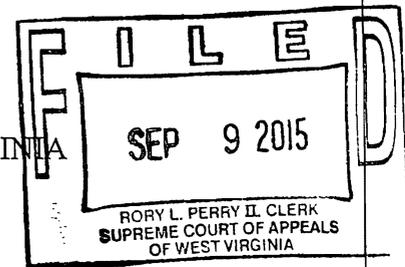


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



SUPREME COURT NO. 15-0364

ALBIN LITTELL, individually, and as
TRUSTEE OF THE LITTELL COAL
INTEREST TRUST

PETITIONER/APPELLANT

V.

STEVE MULLINS, and DONALD HICKS
CLERK OF THE COUNTY COMMISSION
OF MCDOWELL COUNTY,
WEST VIRGINIA,

RESPONDENTS/APPELLEES

PETITIONER'S APPEAL FROM THE CIRCUIT COURT OF
MCDOWELL COUNTY, WEST VIRGINIA

(08-C-178)

RESPONSIVE BRIEF OF RESPONDENT/APPELLEE,
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PETITIONER'S ASSIGNMENTS OF ERROR

Petitioner/Appellant, Albin Littell, states as assignments of error by the Hon. Rudolph J. Murensky, II, Judge of the Circuit Court of McDowell County, West Virginia, the following:

1. The Judge erred in failing to set aside a deed dated on 4/26/06, from the McDowell County Clerk to Appellee, Steve Mullins. Said deed is of record in Deed Book 502, at Page 559. The Judge failed to comply with WV Code Section 11-A-3-19, according to the Appellant.
2. Judge Murensky failed to set aside said deed, again dated on 4/26/06, of record in Deed Book 502, at Page 559, denying Appellant due process of law under the Constitution of West Virginia and the United States.
3. Judge Murensky erred in failing to set aside the deed dated on 4/26/06, based upon lack of notice to the Appellant, Albin Littell.
4. Needless to say, the Respondent/Appellee, Steve Mullins, denies all of these assignments of error and responds fully with respect to these issues in the responsive brief, which follows:

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STIPULATION OF RESPONDENT/APPELLEE

Now comes the Respondent/Appellee, Steve Mullins, who states that the Appellant has, in one way or another, through the appendix or through designation of exhibits or materials to be considered by the Supreme Court in this appeal, has the entire file from the Circuit Court of McDowell County, West Virginia, in Case No. 08-C-178, the instant case, before the Supreme Court, for the Court's consideration as evidence concerning this appeal. The Appellee has no objection to said designation and to the appendixes heretofore submitted by the Plaintiff through the appeal process and joins by way of stipulation, again that there is no objection and that the Appellee joins in moving and in stipulating that the Supreme Court of Appeals should consider the entire record. The Appellee will not re-submit or re-designate any exhibits or materials or transcript or orders or anything else contained in the records from the Circuit Court of McDowell County in this case as everything has already been designated and is before the Court. The Appellee has attempted to impart Appellee's position in this matter in his brief, which follows.

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ATTORNEY FOR APPELLEE

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STATEMENT OF THE CASE

This case has been brought on appeal to this Court by the Petitioner, Albin Littell, individually, and as Trustee of the Littell Coal Interest Trust, a Trust created in Arizona by Littell and his mother in approximately 1999, ten years after the death of the known owner of said property, Nancy Doonan Estate, an Arizona citizen and domiciliary. Counsel for the Appellee, Steve Mullins, will refer to Petitioner/Appellant in this brief as "Littell" for clarification and simplicity purposes. The Appellee, Steve Mullins, will be referred to as "Mullins".

This case involves issues involving the sale of delinquent real estate. The real estate sold at a delinquent Sheriff's Tax Sale was located near the small town of Raysal, in Big Creek District, McDowell County, West Virginia. This case is not complicated and again involves basically statutory provisions with respect to the sale of delinquent real estate at Sheriff's Sales and the requirements relating thereto with certain case law being presented as precedent for the peculiar facts and circumstances of this particular case.

The statutes involved include WV Code Sections 11A-4-3 and 11A-4-4. Littell is appealing the decision of Judge Rudolph J. Murensky, II, Judge of the Circuit Court of McDowell County, which said decision was entered by Order dated on March 25, 2015, subsequent to a bench trial heard several months previous to the said entry of the order of March 25, 2015.

