IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 26, 2016 Session

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY v. OWNERS OF PROPERTY WITH DELINQUENT DEMOLITION LIENS FILED WITH THE REGISTER OF DEED'S OFFICE IN DAVIDSON COUNTY, TENNESSEE, ET AL.

Appeal from the Chancery Court for Davidson County
No. 140442II Carol L. McCoy, Chancellor

No. M2015-00318-COA-R3-CV – Filed April 6, 2016

W. NEAL MCBRAYER, J., dissenting.

Because I conclude that Tennessee Code Annotated § 13-21-103(6) (2011) does not permit assessments of costs or actions for costs against a mortgagee, I respectfully dissent from the reversal. Relying on the definition of the word "owner" found in the Slum Clearance and Redevelopment Act (the "Act"), *see* Tenn. Code Ann. § 13-21-101(4) (2011), the majority concludes that a mortgagee may be assessed the cost of removal or demolition of a structure unfit for human occupation or use. As required when called on to construe a statute, the majority begins by looking to the words of the Act. *See Waldschmidt v. Reassure Am. Life Ins. Co.*, 271 S.W.3d 173, 176 (Tenn. 2008). In my view, however, the majority then fails "to construe the[] words in the context in which they appear in the statute and in light of the statute's general purpose." *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010).

Under Tennessee Code Annotated § 13-21-103(6), "[t]he amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer, as well as reasonable fees for registration, inspections and professional evaluations of the property, shall be assessed against the *owner of the property* . . . ." Tenn. Code Ann. § 13-21-103(6) (emphasis added). Elsewhere the statute provides that "[t]he municipality may bring one (1) action for debt against more than one (1) or all of the *owners of properties* against whom the costs have been assessed . . . ." *Id.* (emphasis added). The prepositional phrase "of the property," including "of the properties," only appears three times

in Tennessee Code Annotated § 13-21-103 and then only in subsection (6).[1] In two instances the phrase modifies the word "owner" or "owners." I believe this signals to the reader that the General Assembly means something other than an "owner" as defined in Tennessee Code Annotated § 13-21-101(4) (2011).

As noted by the majority, "[e]very word used [in a statute] is presumed to have meaning and purpose, and should be given full effect if so doing does not violate the obvious intention of the Legislature." *Marsh v. Henderson*, 424 S.W.2d 193, 196 (1968). Further, "words are known by the company they keep." *Lee Med., Inc.*, 312 S.W.3d at 526. By using the nominal phrase "owner of the property" or "owners of the properties" rather than just the word "owner" or "owners" as elsewhere in the statute, I presume the General Assembly had a purpose, the purpose being to signal that the defined word "owner" does not apply in those instances. The majority's interpretation of the statute renders the preposition phrase "of the property" surplusage. *See Jordan v. Baptist Three Rivers Hosp.*, 984 S.W.2d 593, 600 (Tenn. 1999) ("We are constrained to interpret statutes so that no part or phrase of a statute will be rendered inoperative, superfluous, void, or insignificant.").

Any possible doubt that use of the phrase "owner of the property" is different from the use of the word "owner" alone is dispelled by the manner in which the Act defines "owner." The word "owner" only includes mortgagees of record "unless the context otherwise requires." Tenn. Code Ann. § 13-21-101(4). In the case of Tennessee Code Annotated § 13-21-103(6), municipalities are granted a lien on the property for the costs of removal or demolition of a structure "second only to liens of the state, county and municipality for taxes, any lien of the municipality for special assessments, and any valid lien, right or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice." *Id.* § 13-21-103(6). Given this context, I find it incongruent to interpret Tennessee Code Annotated § 13-21-103(6) as permitting recovery of costs from mortgagees.

I find the majority's explanation for this incongruity unsatisfactory. The majority explains that "[t]he pursuit of demolitions costs by Metro in an action for debut under subsection (6) operates separate and apart from any lien claim theory" and that "Regions would preserve its lien priority even were it assessed demolition costs as an owner under the Act." However, assume for the sake of argument a mortgagee whose sole asset is its duly recorded deed of trust in a property on which a municipality removed or demolished a structure. Assume further that the value of the property is equal to the sum of liens of the state, county, and municipality for taxes and the debt owed to the mortgagee. In such a scenario, the mortgagee could foreclose on its deed of trust, receive at the foreclosure sale

[1] The nominal phrase "owner of the property" appears in only one other section of the Act. *See* Tenn. Code Ann. § 13-21-205(a)(1), (c) (2001). In Tennessee Code Annotated § 13-21-206, the phrase "owner of such property" is used. Tenn. Code Ann. § 13-21-206(4) (2011).

cash equal to the value of the property less the amount of the tax liens, and extinguish the junior lien of the municipality for the costs of removal or demolition of the structure. However, under the majority's interpretation of the statute, the municipality could then sue the mortgagee for the costs of the removal or demolition and recover from the proceeds of the foreclosure sale. In the words of the majority, I "find it difficult to believe that our General Assembly intended that outcome."

As for any benefit the mortgagee might reap from the "potential increase in the value of its subject property through demolition of dilapidated structures on said property at taxpayer expense," it is just as likely that a structure demolished as a matter of expediency by a municipality might result in a decrease in the value of the property. For this reason, mortgagees often reserve the right in their deeds of trust to "secure the property" by, for example, "entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off."[2]

Based on the foregoing, I conclude that the chancery court properly granted Regions Bank judgment on the pleadings, and I would affirm the decision.

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W. NEAL MCBRAYER, JUDGE

[2] The **TENNESSEE DEED OF TRUST**—Single Family—**Fannie Mae/Freddie Mac UNIFORM INSTRUMENT**, Form 3043.