "in excess of $450,000," the approximate value of the Property which they claimed was lost due to defendants' negligence.

¶ 13 During litigation, and after a significant amount of discovery had been conducted, the parties filed cross motions for summary judgment. Plaintiffs filed a partial motion for summary judgment on January 20, 2015, asking the court to "resolve two narrow and presumably undisputed issues," asserting that (1) Sabre's section 22-5 notice did not "strictly comply" with the requirements of the governing statute; and (2) despite the notice's noncompliance, Sabre did not procure the Tax Deed Order by deception or fraud. Defendants, in their motion for summary judgment filed February 20, 2015, asserted that the court must find that, as a matter of law, defendants were not the proximate cause of plaintiffs' injury, and provided two arguments in support thereof. First, defendants claimed that plaintiffs could not establish that they had a redeemable interest in the Property, and therefore plaintiffs had no standing to challenge the Tax Deed Order and would not have prevailed in the tax deed litigation. Second, defendants argued that, assuming the section 22-5 notice was deficient as plaintiffs alleged, the Tax Deed Order was void, and a petition to challenge a void tax deed order may be filed up to two years after the date of entry. Therefore, defendants are not liable for plaintiffs' injury because plaintiffs had ample time to file such a petition after defendants referred them to a different attorney, who

plaintiffs retained. Additionally, raised for the first time in their reply brief, defendants claimed that Sabre's section 22-5 notice was not deficient and raised the question of which document constituted the section 22-5 notice.

¶ 14 On May 20, 2015, the court heard both parties' motions. In a single-page order, the court granted defendants' motion for summary judgment and declined to rule on plaintiffs' motion as moot. Plaintiffs' counsel filed a bystander's report on July 30, 2015 explaining what transpired at the hearing. The report states that no evidence was presented, the parties' arguments were consistent with the arguments raised in their briefs, and the court did not make any findings of fact or explain the legal basis for its decision. Plaintiffs filed their notice of appeal on June 12, 2015.

¶ 15 ANALYSIS

¶ 16 On appeal, plaintiffs contend the circuit court erred in granting defendants' motion for summary judgment. Because the circuit court did not provide a basis for its ruling, plaintiffs address the three arguments defendants made in their motion for summary judgment (and subsequent reply brief), which they used to support their argument that plaintiffs could not show that defendants proximately caused any damages sustained by plaintiffs. Plaintiffs contend that these arguments lack merit and that questions of material fact preclude judgment as a matter of law in defendants' favor. We agree with plaintiffs. We reverse the circuit court's order granting defendants' motion for summary judgment and remand this cause for further proceedings.

¶ 17 Summary judgment is appropriately granted "when 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Stevens v. McGuireWoods LLP*, 2015 IL 118652, ¶ 11 (quoting 735 ILCS 5/2-1005(c) (West

2012)). When considering a motion for summary judgment, the circuit court must construe the evidence in favor of the nonmoving party. *Marquette Bank v. Heartland Bank & Trust Co.*, 2015 IL App (1st) 142627, ¶ 10. Summary judgment "aids in the expeditious disposition of a lawsuit, but is a drastic measure that should be allowed only 'when the right of the moving party is clear and free from doubt.' " *Id.* (quoting *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)). To successfully avoid summary judgment, the nonmoving party must present some factual basis, more than "mere speculation or conjecture," to support its claim. *Freedberg v. Ohio National Insurance Co.*, 2012 IL App (1st) 110938, ¶¶ 25-26.

¶ 18 In this case, the circuit court issued a summary order without explaining the legal or factual basis for its decision to grant defendants' summary judgment motion. As an entry of summary judgment is reviewed *de novo*, however, this court may affirm "on any basis appearing in the record, whether or not the trial court relied on that basis." (Internal quotation marks omitted.) *Freedberg*, 2012 IL App (1st) 110938, ¶ 26; see also *Marquette Bank*, 2015 IL App (1st) 142627, ¶ 10.

¶ 19 This case concerns a legal malpractice claim, which requires plaintiffs, as defendants' clients, to prove that "the defendant attorneys owed the client a duty of due care arising from the attorney-client relationship, that the defendants breached that duty, and that as a proximate result, the client suffered injury." *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 225-26 (2006). The underlying theory in a typical action for legal malpractice "is that the plaintiff would have been compensated for an injury caused by a third party, absent negligence on the part of the plaintiff's attorney." (Internal quotation marks omitted.) *Goldfine v. Barack, Ferrazzano, Kirschbaum & Perlman*, 2014 IL 116362, ¶ 24. Accordingly, it is not enough to simply find negligence on the part of the attorney; it is "essential" that the plaintiff prove the existence of

actual damages which were proximately caused by the attorney's negligence. *Tri-G*, 222 Ill. 2d at 226. In the context of a legal malpractice claim, the issue of proximate causation is "generally considered a factual issue to be decided by the trier of fact." *Renshaw v. Black*, 299 Ill. App. 3d 412, 417 (1998).

