

IN THE SUPREME COURT OF OHIO

08-1361

KARL C. MAUNZ, Trustee, etc.,
Appellants,

vs.

WADE KAPSZUKIEWICZ, as
Treasurer of Lucas County

Appellee.

vs.

On Appeal from the Lucas County
Court of Appeals
Sixth Appellate District

Ct. of App. No. 07-1361

and

Ct. of App. No. 07-1247

Trial Court No. TF2005-1267

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANTS,
KARL C. MAUNZ, TRUSTEE, AND KARL C. MAUNZ, PERSONALLY

George C. Rogers (0014107)
6884 St. Rte. 110
Napoleon, OH 43545
Ph: 419-748-8041
FAX: 419-748-8532
Counsel for Appellants

Julia Bates, Prosecuting Attorney
Joseph P. Boyle, III (0042440)
Counsel of Record
One Government Center, Ste. 500
Toledo, OH 43604
Ph: 419-213-4061
FAX: 419-213-4070
Counsel for Appellee

FILED

JUL 14 2008

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR
GREAT GENERAL INTEREST, AND INVOLVES A SUBSTANTIAL
CONSTITUTIONAL QUESTION

In this period of economic distress with severe impact on the housing market, a surge of public and private foreclosures on homes and business properties is occurring as persons fall behind on mortgage and real estate taxes. It is of public and great general interest that when government agencies institute foreclosure actions, that they only do so in strict compliance with, and under the legal authority of, the duly enacted foreclosure statutes.

In this case, the County Treasurer, through the County Prosecutor, instituted a foreclosure procedure under R.C. 5721.18(A), which by its terms and legislative history, is not applicable to cases involving tax delinquencies that have been certified for more than two years, eg., the foreclosure proceeding was not authorized under R.C. 5721.18(A). This construction of the statute is consistent with subsection (D) to R.C. 5721.18, which requires the prosecutor to set forth in the complaint if subsection (A) is used why subsections (B) and (C) were unavailable as a matter of law. The only argument made by Appellee in its brief, and at oral argument, was that Appellant's construction was not required because "The failure to delete Division (D) was obviously any oversight by the legislature" in its last amendment to R.C. 5721.18.

Appellants clearly had, and have, the winning argument in their Assignment of Error to the Court of Appeals on the substantive issue of the use of the foreclosure statute R.C. 5721.18(A).

The Court of Appeals, however, avoided ruling on the substantive issue that even though Appellants had asserted the defense in their Answer that the Complaint failed to state a claim upon which relief had been granted, they failed to raise in the Trial Court the specific reason that R.C. 5721.18(A) was the improper statute, and it was, therefore, waived, and the issue could not be considered for the first time on appeal.

While it is true that there is a general rule that issues not raised in the trial court are waived for purposes of appeal, said general rule has an exception recognized in Treatises and in Ohio law, and almost every other American court has held that an assertion of error that a complaint fails to state a claim may be asserted for the first time on appeal, Westlaw Key No.193(9), 4 O. Jur. 3d (1978 ed.) Appellate Rev. §148, pp. 317, and see Youngstown v. Moore, (1876) 30 Ohio St. 122 syllabus para. 1. Depriving a property owner of the opportunity to assert to a reviewing court that government agencies had no statutory authority, and failed to strictly comply with foreclosure statutes in instituting a foreclosure proceeding is also a matter of public and great general concern, particularly when denying such review contravenes such a long held, and widely held, rule of appellate review.

STATEMENT OF THE CASE AND FACTS

In 2001, the County Auditor certified a tax delinquency on four parcels of land. The Trial Court recognized this as fact in Note 8 in the Opinion and Judgment Entry of April 28, 2006, and as incorporated into the nunc pro tunc entry of December 7, 2006, Note 8 states,

“The master list demonstrates that the delinquencies were certified in 2001.”

The plaintiff-appellee, Lucas County Treasurer, makes the same admission in Record item 92 at paragraph 2, stating,

“The relevant parcels were certified delinquent six years ago and the foreclosure action was filed two years ago.”

