12-2007

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Real Property

by Linda S. Finley*

I. INTRODUCTION

Each year, as the number of cases involving real property reported by Georgia's appellate courts continues to increase, it becomes more and more difficult to determine which cases to include in this survey Article. Nevertheless, this Article discusses case law and legislative developments in Georgia real property law from June 1, 2006 through May 31, 2007, selected either for their significance to real property law, to update attorneys who either regularly or from time to time practice or render opinions regarding real property, or to survey trends. However, as the reader may see, at times the cases surveyed were selected simply for their unusual or thought-provoking facts.

II. LEGISLATION

After one of the longest sessions in Georgia history, the Georgia General Assembly concluded its 2007 legislative session on April 20, 2007.1 Although several bills were introduced that may ultimately

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The Author wishes to give special thanks to Robert A. “Andy” Weathers, Esq., Carol V. Clark, Esq., Teresa L. Bailey, Esq., and Elizabeth Boswell, Esq. for their assistance, research, and analysis. Particularly, the Author directs the reader to Carol V. Clark, Judicial Update, in 1 REAL PROPERTY INSTITUTE PROGRAM MATERIALS (Institute of Continuing Legal Education in Georgia 2007). The Author also wishes to thank Jonathan E. Green, Esq. and Dylan W. Howard, Esq. for their contributions to this Survey and Kitty S. Davis and Sherice Dunham for their assistance in organizing the research and assuring that the Article is in the form required.

affect real property practice, few were passed, and several will be eligible for reconsideration during the 2008 session. Most notable among these are proposed changes to the materialmen's and mechanics' lien statutes, changes to the time period by which a tax deed could ripen by prescription, and changes to the procedure in which the filer of a security deed on property located in multiple counties would pay intangible tax.

The General Assembly did modify sections 15-6-77, 15-6-97, and 15-6-98 of the Official Code of Georgia Annotated ("O.C.G.A."). The amendments to the statutes added a subsection to O.C.G.A. section 15-6-77, subsection (o), which requires the clerk of superior court to cross-reference and cancel instruments upon request and allows the clerk to collect fees (two dollars) for each cross-reference or cancellation entry.

"The purpose of the proposed changes was to address the problems created in the real estate indexes when multiple cross-reference or cancellation requests are attached to and submitted on one document."

Additionally, O.C.G.A. sections 15-6-77(f), 15-6-97, and 15-6-98 were amended to extend the expiration date that applies to the collection, by superior court clerks, of additional filing fees to support the costs of implementing and maintaining the state-wide uniform information system. The expiration date was extended from 2012 to 2014.

III. TITLE TO LAND

Each year there is at least one case which reminds us of Georgia's colonial past. In Black v. Floyd, Floyd filed suit for declaratory judgment seeking to establish title to marshland that lay along Sterling Creek. The Blacks claimed title to the property by virtue of two Crown grants that were made to Sir James Sterling in 1761. As noted by

9. Id.
13. Id. at 525, 630 S.E.2d at 382-83.
the court, under O.C.G.A. section 52-1-2, the state owns title to tidal waterways unless a private party can trace title back to a conveyance by Crown grant or state grant.

In order to prevail, the Blacks were required to show that the two Crown grants upon which they relied contained "an explicit conveyance of the bed of Sterling Creek." Unfortunately, these ancient documents were indecipherable due to their age, and the trial court found that they could not be interpreted as conveying the marshland.

The Georgia Supreme Court affirmed the trial court's finding that even if the interpretation of the Crown grant provided by the Blacks was to be believed, there was no language of explicit conveyance of the creek bed that would show the Crown's clear intent to part ownership with the land. The court further noted that because royal grants are strictly construed against the grantee and nothing is taken by implication, judgment in favor of Floyd was proper.

