

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **9th day of December, 2022** are as follows:

BY Hughes, J.:

2022-C-00425 *NAR SOLUTIONS, INC.* VS. *BRYAN K. KUHN* (Parish of Jefferson)

REVERSED. DISTRICT COURT JUDGMENT REINSTATED. SEE
OPINION.

SUPREME COURT OF LOUISIANA

No. 2022-C-00425

NAR SOLUTIONS, INC.

VERSUS

BRYAN K. KUHN

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIFTH CIRCUIT, PARISH OF JEFFERSON**

HUGHES, J.

At issue in this matter is an action to quiet title following the tax sale of a parcel of immovable property. Although the district court rendered judgment in favor of the plaintiff, the appellate court held that the plaintiff failed to establish a prima facie case that proper notice of sale was provided to some of the defendant/property owner's ancestors-in-title, and the district court's default judgment against the defendant was vacated. For the reasons that follow, we reverse and reinstate the district court judgment upholding the tax sale.

FACTS AND PROCEDURAL HISTORY

The subject residential property was inherited by siblings, Tracey Kuhn Arvanitis, Deborah Kuhn Boudreaux, Henry Kuhn III, and Bryan Kuhn, upon the death of their parents, Henry J. Kuhn, Jr. and Shirley Miller. In 2009, Bryan acquired the twenty-five percent interest of Tracey, making Bryan a fifty percent owner with Deborah and Henry, who each owned a twenty-five percent interest.

In 2015, a tax sale title to the subject immovable property was sold for \$13,047.76, in payment of delinquent ad valorem taxes and related interest and costs for the 2010 through 2014 tax years, to Mark Laughlin, and a tax sale certificate was

recorded in the parish conveyance records on August 12, 2015. Thereafter, Deborah and Henry donated their respective interests in the property to Bryan in August of 2019.

Plaintiff, NAR Solutions, Inc. (“NARS”), acquired the tax sale title to the property via a quitclaim deed from Mark Laughlin on November 20, 2019 and, on January 10, 2020, NARS filed a Petition to Confirm and Quiet Tax Sale Title and for Declaratory Judgment in the 24th Judicial District Court for Jefferson Parish. NARS attached a certified copy of the August 2015 tax sale certificate.¹ Personal service of the 2020 petition was made on Bryan Kuhn (who had a 100% ownership interest in the property at that time) on January 13, 2020.

On July 27, 2020 the Jefferson Parish Clerk of Court certified that no answer or other pleadings had been filed in the matter (see **NAR Solutions, Inc. v. Kuhn**, 21-0256, p. 3 (La. App. 5 Cir. 1/26/22), ___ So.3d ___, ___ (2022 WL 225014 at *3)), and a motion for entry of preliminary default was filed on July 28, 2020. A preliminary default was entered against Bryan Kuhn on July 28, 2020. A motion to confirm the preliminary default was filed on August 10, 2020, with the following additional exhibits: an affidavit by NARS counsel Mark Boudreau, detailing his efforts in searching for interested parties relative to the property; a judgment of possession in the Succession of Shirley Miller; a judgment of possession in the Succession of Henry J. Kuhn, Jr.; an October 2009 cash sale conveying the twenty-five percent interest in the subject property of Tracey to Bryan; an August 2019 donation to Bryan of the twenty-five percent interests of both Henry and Deborah; a November 2019 quitclaim deed from Mark Laughlin to NARS of the tax sale title previously acquired in the tax sale of the subject property; a January 2020 sheriff’s

¹ The tax sale certificate stated, in pertinent part, that the tax collector had “mailed and published the notice required by law” and had “strictly complied with each and every requirement of the law relating to delinquent taxes, tax debtors, and to seizures, advertisements, and sale of tax sale title to the property in full...”

return reflecting citation and personal service on Bryan of the NARS petition to quiet title and for declaratory relief; and an August 2020 affidavit by NARS secretary and director Theresa Laughlin detailing NARS' purchase of the property interest obtained through the August 2015 tax sale certificate. The record was also supplemented with the filing of an updated affidavit by Theresa Laughlin, a copy of the quitclaim deed by Mark Laughlin to NARS, and documents related to a subsequent tax sale unrelated to the matter before this court.²

Following a January 6, 2021 hearing before the district court, a final default judgment was entered against Bryan Kuhn, signed on February 1, 2021, which: confirmed the prior preliminary default; declared that Bryan Kuhn had been duly notified of the tax sale; found that the August 2015 tax sale, evidenced by the tax sale certificate, was valid as to Bryan Kuhn, the owner of an undivided 100% interest in the property; and declared the title to the subject immovable property quieted and that NARS was the full owner of Kuhn's interest, entitled to a writ of possession. Bryan Kuhn devolutively appealed the district court judgment.