On July 8, 2005, the Lucas County Treasurer filed a foreclosure action on four parcels of land for delinquent real estate taxes pursuant to R.C. 5721.18 (A), pleading as defendants, Karl Maunz, individually and as Trustee, Mohr Variety Beverage Company, and several other defendants. The complaint alleged that the taxes on four parcels of land had gone unpaid for more than one year after being certified delinquent.¹ The parcels of property were not named as defendants as required by R.C. 5721.181 for complaints filed pursuant to R.C. 5721.18 (B) and (C). The complaint failed to allege as required by R.C. 5721.18(D) why Sections (B) and (C) were unavailable as a matter of law. The complaint failed to allege a titled

¹ As Shown in R. item 92, Plaintiffs Responses to Defendants Karl C. Maunz's Motion for Dismissal and To Vacate Sheriffs' Sale, paragraph two states, “The relevant parcels were certified delinquent six years ago and this foreclosure action was filed two years ago”. This is an admission by plaintiff that the certification of delinquency was four years prior to filing the complaint. The Court, in its Opinion and Entry, in Note 8, finds that the tax delinquency was certified in 2001.

interest of Karl C. Maunz, individually in the four parcels of real estate.²

Karl C. Maunz, Trustee, Karl C. Maunz, individually, and Mohr Variety Beverage Company all filed answers that included the defenses that the complaint failed to state a cause of action.

On February 15, 2006, the plaintiff filed a motion for summary judgment for foreclosure with exhibits. The motion asserted that the action was brought under R.C. 5721.18(A).

Defendants Karl Maunz, individually, and Karl Maunz, Trustee, filed memoranda contra the motion for summary judgment. Mohr Variety Beverage, whose counsel had been disqualified and notice of disqualification filed Jan. 30, 2006, was not served with the Feb. 15, 2006 motion for summary judgment.

On April 28, 2006, the trial court granted plaintiffs' motion for summary judgment and entered judgment of foreclosure. The Trial Court's Opinion and Judgment Entry stated at page 4,

The Court finds, upon review of Plaintiff's complaint, that it satisfies the elements to be alleged as prescribed by the statute to state an action in foreclosure.

Since the order was stamped as a final appealable order, and mailed by the Clerk to the defendants, defendant Karl Maunz, Trustee, filed a Notice of Appeal on May 26, 2006. Since this case involved multiple parties and multiple claims, and cross claims, the Court of Appeals issued a mandate dismissing the appeal as not involving a final appealable order on June 13, 2006.

² Paragraph 4 of the complaint, referring to title work attached which fails to show an interest of Karl Maunz individually.

On November 2, 2006, the Plaintiff filed a motion for the trial court to enter a nunc pro tunc order by Entry journalized on December 11, 2006, the Trial Court granted the nunc pro tunc order, changing the judgment entry of April 28, 2006 to conform to that in Exhibit A attached to the motion.³ Despite the addition of the “no just cause for delay” language to the prior judgment entry, the Court did not direct the newly modified order be served as a final judgment entry, nor did the clerk mark such order as a final appealable order, and did not serve it upon the parties as required by Civ. R. 58(B), see docket from December 7, 2006, through October 26, 2007, when this appeal was filed.

On December 28, 2006, the Court issued an order of sale of the foreclosed parcels.

Mohr Variety Beverage Co., filed a motion to vacate the sheriff's sale, the Trial Court denied the motion on May 8, 2007. Karl C. Maunz individually filed a motion to be dismissed from the case, and to vacate the sheriff's sale. On June 26, 2007, the Trial Court entered an order denying the motions, and Karl C. Maunz filed an appeal, Court of Appeals No. 07-1247.

On July 26, 2007, Plaintiff filed a motion to forfeit the parcels. On July 30, 2007, the Court granted the motion and journalized the order. Karl C. Maunz individually filed a motion for an extension of time to respond to the motion for forfeiture, which the Trial Court denied as moot on August 23, 2007. Karl C.

³ Exhibit A to the plaintiffs' motion for a nunc pro tunc order was the same judgment entry as issued April 28, 2006, but with the words added, that the Court had made a determination pursuant to Civ. R. 45(B) of “no just cause for delay.”