In Matthews v. Crowder, the Matthewses brought an action against their cousins to halt them from selling the family farm, to have the court declare the rights of the various parties, and to facilitate an equitable accounting. In 1964 Della Crowder executed a warranty deed which purported to convey land to Ethel Crowder, one of her four daughters. The deed was recorded and recited, "This deed shall not take effect until the death of the grantor. At that time it shall have full force and effect." Della Crowder died intestate in 1966 and was survived by Ethel and three other daughters. In 1968 Ethel Crowder deeded the property to her children, Jefferson, James, and Brenda Sue (the "Crowders"). Ethel Crowder lived on the property until her death in 1993. Her son, Jefferson Crowder, lived on the property all of his life and continued to live on the property at the time the suit was filed.

The Matthewses were the heirs at law of Della Crowder's other three daughters. In 2004, when the Matthewses learned of a potential sale of the property, they brought suit under a theory that they and the

16. Id.
17. Id.
18. Id.
19. Id. at 527, 630 S.E.2d at 384.
21. Id. at 843, 642 S.E.2d at 854.
22. Id. at 842, 642 S.E.2d at 853.
23. Id.
24. Id., 642 S.E.2d at 853-54.
Crowders were cotenants of the property. The Crowders counterclaimed for a declaratory judgment that they were the owners of the property. They prevailed on summary judgment, and the Matthewses appealed.\textsuperscript{25} The Georgia Supreme Court held that the 1964 deed was testamentary in character and could not be upheld as a valid deed to convey title.\textsuperscript{26} Therefore, the court determined that upon Della Crowder's death, Ethel Crowder inherited the property along with her three sisters as cotenants, whose successors were the Matthewses.\textsuperscript{27} The Matthewses were not to be the victors, however, because the court determined that Ethel Crowder held title to the property under color of the 1964 document from her mother and that the 1968 deed from Ethel to her own children constituted color of title for the Crowders.\textsuperscript{28} Therefore, the court explained, the Crowders came into full title upon Ethel's death in 1993, and the seven-year period of prescription began to run in favor of the Crowders.\textsuperscript{29} Significantly, during the time prior to filing the lawsuit, the Matthewses did not act as though they owned the property. In particular, they failed to claim an interest when the Georgia Department of Transportation condemned a portion of the land in 1995. Even more telling is that one of the Matthewses had attempted to purchase a portion of the land from the Crowders.\textsuperscript{30}

In \textit{Robinson v. Williams},\textsuperscript{31} the court was once again called upon to settle a dispute among family members who each claimed real property from a deceased relative. Robinson was the niece of Eddie Dunn, who died in July 2003. Following Dunn's death, Robinson, along with Dunn's daughter, Hailey, opened the deceased's safe, which he kept in his bedroom. They found an original 1993 unrecorded quitclaim deed that conveyed Dunn's home to Robinson. Robinson told Hailey that she knew nothing of the deed. Hailey, a mortgage loan processor, recognized the deed as an original because of the indentations made by the notary stamp and because the signatures of her father and the notary were in ink. Robinson's signature, however, was not on the deed. After Robinson was given the deed to examine, she refused to return it to Hailey.\textsuperscript{32}

\begin{itemize}
\item \textsuperscript{25} \textit{Id.} at 842-43, 642 S.E.2d at 853-54.
\item \textsuperscript{26} \textit{Id.}
\item \textsuperscript{27} \textit{Id.}
\item \textsuperscript{28} \textit{Id.} at 844, 642 S.E.2d at 854.
\item \textsuperscript{29} \textit{Id.} at 845, 642 S.E.2d at 855.
\item \textsuperscript{30} \textit{Id.} at 844-45, 642 S.E.2d at 855.
\item \textsuperscript{31} 280 Ga. 877, 635 S.E.2d 120 (2006).
\item \textsuperscript{32} \textit{Id.} at 877-79, 635 S.E.2d at 121-22.
\end{itemize}
When Robinson claimed ownership of the property, Hailey filed suit. A jury found for Hailey, and Robinson appealed. At trial, Robinson testified that the quitclaim deed found was an unsigned photocopy. She claimed to have the signed original Dunn had given to her in 1993, which she recorded within a week after Hailey opened the safe.

