

John W. Larson, District Judge
Fourth Judicial District, Dept. 3
Missoula County Courthouse
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Missoula, MT 59802
(406) 258-4773

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

WELLS FARGO BANK, N.A.,,

Plaintiff,

vs.

ZINVEST, LLC,

Defendant.

Dept. 3
Cause No. DV-20-796

**ORDER GRANTING ZINVEST'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING WELLS
FARGO, N.A.'s CROSS-MOTION
FOR SUMMARY JUDGMENT**

Before the Court is Zinvest, LLC's Motion for Summary Judgment and Wells Fargo's Cross Motion for Summary Judgment. The Court heard oral argument on July 14, 2021, and the matter was deemed submitted.

Background

The Court finds the relevant facts to this motion as the following. Wells Fargo holds a deed of trust against the parcels of land assigned tax parcels 2281204 and 2281300 by the Missoula County Treasurer. Wells Fargo's deed of trust was recorded with the Missoula County Clerk on June 15, 2004, which identifies Wells Fargo as the lender and the lender's address as "P.O. Box 10304, Des Moines, Iowa 50306-0304." Wells Fargo

1 states it inadvertently failed to code the parcel numbers in its system of
2 records and failed to pay the property taxes as outlined in the Deed of Trust.

3 The taxes assessed against each parcel for the tax year 2014 were
4 unpaid (\$145.92 for parcel 2281204 and \$153.98 for parcel 2281300). On
5 July 15, 2015, Missoula County Treasurer conducted a tax lien sale for
6 Parcels 2281204 and 2281300. On March 8, 2016, Missoula County
7 purchased the tax liens for the parcels, and issued Tax Lien Certificates to
8 itself. On March 15, 2016, the Missoula County Treasurer, executed a
9 county treasurer's certificate of tax sale of both parcels 2281204-2281300
10 and assigned the tax lien certificates to Zinvest. The tax sale certificates
11 state "a tax deed shall be issued to the purchaser on or after the 15th day of
12 July 2017, after notification has been duly given as required by law, unless
13 the property is redeemed in the manner as prescribed by law."
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17 On June 1, 2008, Stewart Title provided Zinvest with two Litigation
18 Guarantees for Tax Parcels 2281204 and 2281300. On June 15, 2018,
19 Zinvest mailed notices to Wells Fargo, Robert Loveman, and Stewart Title.
20 On June 15 and June 22, 2018, notices of pending tax liens were published
21 in the Missoulian. On July 11, 2018, Zinvest executed its "proof of notice"
22 attesting it mailed a "notice of issuance of tax deed" to the "owners, current
23 occupant and parties as required by 15-18-212, MCA" via certified mail,
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1 judgment quieting title in favor of Zinvest, LLC. Zinvest asserts that the
2 statute does not impose any duty to investigate and discover an alternative
3 address other than that on the records, and provides that the address for
4 notice to the parties of interest is "the address disclosed by the records in
5 the office of the county clerk and recorder." Mont. Code Ann. § 15-18-
6 212(4)(b). Zinvest asserts its standard practice is to acquire a Litigation
7 Guarantee providing notice addresses for all parties with a recorded interest,
8 and the Litigation Guarantees were delivered to Zinvest on June 15, 2018,
9 listing Wells Fargo Bank as a recorded interest in the properties with the
10 address of "3601 Minnesota Dr., Suite 200, Bloomington, MN 55435."
11 Zinvest asserts that notices of the pending attachment of the tax lien were
12 also published in the Missoulian as required by § 15-17-122, MCA. Zinvest
13 asserts that it gave proper notice to interested parties under the applicable
14 statutes, and had no affirmative duty to do any more than send notice to the
15 address of interested parties found on the records of the County Clerk and
16 Recorder or title guarantee.
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21 Wells Fargo responds that Zinvest was able to acquire property worth
22 nearly \$200,000 for a few hundred dollars by not strictly complying with the
23 tax sale procedures and constitutional due process requirements. Wells
24 Fargo contends that 1) the tax sale certificates assigned to Zinvest
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1 materially misstate the redemption deadline, 2) Zinvest failed to obtain a
2 proper litigation guarantee or provide notice to the "lender's address"
3 identified in Wells Fargo's recorded deed of trust, 3) Zinvest did nothing to
4 provide alternative notice to Wells Fargo when the notices it mailed to the
5 wrong address were returned undelivered, and 4) Zinvest failed to publish
6 proper notice when the notices it mailed to the wrong address were returned
7 and undelivered. Wells Fargo argues that as the tax lien sale occurred on
8 July 15, 2015, the earliest the tax deeds could have been issued was July
9 15, 2018, not 2017. Wells Fargo contends that the tax sale certificates
10 incorrectly state "[a] tax deed shall be issued to the purchaser on or after the
11 15th day of July 2017 after notification has been duly given as required by
12 law." Wells Fargo asserts that the tax lien sale begins a 36-month period
13 during which the property may be redeemed before a tax deed is issued.
14 M.C.A. § 15-18-111(1).
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19 Next, Wells Fargo contends that its address was plainly stated in the
20 Deed of Trust, but the Litigation Guarantees failed to list it. Wells Fargo
21 argues that the "return to" address on the Deed of Trust was intended only
22 as an instruction to the Recorder to return the Deed of Trust after recording
23 and not intended as an address for the receipt of notices related to the Deed
24 of Trust. Wells Fargo argues that it is undisputed that the notices Zinvest
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1 mailed to Wells Fargo were addressed to "3601 Minnesota Drive, Suite 200,
2 Bloomington, Minnesota 55435" and returned to Zinvest marked "return to
3 sender – not deliverable as addressed – unable to forward." Ex. B-2. Wells
4 Fargo asserts that any address from the Litigation Guarantees may only be
5 relied on if it "lists the identities and addresses of the parties of record that
6 have an interest or possible claim of an interest in the property..." 15-18-
7 212(4)(a)(iii), MCA. Wells Fargo contends that Zinvest cannot rely on the
8 Litigation Guarantees because they did not list, or even purport to list, Well's
9 Fargo's address. Wells Fargo also argues that the tax sale certificates
10 produced by Missoula County are defective because they do not correctly
11 "specify the date on which the purchaser will be entitled to a tax deed."
12 M.C.A. § 15-17-212(1)(h). Wells Fargo further argues that "[n]otice of a
13 pending tax sale by publication must be supplemented by personal service
14 or notice mailed to the last known address of interested parties. *Showell v.*
15 *Brosten*, 2008 MT 261, ¶ 18, 189 P.3d 1210, 1214.

