

34265

**IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA**

WELLS FARGO BANK, N.A.

Plaintiff,

v.

CIVIL ACTION NO. 07-C-26  
HONORABLE DAVID M. PANCAKE

UP VENTURES II LLC; IRONWOOD  
ACCEPTANCE COMPANY, a Delaware  
corporation; PALO VERDE TRADING  
COMPANY, L.L.C., an Arizona limited liability  
company; JEFFREY E. HALL and ANNETTE  
L. HALL,

Defendants.

**ORDER GRANTING MOTION OF THE TAX SALE  
PURCHASER DEFENDANTS FOR SUMMARY JUDGMENT**

On this the 20<sup>th</sup> day of September, 2007, came the Plaintiff, Wells Fargo Bank, N.A., (by Order of Substitution), by its counsel, Stephen Thompson, the Defendants, UP Ventures II, LLC, Ironwood Acceptance Company and Palo Verde Trading Company, LLC, collectively the Tax Sale Purchaser Defendants, by their counsel, Ronald J. Flora, and came the Defendants, Jeffrey E. Hall and Annette L. Hall, the prior owners of the property, in person and *pro se*, pursuant to a Notice of Hearing heretofore filed.

The Court, the Honorable David M. Pancake presiding, having previously reviewed the filings, pleadings and exhibits attached thereto inquired of counsel whether counsel wished to make oral argument in addition to the matters heretofore filed.

Counsel for the Tax Sale Purchaser Defendants asserted that the core issues in the opinion of the said Defendants were as follows:

1. Whether the Plaintiffs were entitled to Notice under the terms of West Virginia Code §11A-4-2?

2. Whether West Virginia Code §11A-4-2 required that the Complaint be dismissed as being time barred?

Counsel for the Tax Sale Purchaser Defendants further represented to this Court that the parties had agreed as to the factual issues regarding the sale of the property to the Tax Sale Purchaser Defendants under the "Sales of Delinquent Lands" provisions of the West Virginia Code.

It was the position of the Tax Sale Purchaser Defendants that West Virginia Code §11A-3-19(a) required that the purchaser at a tax sale provide a list of those who should receive notice for redemption of the property no later than December 31 of the year following the year of the sale. Insofar as the Plaintiff did not perfect its lien by recordation until March 8, 2001, the Tax Sale Purchaser Defendants were under no duty to go beyond the notice requirements of the above-referenced statute. Counsel for the Tax Sale Purchaser Defendants further asserted that, even in the event that notice beyond the provisions of West Virginia Code §11A-3-19(a) were to be required, this matter was nonetheless time-barred under West Virginia Code §11A-4-4(a).

Counsel for the Tax Sale Purchaser Defendants asserted that the Deed to the Defendant Ironwood Acceptance Company was recorded on May 8, 2001, in Deed Book 1078 at page 696, and that this matter was not filed until January 11, 2007. Thus, in light of the provisions of West Virginia Code §11A-4-4(a), the Plaintiff's claim was time-barred.

Counsel for the Plaintiff concurred that there were no factual issues in dispute and that the chronology as set forth in the Tax Sale Purchaser Defendants' Motion for Summary

Judgment was accurate. However, counsel for the Plaintiff argued that under Plemons v. Gale, 396 F.3d 569, 2005 U.S. App. LEXIS 1734 (2005), Mennonite Bd of Missions v. Adams, 462 U.S. 791 (1983), and the other authorities cited in their Response and Amended Response to the Tax Sale Purchaser Defendants' Motion for Summary Judgment, Due Process required more than what is dictated by West Virginia Code §11A-3-19(a) regarding "Notice" of their right to redeem the property from sale.

Counsel for the Plaintiff further asserted that the tax records located in the office of the Sheriff of Cabell County and attached as exhibits to the Response and Amended Response for the tax years 1999, 2000 and 2001 did not disclose the existence of either a prior delinquency in the payment of taxes or a prior sale for unpaid real estate taxes which would have put the lender or property owner on notice that the real estate had been subjected to sale.

Counsel for the Plaintiff further argued that, given the inadequacy of notice to the Plaintiff, the action should not be time barred under West Virginia Code §11A-4-4(a) for the reason set forth in their Response and Amended Response and as supported by the authorities cited therein.