Mullins agrees with Judge Murensky's decision for the most part. Therefore, the only issues in controversy before this Court are presented by Littell and not Mullins.

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Mullins is a 75 year old retired businessman and widower, and is a lifelong resident of McDowell County, West Virginia. Mullins formerly ran a small mom/pop grocery store for many years and has engaged in the purchase of delinquent real estate in McDowell County for many years, having purchased at Tax Sales, literally hundreds of properties down through the years and has been engaged in this activity of purchasing delinquent properties for the last 40 years. Mullins is an expert on the requirements and is an expert on the statutes and laws relating to notices and requirements in order to successfully, legally, and properly purchase delinquent real property. Mullins has never been sued before and is frankly embarrassed by this lawsuit against him. Mullins has never had any prior sales vacated or rescinded, although there have been literally hundreds of these sales over the past forty years or so, in which Mullins was involved as purchaser.

At a delinquent Tax Sale for McDowell County real property, which said property was delinquent insofar as real estate taxes were concerned, Mullins purchased on November 16, 2004, at said Sheriff's Tax Sale, an undivided interest in what is described as Parcel 7 on Tax Map 386 being a 2/9 undivided interest in a 279 acre tract known as the Salyers Trust. At said Sale, Mullins believed he was purchasing a total of 643 acres as were contained in two parcels, located in Big Creek District, McDowell County, which said first parcel and the only parcel of concern in this appeal is Parcel 7 on Tax Map 386 as stated above. A second parcel, which Mullins believed he had purchased was as a direct result of mistakes in the Assessor's Office concerning this second parcel identified as Parcel 5 on Tax Map 366. However, the trial court correctly determined this second tract was not delinquent realty and this resulted from a mistake made in the McDowell

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County Assessor's Office. Therefore, there is no issue before the Court involving Parcel 5 on Tax Map 366. This appeal only involves the purchase by Mullins of Parcel 7 on Tax Map 386, as is identified above as a 2/9 undivided interest in a 279 acre tract known as the Salyer's Trust, listed in the name of Nancy Doonan Estate.

The property purchased by Mullins was an undivided interest in Parcel 7. This was a Tax Sale conducted by the Sheriff of McDowell County, West Virginia on November 16, 2004. Mullins, being an experienced purchaser of real estate, had done his homework and was aware of this property, as well as other properties on the date of Sale, and came prepared to purchase same at the Tax Sale, if the opportunity presented itself and believed that said parcel had value. Parcel 7 was in the name of "Nancy Doonan Estate". It was later learned that Nancy Doonan died in 1989 and was the grandmother of the current owner, Albin Littell. This information was not available at the time of the Sale. After the death of Nancy Doonan, it was the testimony of Littell at the bench trial that Nancy Doonan was his deceased grandmother and upon her death, she bequeathed her interest in certain real estate and property in West Virginia, as well as in other states, both to Albin Littell and to Albin Littell's mother, a woman by the name of Letticia Louise Littell. Later, ten years or so subsequent to the death of Nancy Doonan, it was the testimony of Albin Littell, that a Trust was set up, which the mother and Littell named the "Littell Coal Interest Trust". Again, this Littell Coal Interest Trust was set up in 1999 by Albin Littell and his mother and not by Nancy Doonan prior to her demise, and again, none of these facts were known by Mullins or any State official prior to the Sale or for years after the Sale.

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A bench trial was held before Judge Rudolph J. Murensky, II, in the Circuit Court of McDowell County, Case No. 08-C-178, on March 25, 2013. Littell has provided the Supreme Court with the transcript of said trial, which Mullins will refer to from time to time. Littell has submitted the entire record from the Circuit Court of McDowell County. Mullins will not submit the record a second time.

Littell argues that Mullins did not abide by certain statutory requirements imposed upon purchasers of delinquent property as are contained in the aforesaid WV Code Sections. However, there is no evidence of record indicating that Mullins did not do everything required by statute insofar as notification of a known owner or owners. Mullins researched all information available contained in the real property record room or "vault", as McDowell County attorneys call it. Mullins checked the Grantors Index, the Grantees Index, the Judgment Lien or Tax Lien Index, and the Deed of Trust Index. The Grantors Index in McDowell County would provide information relative to the demise or death of the owner, Nancy Doonan, if same had been appropriately and properly and lawfully submitted, which it was not. There is no dispute as to that fact. Nancy Doonan's Will was not probated or recorded in McDowell County. No documents were filed or records filed by Littell or anyone acting for Littell. There was no record of any of this at the time of the Sale. There were no records filed by Littell or the Littell Coal Interest Trust in McDowell County. To be sure, there was nothing that could be found by Mullins, as nothing more had been placed of record by Littell or his grandmother or his accountant (Reidy).