¶ 20 In their complaint, plaintiffs asserted that they were unable to reclaim title to the Property because defendants' legal malpractice prevented them from successfully challenging a DuPage County circuit court's order directing the deed to the Property to be issued to Sabre. In 2009, Sabre bought the Property's unpaid 2008 property taxes, and pursuant to articles 21 and 22 of the Code (35 ILCS 200/21, 22 (West 2008)), this gave Sabre the right to obtain a tax deed for the Property unless it was redeemed within a specified time frame by a person possessing an interest in the property. See *Phoenix Bond & Indemnity Co. v. Pappas*, 309 Ill. App. 3d 779, 781-82 (1999). To be eligible to obtain a tax deed, a tax purchaser is required to provide several forms of notice to the owners and all other interested parties. Notice must first be made pursuant to section 22-5 of the Code (35 ILCS 200/22-5 (West 2010)) to inform the parties that the property was sold for delinquent taxes. *In re Application of the County Collector*, 225 Ill. 2d 208, 212 (2007) (hereinafter *Apex Investments*). Notice must then be made pursuant to section 22-10 of the Code (35 ILCS 200/22-10 (West 2010)) to alert the parties that the expiration of the redemption period is approaching. *Apex Investments*, 225 Ill. 2d at 213. Once the redemption period expires, the tax purchaser can petition the court to enter an order directing the issuance of a tax deed, which may be granted only if the tax purchaser demonstrates that it strictly complied with the statutory notice requirements. *In re Application of the County Treasurer & ex officio County Collector*, 2013 IL App (1st) 130463, ¶ 10 (hereinafter *Equity One*). After a tax deed order has been entered, it can be challenged by any party who has "*bona fide* title or interest in

the property." *In re Application of the County Treasurer & ex officio County Collector*, 2013 IL App (3d) 120999, ¶ 18 (hereinafter *Lincoln Title*); see 35 ILCS 200/22-45 (West 2010).

¶ 21 Before turning to the parties' arguments, we find it useful to narrow the scope of our analysis. Specifically, we address factual issues regarding whether defendants were retained as counsel for plaintiffs in the tax deed issue central to this appeal and the actions taken by defendants in that capacity. In their answer to the complaint, defendants disclaimed any representation of plaintiffs, or any communication whatsoever with plaintiffs, regarding the tax deed issue, and stated that, accordingly, they took no action to vacate the Tax Deed Order. Defendants asserted that their legal representation of plaintiffs was solely in regard to "an action for Forcible Detainer related to a different piece of property." However, in their response brief on appeal, defendants do not challenge plaintiffs' account of the parties' professional relationship in plaintiffs' statement of facts, specifically plaintiffs' assertions that defendants agreed to represent plaintiffs in the tax deed matter, informed plaintiffs that they had 60 days to challenge the Tax Deed Order, and at the end of July 2012 referred them to another attorney. The only evidence in the record that addresses these assertions is found in the depositions of Svabaite, Ivanauskas, and Kirkliauskas, whose testimony is unambiguously consistent with plaintiffs' allegations in their complaint as to their dealings and communications with defendants. For the purposes of reviewing the grant of defendants' summary judgment motion, this court is obligated to construe the evidence and resolve these questions of fact in favor of plaintiffs, the nonmoving party. See *Marquette Bank*, 2015 IL App (1st) 142627, ¶ 10. Accordingly, we proceed under the assumption that plaintiffs retained defendants as legal counsel in the tax deed matter on or about June 27, 2012, defendants advised plaintiffs that they had 60 days to challenge the Tax Deed Order, and defendants informed plaintiffs on or about

July 30, 2012, that they would not be able to assist plaintiffs in this matter and referred plaintiffs to another attorney. Thus, summary judgment is appropriate only if defendants would necessarily escape liability on plaintiffs' legal malpractice claim despite those assumptions of fact. We now address the parties' arguments in turn.

¶ 22 Whether Plaintiffs Had Standing to Challenge the Tax Deed Order

¶ 23 In their motion for summary judgment, defendants argued that plaintiffs did not have standing to challenge the Tax Deed Order because they did not have a redeemable interest in the Property. Defendants pointed to the August 16, 2010, quitclaim deed, which transferred all interest in the Property from plaintiffs to Kirkliauskas, and asserted that because this act completely extinguished their interest in the Property, plaintiffs no longer had any ability to redeem the Property or challenge the Tax Deed Order. Therefore, defendants argued, plaintiffs were unable to establish that defendants' actions proximately caused plaintiffs' damages because plaintiffs would not have prevailed in the underlying litigation. On appeal, plaintiffs contend that, to the extent that it granted summary judgment in defendants' favor on this basis, the trial court erred. Given the nature of plaintiffs' relationship with Kirkliauskas and their intentions behind the transference of the deed to the Property, plaintiffs argue that they had an interest in the Property sufficient to give them standing to redeem it and to challenge the Tax Deed Order. They contend that they would have prevailed in the underlying litigation had defendants' negligence not foreclosed their ability to do so.