Maunz individually filed a Notice of Appeal from said order, Court of Appeals Case No. 07-1322. The Court dismissed that appeal as denial of such a motion is not an appealable order.

On October 26, 2007, the three defendant appellants engaged counsel to review the proceedings below, and to serve as appellant's counsel. Counsel filed the instant Notice of Appeal involving the Order, of April 28, 2006, and December 7, 2006.⁴

On Appeal, Karl Maunz, Trustee, asserted that the Trial Court erred in granting the complaint of foreclosure pursuant to R.C. 5721.18(A) because the amount of taxes owed were certified more than two years prior to filing the complaint, and that the foreclosure statute required the County Treasurer to bring the action pursuant to R.C. 5721(B) and as an in rem action naming two parcels of real property as defendants per R.C. 5721.181.

The Court of Appeals in its Decision and Judgment Entry of May 30, 2008, however, did not rule upon the assignment of error, holding that failure to raise the specific issue in the Trial Court waived it for purposes of appeal, see ¶12. The Court of Appeals affirmed the decision of the Trial Court.

⁴ The October 26, 2007 appeal of the judgment entries of April 28, 2006 and December 11, 2006 was timely as noted by the Court of Appeals as the time for filing an appeal pursuant to App. R. 4(a) had not expired due to lack of service of notice of said entries.

ARGUMENT

PROPOSITION OF LAW NO. 1:

TO PASS TITLE TO REAL PROPERTY AT SHERIFF'S SALE UPON FORECLOSURE, STRICT COMPLIANCE WITH FORECLOSURE STATUTES IS REQUIRED.

A proceeding to foreclose a tax lien is essentially one in rem and not in personam; it operates on the land itself and not on the title of one in whose name the property is listed for taxation, Huner v. Grier (1962), 173 Ohio St. 158, 161 citing Jones v. DeVore (1858), 8 Ohio St. 430.

Compliance with the tax foreclosure statutes is required for the passing of title to a buyer at sheriff's sale. McGruder v. Esmay (1878) 35 Ohio St. 221, Skinner v. Brown (1866), 17 Ohio St. 33, Wolcott v. Holland (1904, Sixth Cir. Lucas) 5 Ohio C.C. NS, 604, In the Matter of Foreclosure of Liens for Delinquent Land Taxes by Action In Rem Pursuant to R.C. 5721.18(C), 2006-OHIO-5417.

PROPOSITION OF LAW NO. 2

THE FORECLOSURE STATUTE, R.C. 5721.18 WHEN CONSTRUING DIVISION (A)(B) (C) & (D) , LIMITS DIVISION (A) TO APPLICATION TO FORECLOSURE ACTIONS INITIATED LESS THAN TWO YEARS FOLLOWING THE CERTIFICATION OF THE TAX DELINQUENCY, UNLESS THE PROSECUTION ATTORNEY IN THE COMPLAINT SETS FORTH GROUNDS THAT DIVISIONS (B) AND (C) WHICH APPLY TO ACTION INITIATED MORE THAN TWO YEARS FOLLOWING THE CERTIFICATION OF THE TAX DELINQUENCIES, ARE PRECLUDED BY LAW.

R.C. 5721.18(A) states,

This division applies to all foreclosure proceedings not instituted and presented under section 325.25 of the Revised Code or division (B) or (C) of this section, (Emphasis added)

R.C. 5721.18(B) states,

Foreclosure proceedings constituting an action in rem may be commenced by the filing of a complaint after the end of the second year from the date on which the delinquency was first certified by the auditor...

R.C. 5721.18(C) states,

In addition to the actions in rem authorized under division (B) of this section and 5721.14 of the Revised Code, an action in rem may be commenced under this division. An action commenced under this division shall conform to all the requirements of division (B) of this section except as follows:

R.C. 5721.18(D) provides,

If the prosecuting attorney determines that an action in rem under division (B) or (C) of this section is precluded by law, then foreclosure proceedings shall be filed pursuant to division (A) of this section, and the complaint in the action in personam shall set forth the grounds upon which the action in rem is precluded. (Emphasis added)

Division (A) of R.C. 5721.18 applies only when proceedings are not instituted under R.C. 323.25 and divisions (B) and (C). This only occurs when 1) certification of a tax deficiency is less than two years old so that division (B) and (C) do not apply, or when 2) a tax deficiency certification is over two years old when (B) and (C) are applicable, and the prosecutor determines that use of (B) and (C) are precluded by law, and said prosecuting attorney sets forth in the complaint the grounds that precludes the use of an in rem complaint under (B) and (C).

