IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III

STOUT STREET FUNDING, LLC)
STOUT STREET FUND I, LP,)
)
Plaintiff,)
)
VS.)
)
METROPOLITAN GOVERNMENT OF)
NASHVILLE DAVIDSON COUNTY)
in its own capacity for the use and)
benefit of the State of Tennessee, and)
JAMES T. GADDIS, II,)
)
Defendants.)

FC9TT
NO. 12-1418-III

FILED
2013 FEB 11 AM 10:59
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
D.C. & M.

BILL GARRETT, Davidson County
Trans:T20130014608 ORDER
Recvd: 02/21/13 11:50 3 pgs
Fees:17.00 Taxes:0.00
20130221-0017489

MEMORANDUM AND ORDER GRANTING DEFENDANTS' MOTION TO DISMISS, AND DETERMINING PLAINTIFF'S MOTION TO AMEND IS MOOT

Based upon the following, the Court grants the Defendants' motions to dismiss and determines Plaintiff's motion to amend is moot.

1. The undisputed facts are that: (1) the Plaintiff's Deed of Trust on the property in issue was signed by the underlying delinquent taxpayer, Jack Smith, in Arizona two months after the Decree for Sale for delinquent taxes had been entered; (2) the Plaintiff's Deed of Trust was filed on 11/19/10, after Metro's 10/27/10 title search; (3) the Plaintiff took no steps to ascertain the status of taxes on the property; (4) the Plaintiff's Deed of Trust was filed only 26 days before the 12/15/10 tax sale.

2. Established in the affidavit of Attorney Dundon of Metro Legal is that dozens of properties are listed for monthly public auction, and multiple lienholder letters and public notices must go out well in advance of the tax sale so that the parties who do have a recorded interest at the time the decree for sale was entered have sufficient time to respond before the land is sold. Under these circumstances, Metro is incapable of continuously updating its title searches leading up to the date and time of the sale.

3. These facts are alleged in paragraphs 34-39 of the Plaintiff's Second Amended Complaint: (1) that it is the practice of counties contiguous to Davidson to update their tax sale title searches a day before the sale; (2) Knox County updates a few days before sale; and (3) Hamilton County, on its own initiative, sets aside sales where the deed of trust was filed after the initial title search but before the actual sale. These facts, the Court concludes, do not state a claim of a standard of care applicable to Defendant Metro because the differences in size of Metro and those counties, and the unique metropolitan form of government in Davidson County.

4. Based upon the foregoing, the Court concludes as a matter of law that the Plaintiff has failed to state a claim that the Plaintiff's interest was reasonable ascertainable by Defendant Metro. *See, Mennonite Board of Missions v. Adams*, 462 U.S. 771, 800 (1983).

5. The Court further concludes, as a matter of law, that Mr. James T. Gaddis, the purchaser of the property at the tax sale, owed no duty to the Plaintiff to provide notice of the sale of the property.

It is therefore ORDERED that the Defendants' motions to dismiss are granted.

It is further ORDERED that the Court did consider the allegations of the Second Amended Complaint in deciding the motions to dismiss, but that the motion to file the Second Amended Complaint is moot in light of the Court's analysis and ruling on the motions to dismiss.

It is lastly ORDERED that the *lien lis pendens* filed by the Plaintiff on the property in issue is removed.

Court costs are taxed to the Plaintiff.

ELLEN HOBBS LYLE
CHANCELLOR

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF ORIGINAL INSTRUMENT FILED IN MY OFFICE
THIS 21 DAY OF February 2013
CRISTI SCOTT, CLERK & MASTER
BY Vicki Burleigh
DEPUTY

cc: Alan Fister
J. Brooks Fox
Sean Lyons

RULE 58 CERTIFICATION

A Copy of this order has been served by U. S. Mail upon all parties or their counsel named above.

CS 2-11-13
Deputy Clerk and Master Date
Chancery Court