¶ 24 We consider the issue of whether plaintiffs had standing to redeem the Property and challenge the Tax Deed Order in light of the purpose behind the tax sale provisions of the Code. The primary purpose of these provisions is to encourage the payment of property taxes, not to help third parties deprive owners of their property. *In re Application of the County Treasurer &*

ex officio County Collector, 394 Ill. App. 3d 111, 118-19 (2009) (hereinafter *A.P. Properties*). To further that purpose, "[t]he law favors redemptions, and the redemption statute [is] liberally construed unless injury to the tax purchaser results." *In re Application of the Cook County Treasurer*, 185 Ill. 2d 428, 432 (1998) (hereinafter *Loop Mortgage*). "Any party that has such an interest in the property that he or she would have been entitled to redeem has the right to bring suit to set aside a tax sale and to have the tax deed declared void." *Lincoln Title*, 2013 IL App (3d) 120999, ¶ 18.

¶ 25 The Property in this case was conveyed by plaintiffs by quitclaim deed to Kirkliauskas on August 16, 2010, which, as defendants assert, ended plaintiffs' legal ownership of the Property. See 765 ILCS 5/10 (West 2010) (stating that, with a quitclaim deed, the grantor "convey[s] *** all interest" in the transferred real estate). However, in accordance with its liberal policy of redemption, the Code does not require that a person hold title to a property in order to redeem it. The right of redemption is defined in section 21-345(a) of the Code, which states in part:

> "(a) Property sold under this Code may be redeemed only by those persons having a right of redemption as defined in this Section and only in accordance with this Code. A right to redeem property from any sale under this Code shall exist in any owner or person interested in that property, *** whether or not the interest in the property sold is recorded or filed. Any redemption shall be presumed to have been made by or on behalf of the owners and persons interested in the property and shall inure to the benefit of the persons having the legal or equitable title to the property redeemed[.]" 35 ILCS 200/21-345(a) (West 2010).

Although a "complete stranger" cannot redeem a property, a party does not need to have "complete legal title" to have the right of redemption, but must have "some interest, however

incomplete or undefined, in the property." *Loop Mortgage*, 185 Ill. 2d at 432-33. Further, section 21-345(a) of the Code "creates a presumption that any redemption has been made by or on behalf of the owners and persons interested in the property." *A.P. Properties*, 394 Ill. App. 3d at 119-20. This presumption places a "substantial" burden on a tax purchaser seeking to prove that a redeeming party does not have standing to redeem a property. *In re Application of the County Treasurer & ex officio County Collector*, 301 Ill. App. 3d 672, 676-77 (1998).

¶ 26 The questions this court now faces are whether, despite having transferred the Property's title to Kirkliauskas, plaintiffs retained an interest in the Property sufficient to give them standing to redeem the Property, or alternatively, whether defendants have not sufficiently rebutted the presumption that plaintiffs could have redeemed the Property on behalf of an owner or person interested in the Property. We conclude there are genuine issues of material fact, which preclude judgment as a matter of law as to plaintiffs' standing to redeem the Property or challenge the Tax Deed Order.

¶ 27 Generally, an individual who assigns property title to another via quitclaim deed conveys "all the then existing legal or equitable rights" that the individual had in the property. 765 ILCS 5/10 (West 2010); see also *Stump v. Swanson Development Co.*, 2014 IL App (3d) 110784, ¶ 90 (stating that a quitclaim deed "divests the vendor of every interest, including equities, that he possesses at the time the property is conveyed"). Once full title is given to another, the individual typically no longer has a redeemable interest in that property. See *Loop Mortgage*, 185 Ill. 2d at 435-36 (finding that an individual did not have a redeemable interest in a property after conveying the property's warranty deed to a third party). However, being the recipient of "a contract to convey the property create[s] a redeemable equitable interest in the property." *In re*

Application of the County Treasurer & ex officio County Collector, 396 Ill. App. 3d 541, 549 (2009) (citing *Franzen v. Donichy*, 9 Ill. 2d 382 (1956)).

¶ 28 Here, plaintiffs contend, and defendants do not dispute, that the Property was transferred from plaintiffs to Kirkliauskas as part of a business deal. It is evident from the deposition transcripts that all parties involved in this transfer understood that the Property was being used as collateral, that they considered plaintiffs to be the true owners of the Property, and that title would return to plaintiffs once the business ended. This understanding is supported by the actions of the parties; plaintiffs testified that they, not Kirkliauskas, collected rent from the tenants despite Kirkliauskas holding title to the Property and, once they realized the business was ending and plaintiffs needed title in order to address the tax deed issue, Kirkliauskas promptly conveyed title back to plaintiffs. Based on this evidence, plaintiffs assert that they are "persons interested" in the Property sufficient to give them standing to redeem the Property. Under these circumstances, where the Property was used as collateral in a business partnership, plaintiffs have at least raised a material issue of disputed fact regarding whether an oral contract existed whereby title to the Property would return to plaintiffs once the business between Kirkliauskas and Ivanauskas ended. Whether plaintiffs ultimately would have become record title holders as a result of any such agreement has no bearing on their ability to redeem, and making such a determination is beyond the scope of our inquiry. We find guidance in *Loop Mortgage*, 185 Ill. 2d 428, in which our supreme court stated:

> "Tax deed proceedings are not designed, nor are they the appropriate forum, for trying substantial disputes as to title. *** It is immaterial whether [one party] ultimately would prevail over [the potential redeemer] in an action to quiet title to the property. It is sufficient for our purposes here that [the potential redeemer], as a contract purchaser, has

an equitable interest in the property which entitles him to redeem the property." *Id.* at 437-38.