This reading of the statute must be true, otherwise, if a prosecuting attorney had an optional choice to file a division (A) complaint to foreclose an over two year old certification of tax delinquency, then division (D) would be meaningless surplusage. If the prosecuting attorney had such an option he would never have to determine that (B) and (C) were precluded by law, and never have to so assert in the complaint filed under (A).

The reading of the statute is also supported by the history of prior enactments of R.C. 5721.18.

In Am. Sub H.B. No. 1327, the legislature added subsection (B) to R.C. 5721.18 providing for the in rem proceeding. The legislature amended (A) to make it apply to "complaints late the delinquency was first certified." The (B) provision in rem action applied to "proceeding for foreclosures that are commenced by the filing of a complaint after the end of the third year from the date the delinquency was first certified". The (B) provision in rem action applied to "proceeding for foreclosure that are commenced by the filing of a complaint after the end of the third year from the date the delinquency was first certified". A section (B)(3) ¶2 was added that if the county prosecutor determines that a (B) in rem proceeding is precluded by law, then the complaint could be filed under division (A) and the prosecutor in the complaint would set forth the grounds why a (B) in rem action was precluded.

In Am. Sub. H.B. No. 603, the legislature amended R.C. 5721.18 to change division (A) to a two year period, division (B) in rem actions to those complaints filed more than two years after certification of delinquency, and added a Section (C) in rem proceedings. The duty of the prosecuting attorney was moved from (B)(3) ¶2 to a section (D).

In Am. Sub. H.B. No. 576, the legislature streamlined the language in Section 5721.18(A) to state that the division applies to foreclosure proceedings not instituted under divisions (B) and (C).

In any event, R.C. 5721.18 as presently written should be construed with the dichotomy shown by its legislative history, ie., division (A) is not used unless

divisions (B) and (C) which come into effect two years after a notice of delinquency is first certified, are precluded by law. The prosecutor must in the complaint assert the basis why (B) and (C) are precluded.

If division (A) was read to allow a county prosecutor to file a complaint under it for delinquencies that were over two years old without having to aver that (B) and (C) were precluded, then division (D) would be meaningless.

In this case, the county prosecutor filed the tax delinquency foreclosure complaint under division (A) for properties that had been certified as delinquent more than four years previously, and did not aver that divisions (B) and (C) were precluded.

The trial court erred in holding that the complaint in this case was properly filed under R.C. 5721.18(A).

R.C. 5721.181 sets forth the mandatory format for complaints filed pursuant to divisions (B) and (C) specifically requiring that the real property be named a defendant as an in rem action.

PROPOSITION OF LAW NO. 3

THE ISSUE THAT A COMPLAINT FAILS TO STATE A CLAIM MAY BE RAISED FOR THE FIRST TIME IN THE INITIAL REVIEWING COURT.

In its Decision and Judgment of May 30, 2008, the Court avoided issuing a decision on the merits of Appellants' Assignments of Error by citing the general rule that issues not raised in the trial court are waived for purposes of appeal. However, said general rule of waiver has an exception recognized by Ohio and Treatises, and almost every other American state, i.e., that assertions of error that the Complaint

fails to state a claim may be asserted for the first time on appeal. See generally Westlaw Key No. 193(9).

In 4 O Jur 3d, (1978 ed.), Appellate Rev. §148, pp. 317,

While generally speaking, defects in pleading now the complaint under Civil rules...which were not raised and objected to below cannot be asserted in a reviewing court, an exception is recognized where the pleading does not set out facts sufficient, if well states, to constitute a claim, formerly a cause of action. In such cases the question may be raised for the first time in a reviewing court. (Emphasis added)

In Youngstown v. Moore, (1876) 30 Ohio St. 133 syllabus para. 1,

1. An objection to a petition, that it does not contain facts sufficient to constitute a cause of action, may be made at any time before final judgment in error; but, if o objection has been made prior to filing a petition in error in the supreme court, notice of such objection should, in some form, appear on the record in the reviewing court before the case is heard.