On appeal, the appellate court ruled that “*if all of the allegations* set forth in the petition *were denied by defendant*, ... NARS failed to introduce evidence into the record sufficient to overcome those objections and denials” and, therefore, “[t]he evidence offered by NARS in support of a preliminary default was insufficient because no evidence was produced that showed that notice of the tax delinquency or the tax sale had been attempted or made upon the three 2015 co-owners.” **NAR Solutions, Inc. v. Kuhn**, 21-0256 at p. 13 (emphasis added). Thus, the appellate court concluded that “NARS failed to establish a prima facie case to support a default judgment,” and it vacated the district court's February 1, 2021 default judgment

² These documents show that a tax sale title to the instant property was again auctioned for unpaid Jefferson Parish taxes, on August 16, 2017. In that tax sale, the named delinquent taxpayer was Mark Laughlin and the tax sale purchaser was Alpha Capital/BMO Harris. However, NARS redeemed the property on September 21, 2020 on paying the requisite amount of \$14,436.02.

against Bryan Kuhn. **Id.** NARS sought review of the appellate court decision, and we granted its writ application. **NAR Solutions, Inc. v. Kuhn**, 22-00425 (La. 5/24/22), 338 So.3d 45.

LAW AND ANALYSIS

Bryan Kuhn, who was the 100% property owner at the time this action to quiet title was instituted, was duly served, and he was the only named defendant against whom the judgment to quiet title was rendered in this case.

The procedure to quiet title following a tax sale, “[a]fter expiration of the redemptive period,”³ is set forth in La. R.S. 47:2266, which expressly states that “[i]f no proceeding to annul the sale has been instituted after the lapse of six months after the date of service of petition and citation, judgment **shall** be rendered quieting and confirming the title and the full ownership interest therein....” (Emphasis added.) NARS introduced as evidence in the instant action, inter alia, the official certified and duly recorded tax sale certificate as to the subject property, and La. R.S. 47:2155(B) provides that “[a] certified copy of the tax sale certificate is **prima facie** evidence of the regularity of all matters regarding the tax sale and the validity of the tax sale.” (Emphasis added.) See also La. Const. Art. VII, § 25(A) (“A tax deed by a tax collector shall be **prima facie** evidence that a valid sale was made.”) (emphasis added). “Therefore, the former property owner must then carry the burden of proving any defects in the tax adjudication proceedings.” **Smitko v. Gulf South Shrimp, Inc.**, 11-2566, p. 11 (La. 7/2/12), 94 So.3d 750, 757-58.

Because Bryan Kuhn took no action within the prescribed time period to annul the tax sale, that failure is determinative under the particular facts and circumstances of this case, and the judgment of default rendered by the district court in favor of

³ “The property sold shall be redeemable for three years after the date of recordation of the tax sale, by paying the price given, including costs, five percent penalty thereon, and interest at the rate of one percent per month until redemption.” La. Const. Art. VII, § 25(B)(1).

NARS and against Bryan Kuhn was proper. The jurisprudence cited by Bryan Kuhn, rendered under different facts and circumstances and/or arising under the law in existence prior to the changes in the law made by 2008 La. Acts, No. 819, effective January 1, 2009 (see **Central Properties v. Fairway Gardenhomes**, LLC, 16-1855, p. 10 (La. 6/27/17), 225 So.3d 441, 448), is not persuasive in this matter.

DECREE

Accordingly, we reverse the appellate court ruling and reinstate the judgment of the district court.

REVERSED; DISTRICT COURT JUDGMENT REINSTATED.