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CAZENOVIA CREEK FUNDING I, LLC *v.* THE
WHITE EAGLE SOCIETY OF BROTHERLY
HELP, INC., GROUP 315, POLISH
NATIONAL ALLIANCE, ET AL.
(AC 45065)

Elgo, Suarez and Clark, Js.

Syllabus

The plaintiff, C Co., sought to foreclose municipal tax liens on certain real property in the city of Bridgeport owned by the defendant. Following the defendant's failure to pay property taxes in 2012 and 2013, the city imposed liens on the property and assigned the liens to C Co.'s predecessor in interest, M Co. M Co. thereafter assigned the tax liens to C Co. C Co. commenced the present foreclosure action and filed a motion for summary judgment as to liability only. The trial court found that the liens had been properly assigned and that no genuine issue of material fact existed as to the defendant's liability. Thereafter, B Co. was substituted as the plaintiff. The court rendered a judgment of foreclosure by sale, from which the defendant appealed to this court, claiming, inter alia, that the court improperly determined that the tax liens for the grand lists of 2012 and 2013 properly were assigned to C Co. *Held:*

1. The trial court properly rendered summary judgment as to liability: C Co. met its prima facie burden of establishing its ability to foreclose on the tax liens, pursuant to the rule of practice (§ 10-70) governing the foreclosure of municipal tax liens, by producing, inter alia, the certificates of continuing tax lien and the chain of lien assignment from the city to C Co.; moreover, although the defendant alleged, as a special defense, that the assignment of the liens was defective and in violation of the applicable statute (§ 12-195h) because there was no proof that a "legislative body" had approved the assignment of the liens, that defense failed, as the defendant's support for this defense, including minutes from three city council meetings that it alleged did not reflect an approval of a resolution to assign taxes for the 2012 or the 2013 grand list, did not include evidence that those were the only city council meetings held between the relevant dates when a resolution assigning the liens from 2012 or 2013 could have been adopted, and the defendant failed to present evidence to prove that the liens assigned to the unpaid balances from the 2012 and 2013 bills were not encompassed in the city council's resolution to approve the assignment of liens for fiscal year 2014.
2. The defendant could not prevail on its claim that the trial court's factual findings with respect to payments made by the defendant and the amount of debt owed to C Co. were clearly erroneous: although C Co. submitted copies of the certificates of continuing lien showing that unpaid taxes were assessed to the property and due for the 2012 and 2013 tax bills and an affidavit from M Co. stating that a demand had been made on the defendant to pay the delinquent taxes but that no payment had been made, the defendant did not rebut this evidence with any proof that payments had been made to either M Co. or C Co.; moreover, the record reflected that the court properly considered the evidence that the defendant submitted, including three canceled checks, a computerized printout from the city showing two payments credited to the 2012 bill and an affidavit from the defendant's agent asserting that payments had been made in full to the city, and concluded that the canceled checks and proof of payment history were not sufficient to demonstrate that the subsequent liens had been released or satisfied.

Argued January 17—officially released August 1, 2023

Procedural History

Action to foreclose municipal tax liens on certain real property owned by the named defendant, and for other relief, brought to the Superior Court in the judicial

district of Fairfield, where the court, *Hon. Dale W. Radcliffe*, judge trial referee, granted the plaintiff's motion for summary judgment as to liability only; thereafter, the plaintiff withdrew its action as against the defendant John Doe; subsequently, CC1 CT II, LLC, was substituted as the plaintiff; thereafter, Benchmark Municipal Tax Services, Ltd., was substituted as the plaintiff; subsequently, the court, *Hon. Dale W. Radcliffe*, judge trial referee, rendered judgment of foreclosure by sale, from which the named defendant appealed to this court. *Affirmed.*

John T. Bochanis, for the appellant (named defendant).

Juda J. Epstein, for the appellee (substitute plaintiff).