¶ 29 Defendants assert that any alleged oral contract giving plaintiffs standing to redeem would involve the transfer of real estate, and therefore the statute of frauds would preclude its enforcement. To the extent that the statute of frauds applies to the present case, we disagree. The statute of frauds states "[n]o action shall be brought to charge any person upon any contract for the sale of lands *** unless such contract or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith." 740 ILCS 80/2 (West 2010). Because the purpose of the statute of frauds is to "prevent the fraudulent enforcement of asserted contracts that were in fact not made," it is waived where both parties admit to the existence of the contract. (Internal quotation marks omitted.) *Haas v. Cravatta*, 71 Ill. App. 3d 325, 328-29 (1979). In this case, Kirkliauskas and plaintiffs each testified to the existence of their oral agreement, and their testimony, to the extent the issue was fleshed out during their depositions, shows that they had a consistent understanding of the terms. Defendants, who were not parties to the alleged oral contract, cannot impose the statute of frauds to refute its existence. See *David v. Schiltz*, 415 Ill. 545, 555 (1953). The cases cited by defendants in support of this argument are inapposite as each involves an alleged contract *between the two parties to the litigation*; in those cases, one party sought enforcement of the contract while the other party claimed the contract was unenforceable. See *Midwest Manufacturing Holding, L.L.C. v. Donnelly Corp.*, 975 F. Supp. 1061 (N.D. Ill. 1997); *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482 (1997). Here, neither party to the contract disputes its enforceability, and their actions reflect this.

¶ 30 Affirming summary judgment in favor of defendants on the basis of plaintiffs' lack of standing to challenge the Tax Deed Order requires a finding that there is no genuine issue of

material fact that plaintiffs did not have standing to redeem the Property. To the extent the circuit court relied on such a finding as the basis for its decision, we do not agree. On the facts before us, we cannot determine as a matter of law that no oral contract existed that guaranteed the return of the Property's title to plaintiffs after the business between Kirkliauskas and Ivanauskas ended, and the existence of such a contract would mean plaintiffs retained a redeemable interest in the Property. Whether such a contract existed is a question that must be resolved by the finder of fact.

¶ 31 Furthermore, even if plaintiffs did not have standing to challenge the Tax Deed Order through an ownership interest in the Property, it cannot be determined as a matter of law that plaintiffs did not have standing to redeem the Property on behalf of Kirkliauskas. Defendants make no argument that Kirkliauskas could not have redeemed the Property himself; indeed, he was the titleholder of the Property, and section 21-345(a) of the Code (35 ILCS 200/21-345(a) (West 2010)) clearly states that the owner of a property has the right of redemption. Kirkliauskas and Ivanauskas were business partners, and the Property was being used as collateral for that business; both Kirkliauskas and Ivanauskas had a business interest in ensuring that the Property's title not be lost to a third party. As the court stated in *Lincoln Title*, 2013 IL App (3d) 120999:

> "A party may redeem on behalf of the owner even where the party lacks any interest in the property or lacks explicit authorization from the owner. [Citation.] Just because a party redeemed out of his own economic interest does not mean that he did not do so on behalf of the owner as well. [Citation.] The relationship between the party redeeming the property and the owner may be of such a nature that a valid redemption promotes both of their interests." *Id.* ¶ 18.

¶ 32 In *Lincoln Title*, after a tax purchaser obtained the tax deed to a residential property, the company that had issued a title insurance policy on the property challenged the tax deed order for the tax purchaser's failure to comply with the notice requirements of the Code. *Id.* ¶ 15. The tax purchaser argued that the title insurance company did not have standing to challenge the tax deed order because it "had no title or interest in the property and was not the intended recipient" of the statutorily required notices. *Id.* The court disagreed, stating that, despite the company not having "an ownership interest in the property, as the company that had issued a title insurance policy on the subject property, it clearly could have redeemed the taxes on the subject property on behalf of the owner." *Id.* ¶ 19. "As [the property owner's] title insurer, [the title insurance company] would be expected to act on [the owner's] behalf to preserve [the owner's] ownership of the property and to fulfill its contractual obligation to [the owner] to provide or insure clear title to the property." *Id.* The *Lincoln Title* court declined to decide whether a title insurance company *itself* constituted " 'a person interested in the property' as referenced in section 21-345 of the [Code] (35 ILCS 200/21-345 (West 2010)) regarding who had the right to redeem the taxes," but based its decision on the finding that the company had standing to redeem the property *on the owner's behalf*. *Id.* ¶ 20. It therefore had standing to file a petition to attack the tax deed that had been issued. *Id.* ¶¶ 19-20.