The Court held that the issue of failure to state a claim could be brought first in the Court of Appeals, but not first raised in the Ohio Supreme Court. See also Droeder v. Minot, 1993 Ohio App. LEXIS 3937, Flagship Management Services v. Grube, 1994 Ohio App. LEXIS 4759.

For other American courts following such an exception to the general rule, see Govt. Employees Ins. Co. v. Buford (Ill. App. 2003) 788 N.E. 2d 90, Glad v. Baker (La App. 3 Cir, 2003) 851 So. 2d 1255, Warren v. Sharp (Ida, 2003) 83 P. 3d 733, Norburn v. Marotte (Mo. App. 2004) 134 S.W. 3d 651, Mori v. Mori (Utah App. 1995) 896 P. 2d 1237, Padilla v. Estate of Griego (Neb. App. 1944) 517 N.W. 2d 622; Henry v Assoc. Indemnity Corp. (Cal. App. 4 Dist. 1990), 266 Cal. Rptr. 578, 217 CA 3d 1405.

In this case, the Court in its decision acknowledged that appellant, Maunz raised the defense of failure to state a claim in their Answer. Whether appellants had asserted that defense in the answer, or not, appellants still should have been allowed to assert in the Court of Appeals the specific reasons, eg. appellee's use of the wrong foreclosure statute, and failure to sue the proper defendant, that the complaint filed against him failed to state a claim.

CONCLUSION

The complaint filed by the prosecuting attorney in this case 1) failed to name and serve the real property as defendant as required by R.C. 5721.181, 2) failed to set forth grounds that divisions (B) and (C) of R.C. 5721.18 were precluded by law, and/or 3) failed to assert that the property had been certified as tax delinquent less than two years prior to the filing of the Complaint so as to allege facts making division (A) applicable.⁵

The Complaint was not brought under the proper statute, against the proper defendant, the real property, and it was not served with process. The Trial Court finding in its Decision and Judgment Entry that the foreclosure proceeding was properly brought pursuant to R.C. 5721.18(A) was in error.

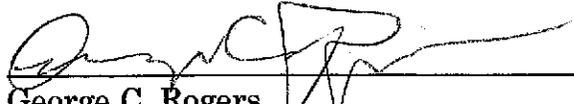
Respectfully submitted,


George C. Rogers (0014107)
Attorney for Appellants

⁵ The complaint asserted that the properties had been certified as delinquent more than one year prior to filing rather than stating it had been two years prior to, or after, certification of the delinquencies.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum In Support of Jurisdiction of Appellants, Karl C. Maunz, Trustee, and Karl C. Maunz, personally was hereby mailed via ordinary U.S. Mail, postage prepaid, to Joseph P. Boyle III, Counsel for Appellee, at One Govt. Center, Suite 500, Toledo, OH 43604, on this 11th day of July, 2008.


George C. Rogers
Attorney for Appellants

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COURT OF APPEALS

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COMMON PLEAS COURT
DEPT. OF PUBLIC SAFETY
CLERK

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Wade Kapszukiewicz, as Treasurer
of Lucas County, Ohio

Court of Appeals Nos. L-07-1361
L-07-1247

Appellee

Trial Court No. TF-200501267

v.

Karl C. Maunz, Trustee, et al.

DECISION AND JUDGMENT ENTRY

Appellants

Decided:

MAY 30 2008

Julia R. Bates, Lucas County Prosecuting Attorney, and
Joseph P. Boyle, III, Assistant Prosecuting Attorney, for appellee.

George C. Rogers, for appellants.

HANDWORK, J.

{¶ 1} This case is before the court on appeal from the judgments of the Lucas County Court of Common Pleas which granted the foreclosure action filed by appellee, Wade Kapszukiewicz, as Treasurer of Lucas County, Ohio, against Karl C. Maunz,

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MAY 30 2008

Trustee, and ordered the property to be sold at sheriff's sale. For the reasons that follow, we affirm the decision of the trial court.