20 Zinvest replies that Wells Fargo cannot show that Zinvest failed to give
21 notice under the requirements of the applicable versions of Montana Code
22 Annotated. Zinvest asserts that the 2007 version of the statute § 15-18-111,
23 MCA was current at the time the tax sale certificates were issued. Zinvest
24 contends that the parcels at issue are residential lots with no dwellings and
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redemption of residential and commercial lots may be made within twenty-
four months of the first tax lien sale. Zinvest asserts that as there was no
special district improvement, Zinvest gave notice that the property may be
redeemed by August 21, 2018, allowing the full thirty-six months. As such,
Zinvest asserts that the tax certificates correctly stated that the interested
parties had twenty-four months from the tax lien sale to redeem the parcels,
and Zinvest's notices properly stated that the interested parties had thirty-six
months to redeem the parcels. Zinvest argues that Wells Fargo mistakenly
relies on the amended version of Mont. Code Ann. § 15-18-212, in its
Complaint, and Zinvest properly gave notice within the sixty days as
required by the statute at the time. Zinvest asserts its published notices
were filed on June 22, 2018, which falls within the sixty days as required by
statute. Zinvest argues that M.C.A. § 15-18-212(4)(b) provides that there is
no duty to determine a notice address other than the address found on the
records associated with the property at issue, or as listed on the litigation
guarantee. Zinvest asserts that it, in fact, provided notice twice, as Wells
Fargo and as an interested party with address unknown.