¶ 33 We find the reasoning employed in *Lincoln Title* equally applicable to the facts of this case. Even if plaintiffs themselves do not constitute persons "interested in the property" as defined by section 21-345 of the Code (35 ILCS 200/21-345 (West 2010)), we cannot find as a matter of law that the Property's use as collateral in Ivanauskas's partnership with Kirkliauskas, the understanding that the Property would be conveyed to plaintiffs once the business ended, and plaintiffs' use of the Property as their own while Kirkliauskas held title did not create the

expectation that plaintiffs would be able to act on Kirkliauskas's behalf to preserve ownership of the Property. Plaintiffs' undoubted personal "economic interest" in redeeming the Property does not diminish their ability to redeem on behalf of the titleholder as their "relationship *** may be of such a nature that a valid redemption promotes both of their interests." *Lincoln Title*, 2013 IL App (3d) 120999, ¶ 18. Therefore, even if plaintiffs did not have standing to challenge the Tax Deed Order through their own ownership interest in the Property, there remains a genuine issue of material fact whether they had standing to challenge it on behalf of Kirkliauskas, and based on the record we cannot find that, as a matter of law, defendants have rebutted that presumption.

¶ 34 To the extent that the circuit court granted defendants' motion for summary judgment based on plaintiffs' lack of standing to challenge the Tax Deed Order and, consequently, their inability to establish proximate cause in their legal malpractice claim against defendants, we find that there are genuine issues of material fact precluding such a determination.

¶ 35 Whether Sabre's Section 22-5 Notice Was Deficient

¶ 36 We next consider whether, had plaintiffs challenged the Tax Deed Order, it can be determined as a matter of law that their challenge would have failed. On appeal, plaintiffs assert that Sabre's initial notice to plaintiffs that the Property was sold for delinquent taxes, sent pursuant to section 22-5 of the Code (35 ILCS 200/22-5 (West 2010)), was deficient. Plaintiffs argue that because of this deficiency and the requirement that a tax purchaser strictly comply with the Code in order to be issued a tax deed order, a direct attack on the Tax Deed Order would have resulted in the order's vacatur. In response, defendants assert that Sabre complied with the applicable statutory requirements and the Du Page County circuit court found that the section 22-5 notice was properly served on all necessary parties.

¶ 37 We first note that this issue, raised and fully briefed by plaintiffs on appeal, is addressed by defendants in only a cursory fashion in a footnote appended to an unrelated argument. Illinois Supreme Court Rule 341(a) (eff. Feb. 6, 2013) states that "[f]ootnotes are discouraged" and this court has previously indicated that "[s]ubstantive arguments may not be made in footnotes and responses made thereto are likewise improper." *People ex rel. Department of Labor v. General Electric Co.*, 347 Ill. App. 3d 72, 87 (2004). This court would thus be justified in disregarding defendants' argument as it relates to this issue. See *Benz v. Department of Children & Family Services*, 2015 IL App (1st) 130414, ¶ 27. However, Rule 341(a) "is an admonishment to the parties, not a limitation on the jurisdiction of the reviewing court." *Id.* Given this court's *de novo* review of the circuit court's order and the lack of guidance from the circuit court as to the legal or factual basis for its decision, we find it necessary to address this issue in order to reach a just result.

¶ 38 In order to be entitled to a tax deed, buyers of delinquent taxes must "strictly comply with the provisions of the Code." *Equity One*, 2013 IL App (1st) 130463, ¶ 10. The notice provisions of the Code are to be "rigidly enforced" and if the notice omits even one "essential statutory element," then "the deed issued pursuant to that notice will be void." *In re Application of the County Collector*, 356 Ill. App. 3d 668, 670 (2005). Actual prejudice due to the tax purchaser's noncompliance with the notice provisions need not be shown; prejudice is presumed. *Id.*; see also *Equity One*, 2013 IL App (1st) 130463, ¶ 11 (noting that "under the strict compliance standard it is irrelevant whether any owner, occupant, or other interested party is misled by a defect in a notice").

¶ 39 Section 22-5 of the Code requires a tax purchaser to, "within 4 months and 15 days" after a tax sale, provide a notice that the property has been sold for delinquent taxes. 35 ILCS 200/22-

5 (West 2010). This statutory provision includes a form which, it instructs, must be "completely filled in" and delivered to the county clerk. *Id.* The tax purchaser "shall" comply with this notice requirement "[i]n order to be entitled to a tax deed." *Id.*; see also *In re Application of the County Treasurer & ex officio County Collector*, 2011 IL App (1st) 101966, ¶ 36 (hereinafter *Glohry*) ("It would be absurd to find the legislature intended a purchaser to be entitled to a tax deed even where he had not done as required by the statute."). The section 22-5 form requires the tax purchaser to complete a number of fields such as "County of ……," "Date Premises Sold ……," "Certificate No. ……," and "Sold for General Taxes of (year) ……." 35 ILCS 200/22-5 (West 2010). After a line that informs the reader that "THIS PROPERTY HAS BEEN SOLD FOR DELINQUENT TAXES," the tax purchaser must complete the following field: "Property located at ……." *Id.* Once received, the county clerk will provide this notice "to the party in whose name the taxes are last assessed as shown by the most recent tax collector's warrant books." *Id.*

¶ 40 Here, we cannot find as a matter of law that Sabre's section 22-5 notice, dated February 26, 2010, strictly complied with section 22-5 of the Code. In the field where the tax purchaser is required to provide notice of the property's location, Sabre wrote: "Property located at DOWNERS GROVE TWP in DUPAGE County, Illinois." Although the notice included a legal description and property index number in the next field, the notice did not include the common address of the Property, "224 S. Thurlow St., Hinsdale, Illinois," in the required location on the form. The omission of the Property's street address, particularly the municipality in which the Property is located, in the "Property located at" field of the section 22-5 notice is a deficiency that could have provided sufficient grounds for plaintiffs to challenge the Tax Deed Order.