Opinion

ELGO, J. The named defendant, The White Eagle Society of Brotherly Help, Inc., Group 315, Polish National Alliance,¹ appeals from the judgment of foreclosure by sale rendered by the trial court in favor of the substitute plaintiff, Benchmark Municipal Tax Services, Ltd.² On appeal, the defendant claims that the court improperly (1) rendered summary judgment against it as to liability after determining that the tax liens for the grand lists of 2012 and 2013 properly were assigned to the plaintiff and (2) found that the debt was due to the plaintiff. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to our resolution of this appeal. The defendant is the uncontested owner of real property located at 595 East Washington Avenue in Bridgeport (property). On April 4, 2014, the collector of revenue for the city of Bridgeport (city) recorded a certificate of continuing tax lien on the property for the taxes due in the amount of \$12,838.74 associated with the bill for the 2012 grand list (2012 bill). On June 24, 2014, the city assigned the tax lien to the plaintiff's predecessor in interest, MTAG Services, LLC, for the unpaid tax amount plus interest for the 2012 bill. On April 2, 2015, the city's collector of revenue recorded a second certificate of continuing tax lien on the property for the taxes due in the amount of \$29,820 associated with the bill for the 2013 grand list (2013 bill). On April 27, 2015, the city assigned the tax lien for the unpaid tax amount plus interest for the 2013 bill to MTAG Services, LLC.³

On July 8, 2015, MTAG Services, LLC, assigned its interest in the tax liens to the plaintiff and duly recorded the assignment with the Bridgeport town clerk's office. This assignment identified the defendant by name and property address, and it listed an "approximate balance due" in the amount of \$17,202.53 for the 2012 grand list lien and \$35,762.15 for the 2013 grand list lien.

The plaintiff, as the purported owner of the liens, commenced the present foreclosure action in April, 2018. On August 31, 2018, the defendant filed an answer that included six special defenses, alleging, inter alia, that (1) the plaintiff failed to prove that the city properly assigned the lien and, thus, the plaintiff did not have the authority to collect any unpaid taxes, and (2) all applicable taxes had been paid.⁴

On September 18, 2018, the plaintiff moved for summary judgment, arguing that no genuine issue of material fact existed with respect to the defendant's liability. In support of that motion, the plaintiff attached evidence to establish that (1) the defendant owned the property at all relevant times, (2) the city filed certificates of the continuing tax liens against the property relating to the 2012 and 2013 bills, (3) the liens were

assigned to MTAG Services, LLC, (4) MTAG Services, LLC, assigned the liens to the plaintiff, and (5) demand for payment had been made but the defendant failed to make any payments.

The defendant filed an objection to the plaintiff's motion for summary judgment on November 19, 2018. In its accompanying memorandum of law, the defendant attached evidence to establish that payments had been made to the city tax collector. The defendant also supplied copies of the minutes, agenda, and resolutions to assign the tax liens from the June 2 and June 16, 2014, and the April 20, 2015 city council meetings.

On February 18, 2020, the court held a hearing on the motion for summary judgment as to liability and heard arguments from both parties, at the conclusion of which it found that no genuine issue of material fact existed as to liability and that the liens associated with the 2012 and 2013 bills had been properly assigned. The court also noted that the defendant would have the opportunity at a later date to argue the special defense of whether the taxes had been paid. The court thus granted the motion for summary judgment as to liability only against the defendant.⁵

On February 19, 2020, the plaintiff filed a motion for a judgment of strict foreclosure. On October 13, 2021, the trial court held a hearing on the plaintiff's motion for a judgment of strict foreclosure. After hearing arguments from both parties, the court ordered foreclosure by sale in favor of the plaintiff due to the substantial equity that existed in the property. On October 21, 2021, a notice of the judgment of foreclosure by sale was sent to the defendant. From that judgment, the defendant now appeals.

I

On appeal, the defendant claims that the court improperly rendered summary judgment as to liability in favor of the plaintiff after determining that the tax liens for the grand lists of 2012 and 2013 properly were assigned to the plaintiff. The defendant argues that it was the plaintiff's burden to prove that the assignment of the liens was proper through a sufficient showing that (1) the municipal tax was "duly and properly assessed upon the property" pursuant to Practice Book § 10-70 (a) (2), (2) the assignment procedure was correctly executed by a "legislative body" in compliance with General Statutes § 12-195h, and (3) the city properly assigned the liens to the plaintiff. We disagree.