In addition, Mullins checked with the Assessor's Office, the Sheriff's Tax Office and the County Clerk's Office. There was no information available other than the name

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of Nancy Doonan Estate and the only address that was found prior to trial was 6035 E. Grant Rd., Tucson, AZ 85712. According to Littell, the Littell Coal Interest Trust had an accountant by the name Dennis Reidy, who is now deceased, having died in early 2013, about two months before the trial in this case. It was Littell's testimony that this Dennis Reidy, accountant, also served as the accountant for Nancy Doonan during her lifetime. It was the responsibility of the aforesaid Dennis Reidy, accountant, to pay taxes and to handle those type of affairs for Nancy Doonan prior to her demise and also for the Littell Coal Interest Trust. Indeed the record shows that the aforesaid Dennis Reidy had paid taxes on this real estate previously, but for unknown reasons, stopped paying taxes after payment of the 2002 taxes, which resulted in this case being before this Court at this time. The 2002 taxes were paid by Reidy in early 2003 by check mailed from Arizona to the Sheriff's Tax Office. Again, this was learned by Mullins subsequent to his being sued and this information was unavailable prior thereto.

The Tax Sale occurred in 2004 and it was a Sheriff's Tax Sale. As this Court well knows there is an eighteen month period after the Sale to allow for the owner to redeem the realty. A deed was executed by the McDowell County Clerk on April 26, 2006, which said deed is of record in Deed Book 502, at Page 559, Instrument No. 3238, dated on 4/26/06 and is a deed from Donald L. Hicks, Clerk of the County Commission of McDowell County, West Virginia, to Steve Mullins. Please see Plaintiff's Exhibit 5, which is a copy of said deed. This deed was executed by the aforesaid Clerk as a result of the non-payment of real estate taxes by the prior owner for tax years 2003, 2004 and 2005. There was a period of probably somewhere around 4 or 5 years that the prior owner failed to note that taxes would be due and owing on said property, but that the said

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prior owner took no action regarding same for a long period of time. This is undisputed. Littell took no action in this matter subsequent to the payment by the accountant of the 2002 taxes until years after the Tax Sale, when Littell filed this lawsuit in 2008.

There is no question of the fact that taxes for these years were not paid by the prior owner, Nancy Doonan Estate or the Littell Coal Interest Trust or by anyone acting in behalf of the property owner or owners.

In any event, Mullins testified that he had done everything he knew to do as was required by statute. He searched everywhere available to try to find any and all information relative to the prior owner, Nancy Doonan Estate. The only address available was the one listed above. When the Nancy Doonan Estate was contacted by the Clerk, the mail was returned by the postmaster and marked "addressee unknown".

The realty purchased at the Sheriff's Tax Sale was a fractional interest, 2/9 undivided interest in a 279 acre tract. Littell argues that Mullins is and was required to give notice to redeem to other co-tenants owning a separate fractional interest in the 279 acre tract. One of the owners of a separate fractional interest was Hall Mining Co. and Littell argues that this Sale should be set aside, as no notice to redeem the Littell properties was given by Mullins to Hall Mining Co., as Hall Mining Co. was a co-tenant. The trial court addressed this argument and issue in its decision. The Court ruled that Littell and Hall Mining "are separate entities, with separate undivided interests, assessed separately". (Please see page 10 of the final order of the trial court.) The trial court went on to rule Hall Mining is not a party entitled to notice to redeem for itself the subject realty or is an entity reasonably expected to protect the Littell property. Hall Mining was not a party to this action and was not entitled to notice to redeem Littell's realty.