¶ 41 Our finding is based on the reasoning used in *Equity One*, 2013 IL App (1st) 130463. In *Equity One*, as in the present case, the tax purchaser insufficiently completed the notice required

by section 22-5 of the Code (35 ILCS 200/22-5 (West 2008)), specifically the same field at issue here, the " 'Property Located at' " field. *Equity One*, 2013 IL App (1st) 130463, ¶ 3. In that field, the tax purchaser wrote: " 'Property Located at: A PARCEL APPROX. 48.12' X 134.33' LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF 69TH ST. AND EUCLID AVE., in Hyde Park Township in COOK County, Illinois.' " *Id.* In subsequent notices, provided pursuant to sections 22-10 and 22-25 of the Code (35 ILCS 200/22-10, 22-25 (West 2008)), the tax purchaser provided the property's street address: "6901 South Euclid Avenue, Chicago, Illinois." *Equity One*, 2013 IL App (1st) 130463, ¶ 5. After no redemption was made, the tax purchaser applied for an order directing the issuance of a tax deed, but the circuit court denied the petition on the homeowner's objection. *Id.* ¶ 6. On appeal, the court affirmed the circuit court's decision, finding that the "section 22-5 notice was not in strict compliance with the Code because it did not include the name of the municipality where the residence [was] located" which "a property location for purposes of section 22-5 should always include." *Id.* ¶ 15. The court held that because the tax purchaser did not include the name of the municipality, Chicago, the postsale notice "was not 'completely filled in,' as required by our legislature." *Id.* A deficient notice, the court explained, "is not regarded as any notice within the meaning of the statute" and the court affirmed the circuit court's denial of the application for a tax deed on that basis. *Id.*

¶ 42 We find the holding in *Equity One* directly applicable here. Similar to the notice in *Equity One*, Sabre's section 22-5 notice failed to include the name of the municipality in which the Property was located, a fact that, had the notice been timely challenged on this basis, may have established that the notice was deficient. Furthermore, Sabre's section 22-5 notice does not include any other specific identifying information in the "Property located at" field, which lists

only the Property's township, county, and state. This defect creates a question of fact regarding whether the section 22-5 notice is "not 'completely filled in' " and is therefore inadequate notice within the meaning of the statute. See *Equity One*, 2013 IL App (1st) 130463, ¶ 15.

¶ 43 In the subsequent field of Sabre's section 22-5 notice, Sabre provided a legal description and PIN number for the property that arguably was not sufficient to remedy its noncompliance. As the *Equity One* court explained, the form provided in section 22-5 of the Code (35 ILCS 200/22-5 (West 2008)) requires the tax purchaser to " 'completely' state *both* (1) the property's location and (2) then its legal description or PIN;" therefore, the inclusion of the latter does not excuse the omission of the former. (Emphasis in original.) *Equity One*, 2013 IL App (1st) 130463, ¶ 15. It is also unclear whether the deficiency in the section 22-5 notice was remedied by the address contained in Sabre's subsequent notice dated February 7, 2012, as each notice must comply with the applicable provision of the Code in order for the tax purchaser to be entitled to the issuance of a tax deed. See *id.* (noting that a revision of the property location to include the property's municipality in notices sent pursuant to sections 22-10 and 22-25 of the Code (35 ILCS 200/22-10, 22-25 (West 2008)), which also required the tax purchaser to "completely" state the property's location, was a "telling" sign that the initial notice was deficient).

¶ 44 Defendants also argue that Sabre's section 22-5 notice "does in fact contain the Property's common address," which we presume to be a reference to, at the bottom of the page, what appears to be the mailing address showing where the notice was sent: "TO: SVABAITE, JURGA 224 S THURLOW ST HINSDALE, IL 60521." Receiving the notice at that address does not provide plaintiffs with notice of which property was sold for delinquent taxes, however, and perhaps more importantly, it simply does not change the fact that the "Property located at"

field was not *completely* filled out as required by statute. On this basis, we cannot conclude that Sabre's section 22-5 notice, dated February 26, 2010, strictly complied with section 22-5 of the Code.

¶ 45 We are mindful that, in construing the Code liberally to effectuate the intent of the legislature, courts have found that even an error considered a "trivial-sounding inconsistency" in a notice required by statute is sufficient to enforce the strict compliance standard and reject an application for a tax deed. *Glohry*, 2011 IL App (1st) 101966, ¶ 4; see also *In re Application of the County Collector*, 295 Ill. App. 3d 703, 710 (1998) (recognizing the "rigid and legalistic application of the strict compliance language" of the Code, but explaining that it "view[s] the statute's strict compliance language as a bulwark" and "[b]y opening the dike to permit any omission—however minute—of statutorily required information, we may unintentionally encourage a flood of litigants seeking case-by-case determinations of the strict compliance boundaries").