The legal principles and standard of review that govern our review of the defendant's claims are well settled. "On appeal, [w]e must decide whether the trial court erred in determining that there was no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . Because the trial court rendered judgment for the [plaintiff] as

a matter of law, our review is plenary and we must decide whether [the trial court's] conclusions are legally and logically correct and find support in the facts that appear in the record. . . . Practice Book [§ 17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . A material fact is a fact that will make a difference in the outcome of the case. . . . Once the moving party has presented evidence in support of the motion for summary judgment, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . The movant has the burden of showing the nonexistence of such issues but the evidence thus presented, if otherwise sufficient, is not rebutted by the bald statement that an issue of fact does exist. . . . To oppose a motion for summary judgment successfully, the nonmovant must recite specific facts . . . which contradict those stated in the movant's affidavits and documents." (Internal quotation marks omitted.) *U.S. Bank, N.A. v. Foote*, 151 Conn. App. 620, 630–31, 94 A.3d 1267, cert. denied, 314 Conn. 930, 101 A.3d 952 (2014).

Practice Book § 10-70 delineates the plaintiff's burden of proof in a municipal tax lien foreclosure action. It provides in relevant part: "(a) In any action to foreclose a municipal tax or assessment lien the plaintiff need only allege and prove: (1) the ownership of the liened premises on the date when the same went into the tax list, or when said assessment was made; (2) that thereafter a tax in the amount specified in the list, or such assessment in the amount made, was duly and properly assessed upon the property and became due and payable; (3) (to be used only in cases where the lien has been continued by certificate) that thereafter a certificate of lien for the amount thereof was duly and properly filed and recorded in the land records of the said town on the date stated; (4) that no part of the same has been paid; and (5) other encumbrances as required by the preceding section. . . ." Practice Book § 10-70 (a).

In support of its motion for summary judgment, the plaintiff submitted (1) a copy of the deed establishing the defendant's ownership of the property at issue, (2) certificates of continuing tax liens for taxes due on the property relating to the 2012 and 2013 bills, (3) certificates of assignment to the plaintiff's predecessor in interest for taxes and interest due on the property relating to these bills, (4) a certificate of assignment of tax liens to the plaintiff from the predecessor in interest, and (5) an affidavit from the predecessor in interest attesting that the defendant had failed to make any

payment. Practice Book § 10-70 (b) provides that, “[w]hen the lien has been continued by certificate, the production in court of the certificate of lien, or a certified copy thereof, shall be prima facie evidence that all requirements of law for the assessment and collection of the tax or assessment secured by it, and for the making and filing of the certificate, have been duly and properly complied with.” Therefore, the plaintiff met its prima facie burden of establishing its ability to foreclose by producing the certificate of continuing tax lien and the chain of lien assignments from the city to the plaintiff.

The defendant argues that it was the plaintiff’s burden to establish that the liens recorded by the city were properly authorized by the “legislative body” prior to being assigned to a third party in accordance with § 12-195h. We disagree. Practice Book § 10-70 (b) makes clear that, after presenting prima facie evidence, as the plaintiff has done here, “[a]ny claimed informality, irregularity or invalidity in the assessment or attempted collection of the tax, or in the lien filed, shall be a matter of affirmative defense to be alleged and proved by the defendant.” For example, in *Benchmark Municipal Tax Services, Ltd. v. Now Entity, LLC*, Superior Court, judicial district of Fairfield, Docket No. CV-16-6057211-S (December 16, 2016), the defendant made an argument similar to that advanced by the defendant in the present case when it alleged that it was the plaintiff’s burden to prove that the assignment of a tax lien complied with § 12-195h. Although that decision is not binding authority upon this court, we look favorably upon its holding that, once a plaintiff has “made a prima facie case in compliance with Practice Book § 10-70, the burden of alleging and proving noncompliance with . . . § 12-195h would fall on [the] defendant.” *Id.*

