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Lippert v. Jung:
**Statutory Period to Obtain Title to Land by Adverse Possession Does Not
Survive a Valid Tax Sale**

By Melissa Machen

The Court of Appeals of Maryland held the statutory period of twenty years necessary to claim title to land by adverse possession does not survive a tax sale and properly conducted right of redemption foreclosure proceedings. *Lippert v. Jung*, 366 Md. 221, 783 A.2d 206 (2001). In so holding, the court determined that land acquired properly through tax sales and foreclosure proceedings has a free and clear title granted by the sovereign. *Id.* at 230, 783 A.2d at 211.

The Lipperts bought land in Baltimore County, Maryland in the mid-1970s. The Lipperts believed the land they purchased included two additional land plots and began making improvements upon them. In May 1991, the two lots were sold at a tax sale. In February 1992, a judgment of foreclosure of all rights of redemption was properly entered. The Lipperts were unaware of both proceedings. In May 1998, more than six years after the foreclosure judgment was entered, Mr. Jung, the successor in interest to the tax sale purchaser and appellee, asked the Lipperts to remove improvements from the two lots. The statutory period in which adverse possession would have given the Lipperts clear title ended on July 11, 1993, eighteen months after the judgment foreclosing all rights of redemption.

The Lipperts sought to quiet title to the two lots based on adverse possession. Mr. Jung filed, and the trial court granted, a motion for summary judgment. The trial court, relying on the laws of jurisdictions outside of Maryland, held that the tax sale and foreclosure judgment terminated the statutory adverse possession period. The trial court stated the Lipperts needed to come forward at the tax sale but did not have claim to title by adverse possession at that time, and therefore, Mr. Jung was entitled to the property by law. The Lipperts appealed to the Court of Special Appeals of Maryland. The Court of Appeals of Maryland, by writ, brought the case before itself.

The Court of Appeals of Maryland first addressed the issue of the standard of review necessary to review this case. *Id.* at 226, 783 A.2d at 209. The court noted that review of a motion for summary judgment decision primarily concerns whether or not there existed a dispute of material facts. *Id.* The court further noted that “[a] material fact is a fact the resolution of which will somehow affect the outcome of the case.” *Id.* at 221, 783 A.2d at 209. Another consideration in review of a motion for summary judgment decision, according to the court, is whether or not the trial court was legally correct. *Id.* The court noted that when no

material fact is disputed, as is the case in *Lippert*, the standard of review is restricted to the issue of whether or not the trial court was legally correct. *Id.* at 366 Md. at 226, 783 A.2d at 209.

The Lipperts first argued that the trial court incorrectly followed the majority rule. *Id.* at 228, 783 A.2d at 210. The minority view, the Lipperts contended, is “a purchaser at a properly conducted tax sale acquires only the interest of the defaulting taxpayer/property owner, and that the interest acquired through the tax sale is thus subject to any inchoate interests then being perfected, such as inchoate interests of an adverse possessor.” *Id.* The Appellee argued the trial court was correct in its application of the majority view to the facts and circumstances of this case. *Id.*

The Lipperts further argued there was no case law directly on point with the facts of the present case. *Id.* The Appellee agreed. *Lippert*, 366 Md. at 228, 783 A.2d at 209. The Court of Appeals of Maryland acknowledged there were no adverse possession cases in which title to land passed through a tax sale. *Id.* However, the court pointed out there were cases that have “defined the scope of title interests acquired through a proper tax sale and foreclosure of right of redemption

proceedings," which support the decision set forth by the trial court. *Id.* at 228, 783 A.2d at 210.

In the present case, the court held that a tax proceeding, when properly held, grants the purchaser a new, clear title in the land "which bars or extinguishes all prior titles, interests, and encumbrances of private persons, and all equities arising out of the same." *Id.* at 229, 783 A.2d at 210.

After a review of cases in Maryland and other jurisdictions, the court stated "a valid tax sale and proper foreclosure of the equities of redemption terminates the prior title, and creates a new title granted by the sovereign. Accordingly, the new title cannot be adversely possessed until the statutory period runs from the time of the creation of the new title" *Id.* at 230, 783 A.2d at 211.

In support of this holding, the court recognized public policy dictated that "the public interest in marketable titles ... purchased at tax sales outweighs considerations of individual hardship in every case." *Id.* The court, however, did note one exception to this general rule - fraud in conducting the foreclosure. *Lippert*, 366 Md. at 235, 783 A.2d at 214.

The court further stated that tax sales, if properly conducted, are not concerned with the rights of possessors of the land but are concerned with actual title to the land. *Id.* at 231, 783 A.2d at 211.

The court noted that the Appellants, in essence, were asking the court to ignore tax sales and subsequent foreclosure proceedings and the indefeasible titles that such

proceedings produce. *Id.* At 232, 783 A.2d at 212. The court further stated the Lipperts were essentially arguing that obtaining title to land through adverse possession is superior and tantamount to other means of creating clear title, even if the statutory period necessary has not yet run at the time of the requisite proceeding. *Id.* The court gave no credence to this argument, and noted that easements and vested remainder interests do not survive valid tax sales and right of redemption foreclosure proceedings. *Id.* at 234, 783 A.2d at 213.

The Court of Appeals of Maryland concluded that the Appellee held a completely new title since 1992. *Id.* at 235, 783 A.2d at 214. The court further stated "in order for the inchoate adverse possession to ripen into actual title by adverse possession, the period of twenty years must run from the creation of the new title." *Id.*

By holding that adverse possession that has not yet ripened does not survive a proper tax sale and foreclosure proceeding, the Court of Appeals of Maryland brought the law of adverse possession in Maryland in line with the majority view "that properly acquired tax titles are new grants of title by the sovereign entity." *Id.* at 245, 783 A.2d at 220.

In this case, the Court of Appeals of Maryland has clarified the law of adverse possession in Maryland. However, this decision has repercussions for every Maryland land owner and anyone dealing in real estate. This case provides actual notice to all land title holders to double

check their title and make sure it is free and clear of any adverse possession claims.

In this case, Maryland follows the majority rule that a proper tax sale and foreclosure terminates the prior title and creates a new one. Therefore, any adverse possession claims in prior title are destroyed and must begin anew in new title. Ultimately, the Maryland courts will uphold the rights of the property title holder.

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