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The trial court, in a footnote, (see footnote #2 on page 5 of the trial court's decision) states that Littell and Hall Mining Co. had appeared in this trial court previously in another case. The Court determined from this history and from the Court's personal knowledge of prior litigation, that Littell and Hall Mining Co. have separate and distinct interests, which at times are at odds with each other. The Court was involved as an arbiter in litigation, as a matter of fact, involving the same real estate involved in this action wherein Littell and Hall Mining Co. had separate interests. Therefore, the trial court ruled that Mullins had no duty to contact Hall Mining Co. by giving Hall Mining Co. a notice to redeem the subject realty.

Littell testified that this matter was the responsibility of the bookkeeper, Reidy, who obviously dropped the ball in that he did not pay the taxes as he was required. It is unknown as to why Mr. Reidy, the accountant, did not follow through and pay these taxes. Taxes had been paid for prior years. Indeed Littell argues that the last check sent by Reidy to the McDowell County Sheriff's Tax Office had an address on it or the then correct address of the Littell Coal Interest Trust and that it should have been the duty of Mullins to find the current address from that check. The Court found, obviously, that that was something that would be impossible for Mullins to do in that the Sheriff's Tax Office receives literally thousands of checks in payment of taxes and as far as Mullins knows, no record is kept of the address of the payor on these checks by the Sheriff's Tax Office or any other office. This is how desperate Littell is in this matter. This argument is completely unreasonable.

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Indeed, it was several years after the Tax Sale that Littell recognized the problem or realized that there was a problem. It was apparently 2008 before Littell realized that this property had been sold at a Tax Sale some 4 or 5 years previous.

Mullins argues that Littell is bound by the actions or lack of action on the part of his agent, Accountant Reidy. It is unknown again as to why Reidy failed in the execution of his duties, in his failure to pay these taxes as he had in 2002. Since Reidy is deceased and did not testify at the trial, there is no evidence as to why Reidy failed to perform his duties. There was no evidence from Littell that Reidy had failed in other areas of his employment as an accountant. Indeed, Littell had no answer to the Court as to why his agent (Reidy) had failed to pay taxes.

The evidence further showed that Nancy Doonan did not acquire this property by Will or by deed, but it was inherited by Nancy Doonan. Therefore, it became more difficult for Mullins to try to run down any information on Nancy Doonan. The testimony of Littell was that no probate documents, such as a Will or any other document as the result of the death of Nancy Doonan was ever filed in McDowell County, West Virginia, so there was no way of knowing or finding out about the death of Nancy Doonan since nothing was ever filed.

The only records, again, show the address as stated above.

Littell argues that Mullins should have notified and contacted and listed for the County Clerk, names and addresses of co-tenants, who owned other fractional interests in the subject real property. The Court has determined in its decision that this was not an obligation or requirement that Mullins was responsible to adhere to and was completely and totally unreasonable. Also, there was no record, and Littell testified that there was no

submission into the records in McDowell County, West Virginia, anything by Littell or his mother or by the Littell Coal Interest Trust so that the existence of said Trust or the ownership of Littell and/or his mother was not filed in McDowell County, West Virginia, anywhere and therefore Mullins would have no way of finding this information, as same was not documented. Indeed, there was no record of the death of Nancy Doonan in McDowell County. Littell, in his testimony, did not know the exact date his grandmother died. In his testimony, Littell states that he thought she died in 1989. Other witnesses have indicated that Nancy Doonan died in 1999. So, Mullins did not know about the death of Nancy Doonan at the Sale or thereafter until this lawsuit was instituted in 2008. Littell simply dropped the ball. That's what the real issue is in this case. Mullins did everything that he was required to do by statute. Littell simply dropped the ball, notwithstanding the fact that it is a property owners' legal requirement that the owner is responsible for the payment of taxes on one's real estate and to provide McDowell County officials as to the address of the owner of realty. The law imposes a duty on each real property owner to enter his land on the State's land books., W.Va. Code 11A-3-1.

During the course of the trial and during the course of litigation, it came into evidence that Nancy Doonan had one child, namely, Letticia Louise Littell, who in turn was the mother of the Petitioner herein. Subsequent to the death of Nancy Doonan, which was in 1989, Nancy Doonan had a Will and apparently codicils, all of which were probated in the county in which she had lived in Arizona, but nothing probated or filed in West Virginia. Apparently the Will or codicils or both of the aforesaid Nancy Doonan, deceased, created a Trust for her residuary estate. The original Trust, which predated the

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Will or codicils of Nancy Doonan was terminated upon her death, apparently by her Will, and in any event, the real estate interest in West Virginia and apparently other places was distributed in equal shares to Leticia Louise Littell, daughter of Nancy Doonan, deceased, and to Albin Littell, grandson and son of Leticia, when Albin Littell turned 30 years of age and counsel is unaware of when that was. In other words, the Littell Coal Interest Trust was created ten years after the death of Nancy Doonan by Littell and his mother.