Counsel for the Tax Sale Purchaser Defendants then represented to the Court that the tax ticket for the year 1998 clearly indicated that the property had been sold to an individual and that there was no Redemption Certificate of record in the Office of the Clerk of the County Commission of Cabell County, West Virginia.

The Court, based upon the pleadings heretofore filed and the proffers of counsel does hereby make the following Findings of Fact and Conclusions of Law:

1. The Tax Sale Purchaser Defendants have complied with all of the statutory

requirements under the West Virginia Code regarding the providing of notice to those parties entitled thereto in accordance with the requirements of West Virginia Code 11A-3-19(a).

2. With all evidence taken in a light most favorable to Plaintiff, it is possible that continued Discovery might reveal matters regarding the inadequacy of Notice under Plemons, supra, as well as clear and convincing evidence of a lack of due diligence in providing notice on the part of the tax sale purchaser as set forth in West Virginia Code §11A-4-4.

3. The West Virginia Supreme Court reviewed the three (3) year limitation period set forth in West Virginia Code §11A-4-4(a) in the case of Shaffer v. Mareve Oil Corp., 204 S.E.2d 404, 157 W.Va. 816 (W.Va. 1974), which held that the period of limitations provisions within which a party must institute an action are reasonable time limitations that are not violative of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States (see Syllabus Point 6). The Court further opined that a rational interpretation of the Legislative intent was that it intended the Statute of Limitations of West Virginia Code §11A-4-4(a) to bar actions to set aside such a tax sale deed for all defects defined therein, including jurisdictional defects.

4. As is set forth in the chronology of events which has been stipulated and agreed to by the parties, the tax sale purchaser's (one of the Defendants herein) Deed was recorded on May 8, 2001. The limitations period began to run at that time, and this matter was not filed until January 11, 2007.

5. Notwithstanding any such putative failure to exercise reasonable diligence in providing notice which might be disclosed by additional discovery, the Court finds that this action is time-barred pursuant to West Virginia Code 11A-4-4(a) and consistent with the West

Virginia Supreme Court's holding in Shaffer v. Mareve, supra.

6. Given this Court's Finding that the case is time-barred by virtue of the statute as referenced above, the Court herein does not need to address the Constitutional issues of notice and Due Process raised by the Plaintiffs.

7. Jeffrey E. Hall and Annette L. Hall have waived their right to review the Order prior to its entry by the Court.

8. The objections and exceptions of the Plaintiff is hereby noted and preserved for purposes of Appeal.

9. This Order constitutes a Judgment as the same is defined in Rule 54 of the West Virginia Rules of Civil Procedure regarding decrees from which an Appeal may lie.

10. Based upon all of the foregoing, the Defendants', UP Ventures II, LLC, Ironwood Acceptance Company and Palo Verde Trading Company, LLC, Motion for Summary Judgment shall be **granted** and this action shall be **dismissed**.

11. The Circuit Clerk is hereby directed to forward a certified copy of this Order to the following:

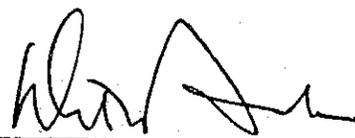
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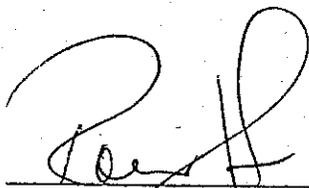
DATED this 10th day of October, 2007.

ORDER:  
ENTER:



HONORABLE DAVID M. PANCAKE

PREPARED BY:

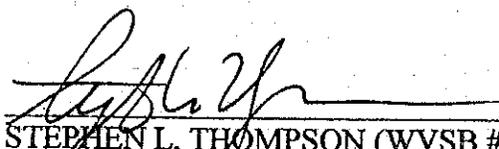


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STATE OF WEST VIRGINIA  
COUNTY OF CABELL  
I, ADELL CHANDLER, CLERK OF THE CIRCUIT  
COURT FOR THE COUNTY AND STATE AFORESAID  
DO HEREBY CERTIFY THAT THE FOREGOING IS  
A TRUE COPY FROM THE RECORDS OF SAID COURT  
ENTERED ON \_\_\_\_\_  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT  
THIS \_\_\_\_\_  
*Adell Chandler* CLERK  
CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

APPROVED BY:



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