{¶ 2} On July 8, 2005, appellee filed a complaint for foreclosure, due to unpaid real estate property taxes, on four parcels of property located in the city of Toledo. The complaint stated the descriptions for each parcel; the amount of taxes, assessments, penalties, interest and charges due, as certified on the original master list filed with the Lucas County Prosecuting Attorney by the Lucas County Auditor; the identity of each party who may have an interest in the property; and a prayer to have the property sold at sheriff's sale. The named defendants were Karl C. Maunz, Trustee, as property owner, Karl C. Maunz, individually, Mohr Variety Beverage Company ("Mohr Variety"), Nancy Bartley, Gray Brewing Company ("Gray Brewing"), the city of Toledo's Department of Public Utilities, and the city's Department of Economic & Community Development.

{¶ 3} On February 15, 2006, appellee sought summary judgment against Karl C. Maunz, Trustee. Appellee's motion described the parcels of property and stated that it sought foreclosure pursuant to R.C. 5721.18(A); that the taxes had not been paid for more than one year after the certification of delinquency; and that the amount owed at the time of the motion was \$34,908,21. The motion further stated that if Karl C. Maunz, individually, had an interest, he had denied all allegations in the complaint; that Mohr Variety protected its lease-hold interest in the real estate; that Gray Brewing and the department of public utilities protected their respective lien interests in the real estate;

and that Bartley and the department of economic and community development were in default of answer or other pleadings.

{¶ 4} On March 31, 2006, Maunz, as trustee, opposed appellee's motion for summary judgment on the bases that (1) the property was over-valued and, therefore, the assessed taxes were excessive; (2) pursuant to a lease agreement, Mohr Variety owed the taxes on the property; and (3) appellee needed to add Rainbow Beverage Company ("Rainbow") as a necessary party in interest, as Rainbow was also allegedly liable for the tax debt. On April 28, 2006, the trial court granted appellee's motion for summary judgment against Maunz, as trustee and owner of the property. Another judgment entry, that was also entered on April 28, 2006, additionally held that the amount of delinquent taxes, special assessments, penalties, and interest totaled \$34,908.21 for the four parcels; that Bartley and the department of economic and community development were in default; that any interest Karl C. Maunz, individually, held in the property was extinguished; that Mohr Variety had a valid lease-hold interest; that Gray Brewing and the department of public utilities had valid and subsisting liens on the property; and that the property should be sold by the sheriff. The judgment entries of April 28, 2006, were joined together in a nunc pro tunc judgment, journalized on December 11, 2006, in order to make the case final and appealable.¹

¹Although the case would have been final and appealable on December 11, 2006, the parties were not served with notice of the trial court's decision as required by Civ.R. 58(B) and 5(B). As such, the time for filing a notice of appeal never began to run.

{¶ 5} On May 26, 2006, Maunz, as trustee, filed a motion for reconsideration of the trial court's award of summary judgment. The basis for the motion was that he had established a genuine issue of material fact regarding whether Rainbow had a financial interest in the property and should be added as a party defendant. Mohr Variety also filed motions for reconsideration, on May 2, 2007 and May 4, 2007, alleging that Mohr Variety and other defendants were not properly served with the complaint and/or notice of the sheriff's sale, which was filed on April 19, 2007. Appellee responded on May 7, 2007, arguing that all necessary parties were served. Following a hearing on May 8, 2007, the trial court denied the motions for reconsideration in an order journalized on May 15, 2007.

{¶ 6} On May 22, 2007, Maunz, individually, filed a motion to be dismissed from the case or, alternatively, to have the sheriff's sale vacated. Maunz argued that he was not a real party in interest in his individual capacity and that his credit was damaged by the trial court's judgment. The trial court denied this motion on June 27, 2007.

{¶ 7} On appeal, Karl C. Maunz, as trustee and individually, raises the following assignments of error:

{¶ 8} "The trial court erred in its order of April 28, 2006, and subsequent nunc pro tunc order of December 17, 2006, [sic²] in determining that the complaint of foreclosure complied with statutory law."

²The order referred to by Maunz was file-stamped on December 7, 2006, and was journalized on December 11, 2006, not on December 17, 2006.