¶ 46 In an additional, undeveloped argument, defendants assert that "there are two different [section] 22-5 Notices in the Record," the above-referenced notice dated February 26, 2010, and a second, amended notice dated February 7, 2012. They contend that the latter notice complied with the statute because it expressly identified the common address of the Property. We find this argument unavailing. The document dated February 7, 2012, does not appear to be a section 22-5 notice, but rather a notice pursuant to section 22-10 of the Code because it follows the form provided in section 22-10 of the Code, which differs from the form in section 22-5 of the Code and the date it was issued complies with the requirement that the section 22-10 notice be sent "not less than 3 months nor more than 6 months prior to the expiration of the period of redemption," which in this case was June 15, 2012. See 35 ILCS 200/22-10 (West 2010).

Assuming *arguendo* the February 7, 2012, document was to be considered a section 22-5 notice, defendants do not argue how it complies with the requirement that a section 22-5 notice shall be delivered to the county clerk "within 4 months and 15 days after any sale" (35 ILCS 200/22-5 (West 2010)). In this case, the sale occurred on or about November 23, 2009, which was well over two years prior to the date of that document. Thus, we do not believe it can be determined that the February 7, 2012, notice prevented plaintiffs from successfully challenging the Tax Deed Order as a matter of law.

¶ 47 Although the sufficiency of a notice is an issue that generally may be resolved by the circuit court as a matter of law, here we decline to hold that Sabre's section 22-5 notice was legally deficient, where the issue was not fully briefed by the parties and there is no indication in the record whether the circuit court relied on the adequacy of the notice as a basis for its ruling. To the extent that the circuit court granted defendants' motion for summary judgment based on the opposite conclusion—that Sabre strictly complied with section 22-5 of the Code and plaintiffs had no legitimate grounds on which to challenge the Tax Deed Order—we find such a determination to be unsupported by the record.

¶ 48 Deadline to Challenge the Tax Deed Order

¶ 49 Moving forward under the assumption that plaintiffs had standing to challenge the Tax Deed Order and there was a deficiency in Sabre's section 22-5 notice that would have allowed for a successful challenge, we now consider whether defendants' referral of plaintiffs' case to other legal counsel on or about July 30, 2012, prevented plaintiff from establishing defendants' liability for legal malpractice. This question turns on the deadline by which plaintiffs were required to file their challenge to the Tax Deed Order. Defendants assert that any deficiency in one of Sabre's statutorily required notices would make the June 19, 2012, Tax Deed Order void,

and a petition to vacate a void tax deed order may be filed up to two years after its entry. As plaintiffs retained counsel other than defendants well before this two-year deadline, defendants argue, any failure to challenge the Tax Deed Order is a negligent act by successor counsel sufficient to constitute an "intervening cause that br[eaks] the chain of causation," and negates proximate cause as to defendants. Plaintiffs contend that they were required to challenge the Tax Deed Order within 30 days of its entry, and that defendants' referral to another attorney after this deadline could not insulate them from liability flowing from their failure to properly advise plaintiffs of this fact. We find that a material question of fact exists precluding summary judgment on this issue.

¶ 50 A tax deed order may be challenged through direct and collateral attack. See *Greater Pleasant Valley Church in Christ v. Pappas*, 2012 IL App (1st) 111853, ¶ 25. This may be done in one of three ways: "(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 of Civil Procedure (735 ILCS 5/2-1203 (West 2008) (motion made within 30 days after judgment)); or (3) by filing a petition for relief under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008))." *Excalibur Energy Co. v. Rochman*, 2014 IL App (5th) 130524, ¶ 18. The first two methods of challenging a tax deed order, considered direct attacks, must be brought within 30 days of the order's entry. See Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008) (stating that "notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from"); 735 ILCS 5/2-1203(a) (West 2012) (stating that in a case tried without a jury, a party "may, within 30 days after the entry of the judgment *** file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief").

¶ 51 The third method of challenging a tax deed order, filing a petition pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)), allows a party to file the petition within two years of entry of the order or judgment (735 ILCS 5/2-1401(a), (c) (West 2012); *People v. Thompson*, 2015 IL 118151, ¶ 28), but is significantly more limited in scope with respect to what types of challenges may be brought. Section 2-1401 essentially "codified the common law means of collaterally attacking judgments." *In re Application of the County Collector*, 397 Ill. App. 3d 535, 542 (2009) (citing *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104-05 (2002)). This section allows for the vacatur of a judgment older than 30 days by "alert[ing] the circuit court to facts that, if they had been known at the time, would have precluded entry of the judgment." *Excalibur Energy*, 2014 IL App (5th) 130524, ¶ 19. Relief through such a collateral attack, when made on an order directing the issuance of a tax deed, is limited by statute to the following grounds:

> "(1) proof that the taxes were paid prior to sale;
>
> (2) proof that the property was exempt from taxation;
>
> (3) proof by clear and convincing evidence that the tax deed had been procured by fraud or deception by the tax purchaser or his or her assignee; or
>
> (4) proof by a person or party holding a recorded ownership or other recorded interest in the property that he or she was not named as a party in the publication notice as set forth in Section 22-20 [of the Code], and that the tax purchaser or his or her assignee did not make a diligent inquiry and effort to serve that person or party with the notices required by Section 22-10 through 22-30 [of the Code]." 35 ILCS 200/22-45 (West 2010).