In any event, subsequent to the death of Nancy Doonan, the interest in the real property, which is the subject matter of this suit, was turned over to or owned by or conveyed to the Littell Coal Interest Trust. Interestingly enough, none of this information or documentation was ever submitted or recorded or probated in McDowell County, West Virginia, and only came to light as a result of this lawsuit. In other words, Mullins had none of this information and no way to find it during the course of the events which led to this lawsuit. To end this issue, Littell and his predecessors have never recorded any deeds, Wills, or any other instruments concerning this real estate or anything else in McDowell County, West Virginia. Indeed, there is no deed of conveyance to Nancy Doonan. As Littell never listed or provided this necessary information the States need for tax revenues was significantly jeopardized. Please see John v. Fisher, II, Delinquent and Non-Entered Lands and Due Process, 115 W.Va. L. Rev. 43, 78-79 (2012).

Judge Murensky correctly finds Littell relied on his accountant, Dennis Reidy, to keep track of real estate taxes. Indeed, accountant Reidy paid real estate taxes subsequent to the death of Nancy Doonan up thru 2002, but for reasons unknown, ceased payment of taxes on real estate for tax year 2003 and thereafter. This resulted in the Tax Sale in

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November of 2004 to Mullins, who again did nothing wrong and met all of the statutory requirements imposed by law on purchasers of delinquent real estate in the State of WV and in McDowell County. By statute, Mullins was required to provide the McDowell County Clerk with a list of any person who should be provided with a notice to redeem real estate. As a result of the search undertaken by Mullins, he again reviewed all available indexes, which are stated hereinabove, and met with representatives in the Sheriff's Tax Office and also with the McDowell County Assessor's Office and again was only able to find information concerning Nancy Doonan as stated hereinabove.

At the end of the day, Mullins submitted information to the Clerk as indicated above that the only information he could find, and indeed the only information which was later determined to be of record, was simply Nancy Doonan Estate, 6035 E. Grant Rd., Tucson, AZ 85712. This information was imparted to the Clerk, who in turn attempted to contact the Nancy Doonan Estate at said address, resulting in the return by the postmaster of said correspondence marked "ANK, addressee not known". Subsequently or during this time, in February of 2006, the McDowell County Clerk's Office published a right to redeem in two newspapers of general circulation in McDowell County, which are the only two newspapers, The Welch News and The Industrial News. I believe the publication dates were 2/8/06 and 2/22/06. Please note that the Sheriff's Tax Sale was in 2004. The deed was executed in 2006, nearly two years later and still not action was taken by Littell to redeem the realty.

Mullins, as a purchaser of delinquent realty, was required to meet certain obligations and to provide the County Clerk with a list of those persons or entities to be served with notices to redeem. See W.Va. Code Section 11A-3-19(a)(1). Thus, those

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persons entitled to notice to redeem are permitted to redeem the realty, subject to the tax lien. Such persons would be the owner of the realty or such other person authorized to pay taxes. (Reidy) Please see SYL. PT. 4, Rollyson v. Jordan, 518 SE 2d 372 (W.Va. 1999). If the purchaser at such a delinquent tax sale “Mullins here” fails to comply with the requirements as set forth in W.Va. Code Section 11A-403 and 11A-3-19, said delinquent tax sale may be set aside.

The interest purchased by Mullins at said Tax Sale was a fractional interest, a 2/9 interest in 279 acres referred to as the Salyers Trust. There are other owners who own the other fractional interests in said property, namely, Hallmont Mining Co., W.F. Harmon Heirs, Judith Wadosky, and others as well. Littell argues that Mullins had the duty to notify the co-tenants that the taxes had not been paid and that these names should have been given over to the County Clerk in order that they might be notified and given the right to redeem the property. Without getting into complicated legal arguments, Judge Murensky determined that this argument was without merit and that Mullins was under no obligation to give information to the Clerk resulting in notice to redeem information being given over to co-tenants as their interests in said property was separate and distinct from Nancy Doonan and Littell.