{¶ 9} "The trial court erred in its orders of May 8, 2007, journalized May 13, 2007 [sic³], and June 16, 2007 [sic⁴], in failing to vacate the sheriff's sale and to dismiss the complaint against Karl C. Maunz, individually."

{¶ 10} "The trial court erred in its order of June 16, 2007 [sic⁵] in overruling the motion to dismiss the complaint against Karl C. Maunz, individually."

{¶ 11} Maunz argues in his first assignment of error that the trial court erred in granting appellee's complaint of foreclosure pursuant to R.C. 5721.18(A). Because the amount of taxes owed was certified more than two years prior to the filing of appellee's complaint, Maunz argues that appellee had to bring its foreclosure action in an in rem proceeding pursuant to R.C. 5721.18(B), which, according to Maunz, would include naming the parcels of real property as party defendants. Appellee, however, argues that Maunz failed to raise any issue regarding R.C. 5721.18 in the trial court.

{¶ 12} It is well-settled that a litigant's failure to raise issues for the trial court's determination in motions to dismiss, for summary judgment, or responses thereto, waives those issues for purposes of appeal. See *Doe v. First United Methodist Church* (1994), 68 Ohio St.3d 531, 541, fn. 7; *Abraham v. National City Bank Corp.* (1990), 50 Ohio

³The order referred to by Maunz was signed by the judge on May 8, 2007, but was file-stamped on May 11, 2007, and was journalized on May 15, 2007, not on May 13, 2007.

⁴The order referred to by Maunz was file-stamped on June 26, 2007, and journalized on June 27, 2007, not June 16, 2007.

⁵See fn. 4.

St.3d 175, 176, fn. 1; *Thompson v. Preferred Risk Mut. Ins. Co.* (1987), 32 Ohio St.3d 340, 342; *Walker v. Firelands Community Hosp.*, 170 Ohio App.3d 785, 2007-Ohio-871, ¶ 13; and *Hood v. Rose*, 153 Ohio App.3d 199, 2003-Ohio-3268, ¶ 10. See, also, *Republic Steel Corp. v. Board of Revision of Cuyahoga Co.* (1963), 175 Ohio St. 179, 184-185. Maunz argues that the issue was raised in his answers, wherein he stated that the complaint failed to state a claim upon which relief could be granted. We, however, find that the issues regarding R.C. 5721.18 were never raised for the trial court's consideration. Accordingly, we decline to consider Maunz's arguments regarding appellee's alleged non-compliance with R.C. 5721.18 for the first time on appeal. Maunz's first assignment of error is therefore found not well-taken.

{¶ 13} Maunz argues in his second and third assignments of error that the trial court erred in failing to vacate the sheriff's sale and dismiss the complaint against Karl C. Maunz, individually. With respect to the sheriff's sale, Maunz asserts that it would be error for the property to be sold at sheriff's sale when R.C. 5721.18 has not been followed. He additionally argues that he had no individual ownership in the subject property.

{¶ 14} Again, we find that any alleged error with respect to appellee's failure to comply with R.C. 5721.18 was not raised in the trial court and was therefore waived for purposes of appeal. We additionally find that no judgment of foreclosure was entered against Maunz as an individual. Rather, summary judgment was awarded against Maunz only in his capacity as trustee, and the judgment entry noted that any interest Maunz may

have had individually in the property was extinguished.⁶ Accordingly, we find that the trial court did not err in denying Maunz's motion to dismiss and/or vacate the sheriff's sale. Maunz's second and third assignments of error are therefore found not well-taken.

{¶ 15} On consideration whereof, the court finds substantial justice has been done the party complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

JUDGMENT AFFIRMED.

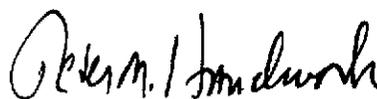
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

⁶We note that Maunz was individually named in the complaint because the title search revealed that liens on the property listed Maunz.

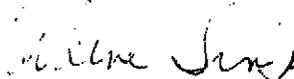
Peter M. Handwork, J.

Arlene Singer, J.

Thomas J. Osowik, J.
CONCUR.



JUDGE



JUDGE



JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.