Wells Fargo replies that if no special improvement district assessment,
as conceded by Zinvest, was delinquent, the two-year redemption period
provided by § 15-18-111(2), MCA, does not apply. Wells Fargo further

1 asserts that its address was plainly stated in the Deed of Trust. Wells Fargo
2 argues that Zinvest admits it published notice for an “unknown interested
3 party,” not because it did not know Wells Fargo’s address. Wells Fargo
4 asserts that Zinvest does not dispute that there were reasonable steps it
5 could have taken to locate an address for Wells Fargo—such as examining
6 its Deed of Trust to locate the “lender’s address,” searching for its registered
7 agent on Montana’s Secretary of State’s website, or visiting Wells Fargo’s
8 website.
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11 The Montana Supreme Court has “firmly maintained the position that
12 procedural requirements set forth in tax deed statutes must be strictly
13 observed.” *Zinvest v. Anderson*, 2015 MT 204, ¶ 16, 353 P.3d 1192
14 (quotation omitted). The failure to strictly comply with the requirements
15 related to the tax sale certificates and assignments renders the tax deeds
16 void. *Zinvest v. Anderson*, supra, 2015 MT at ¶ 16. The failure to provide
17 adequate notice in compliance with the statute renders a tax deed void.
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19 *Isern v. Summerfield*, 1998 MT 45, ¶ 28. “[I]f the legal requirements with
20 respect to notice are not complied with, a county treasurer may not legally
21 issue a tax deed.” *Moran v. Robbin*, 261 Mont. 478, 483, 863 P.2d 395, 398
22 (1993).
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25 The first issue before the Court is whether the redemption deadline set
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forth in the tax sale certificates was proper. The 2007 version of Mont. Code Ann. § 15-18-111(2), which applies to unoccupied, residential and commercial lots provides:

For property subdivided as a residential or commercial lot upon which special improvement district assessments or rural special improvement district assessments are delinquent and upon which no habitable dwelling or commercial structure is situated, redemption of a property tax lien acquired at a tax lien sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, or any interested party *within 24 months from the date of the first day of the tax lien sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.*

Montana Bill Text, 2007 Montana House Bill No. 623, Montana Sixtieth Legislature – 2007 Session (emphasis added). Mont. Code Ann. 15-18-111(1) (2007), provides that redemption of a property tax lien may be made “within 36 months from the date of the first day of the tax lien sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.” Here, the tax lien sale occurred on July 15, 2015, and the County Treasurer’s Certificate of Sale states that redemption could be made by July 15, 2017. The Court finds that the tax certificates correctly stated that the interested party, Wells Fargo, had twenty-four (24) months from the tax lien sale to redeem the parcels. The Court finds that the tax sale certificates properly identified the date by which the purchaser was entitled to a tax deed.

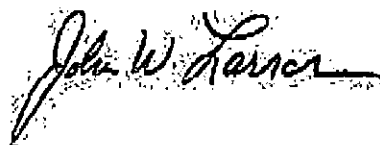
1 The next issue is whether proper notice was provided. Mont. Code
2 Ann. § 15-18-212(4)(b) provides that “[t]he address to which the notice must
3 be sent is, for each party, the address disclosed by the records in the office
4 of the county clerk and recorder or in the litigation guarantee, and, for the
5 occupant, the street address or other known address of the subject
6 property.” Zinvest asserts its practice in fulfilling its obligations under the
7 statutory tax-deed process is to acquire a Litigation Guarantee providing
8 notice addresses for all parties with a recorded interest. See Affidavit of
9 Steve Zimmerer. Both Litigation Guarantees list Wells Fargo Bank as a
10 party with recorded interest in the properties with the address of “3601
11 Minnesota Dr., Suite 200, Bloomington, MN 55435.” See Affidavit of Zainya
12 Zimmerer. The Court finds that the statute at issue provides a litigation
13 guarantee may satisfy the address requirement, and Zinvest requested
14 litigation guarantees in compliance with the statutory notice. Next, Mont.
15 Code Ann. § 15-18-212 was amended, changing the notice deadline from
16 “not more than 60 days prior to and not more than 60 days following the
17 expiration of the redemption period...” Under the earlier version of the
18 applicable statute, Zinvest was required to give notice within the sixty (60)
19 days prior to when the redemption period, which ended on August 21, 2018.
20 This Court has determined that Zinvest’s published notice filed on June 22,
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2018, was correct within the required sixty days, and the tax lien process
was complied with properly. The Court finds that there is no genuine issue
of material fact the statutory requirements for tax lien procedure were met
and no due process violations. Accordingly,

IT IS HEREBY ORDERED that Zinvest, LLC's Motion for Summary
Judgment is GRANTED.

IT IS FURTHER ORDERED that Wells Fargo Bank, N.A.'s Cross-
Motion for Summary Judgment is DENIED.

Dated this 17th day of November, 2021.



JOHN W. LARSON, DISTRICT JUDGE

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