WV Code Section 11A-3-19 directs that a prospective purchaser provide a list to the Clerk of the County Commission of any persons who should have knowledge and should be served with a notice to redeem. This statutory requirement was addressed by Mullins when he provided a statement to the McDowell County Clerk indicating that there were no known errors. This is contained in Plaintiff’s Exhibit No. 2.

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It was discovered during the trial of this case that the address for Nancy Doonan Estate was the actually the address of Dennis Reidy, the accountant, who handled Nancy Doonan's legal affairs apparently prior to her demise and subsequent thereto. Again, there is no explanation as to why Reidy, agent of Littell, during the course of all these developments in this case, did not pay the taxes. He simply dropped the ball. However, Littell has the right to institute these legal proceedings by the filing of this suit in which protects the original owner's interests. See W.Va. Code Section 11A-4-4.

The Court must also consider "Due Process issues" to protect the original owner's rights. Mullins has the duty to attempt to reasonably identify from the McDowell County public records who (what person) should be notified. Please see SYL PT 1, Lilly v. Duke, 375 S.E. 2d 122, (W.Va. 1988).

Also, the Court must consider "Mullins" effort to search publicly available county records and determine if a proper search of same by Mullins would have ascertained a current address of the owner from such a search. See Plemons v. Gale, 396 F. 3d 569, 577 (4th Cir. 2005). Additional steps are to be taken by the buyer to notify the owner, only if it is practical so to do. See Jones v. Flowers, 547 U.S. 220 (2006).

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MULLINS RESPONSE TO ASSIGNMENTS OF ERROR

I.

Mullins responds to Littell's assertion as an assignment of error that the trial court erred, failing to set aside a deed dated on 4/26/06 of record in Deed Book 502, at Page 559, from Donald L. Hicks, Clerk of the County Commission of McDowell County to Steve Mullins. Littell argues that in WV Code Section 11A-3-19a, Mullins was required, as the purchaser of property at a Sheriff's Tax Sale, to provide the Clerk of the County Commission of McDowell County, West Virginia, a list of those individuals who should be served with a right to redeem, and to request that the Clerk prepare and serve this notice as provided by statute.

Also, Littell assigns as error that a co-owner of real estate, whose interest is subject to separate assessment is permitted to pay the taxes of either his own interest alone or, in addition to, the interest of any or all of his co-owners. Littell argues that the co-owners of other fractional interests should have been given notice by Mullins of a right to redeem.

The trial court determined, on page 5 of its decision, that Hall Mining Co., a co-tenant, was not a party asserting a right to redeem property in this action and has not intervened in this action asserting any right to redeem this property. The trial Judge correctly found that the McDowell County records indicated Hall Mining was one of several co-tenants with Littell concerning Parcel 7. As a co-tenant and not as a joint tenant with rights of survivorship, Littell and Hall Mining do not share privity of estate.

There is nothing in the record indicating that Mullins should have known that Littell and Hall Mining Co. enjoyed any kind of special relationship that would lead to such notice.

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The Court further stated that reasonable efforts to notify a property owner of a Tax Sale do not require contact with another entity absent evidence showing that a special relationship between that entity, here meaning Hall and any other co-tenants, and the delinquent owner, Littell, exist. Please see Plemons v. Gale, 396 F. 3d 569, 77 (4th Cir. 2005). Also, the issue of giving notice to redeem to Hall Mining Co., a co-tenant, has been addressed previously by counsel. There was no special relationship between Hall Mining and Littell. Indeed, their interests were separate and distinct. The two entities had specifically requested that their properties be assessed separately years before, thus indicating no privity of estate as the Court addresses in the final order. (See footnote 2 of page 5 of final order of trial court.)

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II.

Littell contends trial court erred in failing to set aside deed of 4/26/06 of record in Deed Book 502, at Page 559, based upon constitutional rights of due process.

Littell continues to argue that Mullins should have notified Hall Mining or other co-tenants.