A tax deed order may not be challenged through a collateral attack "on questions relating to notice, unless the challenge squarely fits within the language of section 22-45." (Internal quotation marks omitted.) *DG Enterprises LLC-Will Tax, LLC v. Cornelius*, 2015 IL 118975, ¶ 29 (referring to 35 ILCS 200/22-45 (West 2010)).

¶ 52 In this case, the undisputed facts establish that the Tax Deed Order was entered on June 19, 2012. On or about June 27, 2012, well before the deadline to challenge the Tax Deed Order via direct or collateral attack, plaintiffs sought legal representation from defendants to challenge the order. Defendants advised plaintiffs that they had 60 days to challenge the Tax Deed Order. Through July 19, 2012, the 30-day deadline to challenge the Tax Deed Order by way of a direct attack, defendants had not filed any challenge to the Tax Deed Order, nor had they advised plaintiffs to seek alternate representation. On or about July 30, 2012, defendants advised plaintiffs that they would not be able to assist plaintiffs in the tax deed matter and referred them to another attorney, who plaintiffs contacted soon afterwards. Defendants argue that regardless of whether defendants committed professional negligence through their inaction or incorrect advice, plaintiffs had up to two years (until June 19, 2014) to file a section 2-1401 petition, and plaintiffs' hiring of a successor attorney in 2012 with sufficient time to file such a petition relieved defendants of liability.

¶ 53 In order to resolve this issue in favor of defendants on summary judgment, it must be determined that, as a matter of law, plaintiffs were not limited to directly attacking the Tax Deed Order, but had the grounds to file a collateral attack pursuant to section 2-1401. A successful collateral attack of a tax deed order requires plaintiffs to assert one of the four grounds enumerated in section 22-45 of the Code (35 ILCS 200/22-45 (West 2010)). Plaintiffs argue that defendants have not provided any evidence that shows that any of the four narrow grounds for

mounting a collateral attack were available to plaintiffs and their new legal counsel following expiration of the 30-day deadline to initiate a direct attack. Specifically, plaintiffs assert that defendants do not argue that the taxes were paid or that the property was exempt from taxation. Further, in defendants' response to plaintiffs' motion for partial summary judgment, defendants "agree there is no evidence to suggest that [the Tax Deed Order] was procured by fraud and deception and so stipulated on February 23, 2015."

¶ 54 Thus, the only remaining ground is section 22-45(4), which allows for collateral attack where there is "proof by a person or party holding a recorded ownership or other recorded interest in the property that he or she was not named as a party in the publication notice as set forth in Section 22-20 [of the Code], and that the tax purchaser or his or her assignee did not make a diligent inquiry and effort to serve that person or party with the notices required by Section 22-10 through 22-30 [of the Code]." 35 ILCS 200/22-45(4) (West 2010). Plaintiffs contend that this section is also inapplicable as they were not the "recorded" owners of the Property. Defendants argue that a defective notice necessarily makes a subsequent tax deed order void and cite to *People ex rel. McGuire v. Cornelius*, 2014 IL App (3d) 130288, as support for this proposition. However, defendants' argument is questionable in light of the fact that *McGuire* was reversed by our supreme court in *DG Enterprises, LLC-Will Tax, LLC v. Cornelius*, 2015 IL 118975. In *DG Enterprises*, the court determined that the order issuing a tax deed was not void where the publication and certified mail take notices failed to include the address and phone number of the county clerk. *DG Enterprises, LLC-Will Tax, LLC*, 2015 IL 118975, ¶ 29. Accordingly, we believe the trial court could not have determined, as a matter of law, that plaintiffs had grounds to file a successful collateral attack on the Tax Deed Order. To

the extent that the circuit court granted defendants' motion for summary judgment on this basis, it erred.

¶ 55 CONCLUSION

¶ 56 In sum, we find that it cannot be determined as a matter of law based on the facts before us that plaintiffs did not have standing to challenge the Tax Deed Order, that Sabre's section 22-5 notice was not deficient, or that plaintiffs had grounds to file a successful section 2-1401 petition to challenge the Tax Deed Order. Nor have we identified any other basis in the record for affirming the circuit court's decision to grant defendants' motion for summary judgment. Plaintiffs adequately alleged and presented evidence creating a genuine issue of material fact as to whether defendants committed and are liable for legal malpractice in regard to their representation of plaintiffs in challenging the Tax Deed Order. We reverse the circuit court's decision to grant defendants' motion for summary judgment and remand for further proceedings consistent with this order.

¶ 57 Reversed and remanded.