In the present case, the defendant’s answer contained several special defenses, two of which allege the purported defective assignment of the liens. It is well established that “[t]he party raising a special defense has the burden of proving the facts alleged therein. . . . If the plaintiff in a foreclosure action has shown that it is entitled to foreclose, then the burden is on the defendant to produce evidence supporting its special defenses in order to create a genuine issue of material fact Legally sufficient special defenses alone do not meet the defendant’s burden. The purpose of a special defense is to plead facts that are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action. . . . Further . . . [t]he applicable rule regarding the material facts to be considered on a motion for summary judgment is that the facts at issue are those alleged in the pleadings. . . . [B]ecause any valid special defense raised by the defendant ultimately would prevent the court from rendering judgment for the plaintiff, a motion for summary judgment should be denied when

any [special] defense presents significant fact issues that should be tried.” (Citations omitted; internal quotation marks omitted.) *U.S. Bank National Assn. v. Eichten*, 184 Conn. App. 727, 745, 196 A.3d 328 (2018). “In mortgage foreclosure cases, courts require that a viable legal defense directly attack the making, validity, or enforcement [of the note and mortgage]. . . . [S]pecial defenses which are not limited to the making, validity or enforcement of the note or mortgage fail to assert any connection with the subject matter of the foreclosure action and as such do not arise out of the same transaction as the foreclosure action.” (Citation omitted; internal quotation marks omitted.) *Id.*, 750–51. Because a defective assignment could impact the enforcement of a mortgage lien, the court was correct to consider it as a valid special defense.

In support of this special defense, the defendant supplied city council minutes from three different city council meetings. The defendant argued that, because these city council minutes did not reflect an approval of a resolution to assign taxes for the 2012 grand list nor the 2013 grand list, the assignments failed to comply with § 12-195h because there was no proof that a “legislative body” approved the assignment of the liens. Although the defendant concedes that the city council, at one of its meetings, assigned tax liens for “fiscal year 2014,” it argues that there is no proof that the “fiscal year 2014” encompasses liens related to assessments from the 2012 or 2013 tax bills.

This argument fails for two reasons. First, the liens could have been validly assigned at any city council meeting between the dates that the city recorded the certificate of continuing liens and the date that the liens were assigned to a third party. Although the defendant supplied minutes for three different city council meetings, there is no evidence in the record, via affidavit or other form of proof, that these were the only city council meetings held between the relevant dates when a resolution assigning the liens from 2012 or 2013 could have been adopted.

Second, the plaintiff’s prima facie evidence “is not rebutted by the bald statement that an issue of fact does exist. . . . To oppose a motion for summary judgment successfully, the nonmovant must recite specific facts . . . which contradict those stated in the movant’s affidavits and documents.” (Internal quotation marks omitted.) *U.S. Bank, N.A. v. Foote*, supra, 151 Conn. App. 631. The defendant failed to present evidence to prove that the liens assigned to unpaid balances from the 2012 and 2013 bills were not, in fact, encompassed in the city council’s resolution to approve assignment of liens for fiscal year 2014. For that reason, we conclude that the court properly determined that there was no genuine issue of material fact as to whether the assignments in question were defective and rendered summary judg-

ment accordingly.

II

The defendant also claims that the court improperly determined the debt due to the plaintiff. The defendant argues: (1) it was the plaintiff's burden to prove that no part of the assessed lien had been paid in accordance with Practice Book § 10-70 (a) (4); and (2) the court erroneously found that the taxes in question had not been paid.

As to the first argument, the defendant correctly states that it is the plaintiff's burden to prove "a tax . . . or such assessment . . . was duly and properly assessed upon the property and became due and payable . . . [and] no part of the same has been paid." Practice Book § 10-70 (a). To meet this burden, the plaintiff submitted copies of the certificates of continuing lien to the trial court showing that unpaid taxes were assessed to the property and due for the 2012 and 2013 tax bills. The plaintiff also submitted an affidavit from its predecessor in interest, MTAG Services, LLC, stating that a demand had been made on the defendant to pay the delinquent taxes but that no payments had been made. The defendant did not rebut this evidence with any proof that payments had been made to either the plaintiff or its predecessor in interest. The plaintiff thus met the requirements under § 10-70 (a), and the burden shifted to the defendant to allege and prove, as an affirmative defense, "[a]ny claimed informality, irregularity or invalidity in the assessment or attempted collection of the tax, or in the lien filed" Practice Book § 10-70 (b).