Littell further argues that a check paying the 2002 taxes had a different address on it and this violates due process by Mullins' failure to obtain the address on that cancelled check payable to the McDowell County Sheriff's Dept. for 2002 taxes. The trial Judge stated in the Court's decision that the Sheriff's Tax Office does not make copies nor does it note addresses on the thousands of checks that it receives. The Court further states that there would have been no reason to suspect that the name and address on said check, which was related to the Trust or to Littell, would have revealed the heirs to the Nancy Doonan Estate. How Mullins could have found this check is unknown. The Court further finds that it is up to the taxpayer, Littell in this case, to keep his address updated with the State of WV. This was admittedly not done by Littell. The Court found in its decision that Mullins complied with all procedural obligations imposed upon a purchaser of delinquent real estate in the State of WV as is contained in WV Code Section 11A-3-19. Any further search based upon available information in McDowell County, West Virginia, in any of the Offices at the courthouse in McDowell County, West Virginia, would have not revealed Littell's proper address or the proper address for the Nancy Doonan Estate. Littell responded at trial that he had relied upon his accountant, Reidy, to handle these affairs, such as paying taxes on West Virginia realty.

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III.

Littell contends that the Court should have set the 4/26/06 deed aside for lack of sufficient notice to Littell.

Mullins states that he has tried to make his position clear in this case. Mullins has done nothing wrong and everything right. It is not the fault of Mullins that the accountant of Littell dropped the ball. Littell admitted during his testimony that it was the responsibility of his now deceased accountant, Reidy, to pay taxes and to take other action in behalf of the Littell Trust, which obviously was not done. It is unknown to this day as to why accountant Reidy did not perform his duties as he had previously done through 2002. However, it is not the fault of Mullins that the accountant employed by Littell as his agent and whose acts would be those acts of his superior, failed to perform his duties by paying these taxes. This went on for years and was not an isolated event. Now Littell wants to blame Mullins. Mullins agrees that he has a duty by law to do all of those things that have been discussed in this matter over and over again. Basically, as Mullins sees it, he was supposed to try to run down a check from Reidy paying the 2002 taxes, which had a new address on it. It is unknown as to how that could be accomplished as a practical matter. Another argument is that Mullins should have given the names of Hall Mining Co. and others who were co-tenants owning other fractional interests in this property and that these co-tenants should have been given a notice to redeem. The Court has addressed those arguments and counsel has addressed same in this brief several times as well.

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STATEMENT REGARDING ORAL ARGUMENT

Appellee sees no reason to have an oral argument. This is a simple factual case. It is unknown as to what could possibly be added by counsel, but again, this is a decision for the Court to make.

ARGUMENT

Mullins would argue that the trial court's decision as contained in a final order in this case entered on March 25, 2015, should be affirmed.

In the Littell brief on page 16 thereof entitled "Argument", there is a repeat of everything that has already been stated previously in the brief of Littell. Mullins has attempted to respond as best as he can to these submissions. Again and again we hear the same thing or read the same thing. It is Littell's argument that Steve Mullins, an elderly and retired businessman, who lives in McDowell County his whole life, and who does this type of work in that he speculates on real estate, improperly failed to meet all statutory requirements concerning the sale of delinquent realty. Mullins has purchased real estate at delinquent Tax Sales over the years and has literally acquired hundreds and hundreds of separate parcels of real estate and has never had problems in all those years and in all those purchases.

The point is that Mullins is not new at this. He knows what is required and complies with statutory requirements. Mullins searched the records again, all Indexes in the record room, interviewed the McDowell County Clerk, representatives of the Assessor's Office and representatives of the Sheriff's Tax Office. It is admitted by Littell that there is nothing to find other than that which was found as Littell never submitted

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any documentation. There were no deeds, no Wills, no appraisals, no nothing submitted by Littell. What is it that Mullins was supposed to have found?

The trial court correctly points out that any additional research or efforts on the part of Mullins in searching the records at the McDowell County courthouse would have been fruitless, as there was nothing more to find. Littell does not talk about the fact that it is a taxpayer's obligation to provide updated and sufficient information to officials in the Clerk's Office and in the Sheriff's Tax Office indicating a current address. Littell does not say anything about the fact that his accountant failed in his duties and not only failed once, but failed many times over a period of 5 or 6 years. The principal, Littell, is bound by the actions or lack of action on the part of his agent (Reidy).

Littell argues that Mullins should have tried somehow to obtain a copy of that check from accountant Reidy paying the 2002 taxes. How that would be accomplished is unknown. The Sheriff does not make a record of these addresses unless requested by the taxpayer. The Sheriff makes no "copy" of the check. The check is not filed with the Sheriff's Office. There would be no way that Mullins could have found this negotiated check as it was not of record in the Sheriff's Tax Office, but was returned to the bank of origin in Arizona, subsequent to payment, then returned to Littell or his accountant (Reidy).

Littell argues that he and his mother own a fractional interest, which is a 2/9 interest in this property located in Big Creek District, McDowell County. Littell argues that there are co-tenants, namely Hall Mining Co. Littell argues that Mullins should have listed Hall Mining Co. as a party to notify in an effort to have these taxes paid and redeemed. The Court finds otherwise. There is no privity of ownership between Hall

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Mining Co. and Littell. These two owners and any other co-tenants have no privity and no real relationship to each other. It would be the same as owning a condominium, apartment. If real estate taxes were not paid to the county, say at Myrtle Beach, SC, as there are no condos in McDowell County, and if taxes are delinquent on that apartment, then for sake of an example, let's say there are 50 apartments in this condominium building, is a buyer at a Tax Sale required to giving notices to redeem for that one apartment in that complex to all other owners or apartments in the condominium complex who would all be co-tenants, but would have no privity with each other. All co-tenants would be in the same building. In any event, the Court has found that Mullins was not required to give notice to any and all possible co-tenants. As a practical matter, counsel is uncertain as to how Mullins would be able to ascertain who the co-tenants are or were. Each co-tenant would be given a separate tax ticket. In any event, the Court has determined that, that particular argument is unreasonable and that Mullins would not be required to give notice to all possible co-tenants, again for lack of privity, and for other reasons previously stated herein.

The long/short of this case is that the owner of this property at the time of the Tax Sale, the Littell Coal Interest Trust, failed to pay real estate taxes for the years of 2003 on up until 2006 and that thereafter, did not realize or recognize that this property had been sold until several years later. Now Littell comes to court and argues that it is Mullins' fault.

There is a public interest in this case that could possible affect or influence future Tax Sales. It is to the State's interest and benefit that it continue to receive payments of real estate taxes. When an owner fails, for whatever reason, that owner is given a long

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period of time to redeem the property. Indeed, after the Tax Sale, and in this case it was a Sheriff's Tax Sale, Littell was given 18 months to come in and redeem the property by payment of the taxes. Littell did not come in to pay the taxes. At what point in time did the responsibility shift from Littell to pay the taxes to Mr. Mullins in purchasing the property? The State has an interest in these matters. A decision by this Court to reverse the trial court's decision could have undesirable effects concerning future Tax Sales. If a purchasing party knows that not only do they have to wait 18 months to try to get a deed from the County Clerk after purchasing the property at a Tax Sale during which the owner of said property can come in and redeem said property, thus negating all of the time, effort, and expense expended by the purchasing party, then to consider the possibility of several years thereafter being sued by the prior owner, would be a situation that should be avoided. In other words, this would have a "chilling affect" on future purchases by prospective speculators. As things are now, the State gets its tax money. The property is owned by another person who hopefully will maintain said property. Future taxes will be paid in almost all cases. In this case by Mullins. The State comes out the winner.

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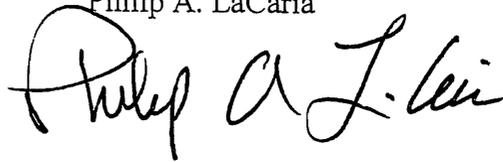
CONCLUSION

Defendant, Steve Mullins, respectfully requests this court to deny this appeal by Petitioner Littell and to affirm the decision of Judge Rudolph J. Murenky, II in trial court Case No. 08-C-178, Circuit Court of McDowell County, entered on March 25, 2015.

STEVE MULLINS, APPELLEE

By Counsel

Philip A. LaCaria

A handwritten signature in black ink that reads "Philip A. LaCaria". The signature is written in a cursive style with a large initial "P" and "L".

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CERTIFICATE OF SERVICE

I, Philip A. LaCaria, counsel for Appellee, Steve Mullins, do hereby certify that I have served a true copy of the foregoing brief of Appellee to the Supreme Court of Appeals of West Virginia, via first class U.S. Mail, and have served copies of said brief and all attached exhibits to counsel herein below named on this the 8th day of September, 2015:

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