The defendant also argues that the court erroneously found that the taxes in question had not been paid. As evidence of payment, the defendant submitted (1) three canceled checks made payable to the "Tax Collector City of Bridgeport," (2) a computerized printout from the city showing two payments credited to the 2012 bill, and (3) an affidavit from the defendant's agent asserting that payments had been made in full to the city. On appeal, the defendant contends that the court ignored that evidence and, as a result, erroneously calculated the debt due to the plaintiff.

Whether payment was tendered by a defendant in a foreclosure action is a question of fact. See *Homecomings Financial Network, Inc. v. Starbala*, 85 Conn. App. 284, 289, 857 A.2d 366 (2004). "Questions of fact are subject to the clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Because it is the trial court's function to weigh the evidence and determine credibility, we give great

deference to its findings. . . . In reviewing factual findings, [w]e do not examine the record to determine whether the [court] could have reached a conclusion other than the one reached. . . . Instead, we make every reasonable presumption . . . in favor of the trial court's ruling.” (Internal quotation marks omitted.) *Murtha v. Hartford*, 303 Conn. 1, 12–13, 35 A.3d 177 (2011).

Contrary to the defendant's assertion, we conclude that the record reflects that the court properly considered the evidence submitted. The court reviewed the evidence, heard arguments from both sides, and then determined that (1) two of the canceled checks and the computerized printout reflected partial payments made toward the 2012 bill, (2) the lien associated with 2012 bill properly was assessed for a remaining unpaid balance, and (3) the canceled checks and proof of payment history were not sufficient to demonstrate that the subsequent liens had been released or satisfied. As to the third canceled check, there was no evidence in the record indicating that this payment had been applied to the 2013 bill as the defendant argued.

Although the defendant alleged, as a special defense, that all applicable taxes had been paid, it was the defendant's burden to put forth sufficient evidence to prove this assertion. The defendant did not provide the court with any evidence that payments had been made to either the plaintiff or the plaintiff's predecessors in interest to satisfy its tax obligations. Accordingly, we conclude that the court's factual findings with respect to payments made by the defendant and the amount of debt owed to the plaintiff are not clearly erroneous.

The judgment is affirmed and the case is remanded for the purpose of setting new law days.

In this opinion the other judges concurred.

¹ Also named as defendants in the operative complaint were the Water Pollution Control Authority for the city of Bridgeport, Aquarion Water Company of Connecticut, and John Doe. On February 20, 2020, the plaintiff withdrew its action as against John Doe. Because the Water Pollution Control Authority for the city of Bridgeport and Aquarion Water Company of Connecticut have not participated in this appeal, we refer to The White Eagle Society of Brotherly Help, Inc., Group 315, Polish National Alliance as the defendant.

² Cazenovia Creek Funding I, LLC, commenced this tax lien foreclosure action in 2018. By order dated September 21, 2020, the court granted the motion to substitute CC1 CT II, LLC, as the plaintiff in lieu of Cazenovia Creek Funding I, LLC. The court thereafter granted the motion to substitute Benchmark Municipal Tax Services, Ltd., as the plaintiff in lieu of CC1 CT II, LLC.

³ The assigning certificates, copies of which were submitted in support of the motion for summary judgment, state that all “right, title and interest” the city has to secure unpaid taxes, interest, charges, and fees associated with the lien are transferred to MTAG Services, LLC. The assigning certificates list the bill numbers for which taxes were due and identify the property by address and the defendant's name.

⁴ The defendant also alleged accord and satisfaction as a special defense. The court rejected that special defense, and the defendant does not challenge the propriety of that determination in this appeal.

⁵ Following the rendering of summary judgment as to liability only, the defendant filed an appeal with this court, which was dismissed for lack of

a final judgment.