The supreme court held that the quitclaim deed was void for want of delivery and affirmed the jury's finding of lack of delivery. The court held, "Execution of a deed without delivery does not pass title, and delivery that passes title must be made during the lifetime of the grantor." The court reversed an award of attorney fees and remanded the matter to the trial court for determination.

IV. CONDEMNATION

In Gwinnett County v. Howington, Gwinnett County instituted condemnation proceedings for a sewer line to acquire two easements over part of a twenty-six acre tract of land. Pursuant to a prior request from Howington, one month after the condemnation action was filed, the zoning was changed from low-density residential use to high-density residential use. One year after the Gwinnett County condemnation was filed, a second condemnation action, seeking to acquire ownership to the entire twenty-six acre tract, was filed by the Gwinnett County School District (the "School District").

At trial, on the County's action, the trial court granted Howington's motion in limine to exclude any evidence that the property was also condemned by the School District. Thereafter, Howington's appraiser testified that based upon the rezoning, adequate compensation for the easements was $132,480. The jury ultimately awarded Howington $133,000 as compensation for the taking of the easements.

The County appealed the verdict, arguing that it should have been permitted to introduce evidence of the School District's condemnation to refute the appraiser's opinion of value and establish that the taking of

33. Id. at 877, 635 S.E.2d at 121-22.
34. Id. at 879, 635 S.E.2d at 122.
35. Id., 635 S.E.2d at 123.
36. Id., 635 S.E.2d at 122 (citing Hall v. Metro. Life Ins. Co., 192 Ga. 805, 807, 16 S.E.2d 576, 578 (1941)).
37. Id. at 880, 635 S.E.2d at 123.
38. This section was authored by Jonathan E. Green, associate in the firm of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC. Vanderbilt University (B.A., 1998); University of Georgia (J.D., cum laude, 2001). Member, State Bar of Georgia.
40. Id. at 348, 634 S.E.2d at 158-59.
41. Id., 634 S.E.2d at 159.
the easements caused no consequential damages to Howington's property. The court of appeals affirmed the trial court's decision to exclude the evidence of the second condemnation action from the trial. The court of appeals held that evidence of the sale of land to condemning authorities is inadmissible to prove the value of the land to be condemned. The court of appeals further determined that the subsequent condemnation of the entire tract did not affect the value of the easements at the time of the taking. The court of appeals also determined that because the rezoning of the property had commenced during the trial of the condemnation action, the value attributed to the rezoning affected the value of the easements at the time of the taking.

In *Orr v. Georgia Transmission Corp.*, the Georgia Transmission Corporation ("GTC") filed a condemnation petition seeking an easement right of way to erect electrical transmission lines and other facilities on Orr's property. The GTC also sought a right of way to enter onto adjacent property to remove dangerous trees. After a hearing, a special master awarded Orr $15,775 as the fair market value of the property to be acquired and $16,000 in consequential damages. Orr filed an exception to the special master's award and, after the court adopted the award, filed a notice of appeal for a jury trial. GTC then paid the amount of the special master's award into the registry of the court on June 5, 2005. On October 13, 2005, the parties filed a consolidated pretrial order in which they stipulated to the amendment of the original petition to remove the dangerous tree maintenance easement.

After amending the petition, Orr filed a motion to elect October 13, 2006, the date of the amendment of the petition, as the date of the taking. The trial court rejected the election. On appeal, the court of appeals affirmed the lower court's decision. In its decision, the court of appeals stated that while the law permits a condemnee to elect whether to use the date of the petition or the date of an amendment of the petition as the taking date, the election can only be used when the condemnor would otherwise stand to reap a windfall. Finding that the deletion of the tree maintenance provision merely deleted surplus language from the easement, the appellate court held that GTC, the

42. *Id.*
43. *Id.* at 349, 634 S.E.2d at 159.
44. *Id.* at 348, 634 S.E.2d at 159 (citing Oglethorpe Power Corp. v. Seasholtz, 157 Ga. App. 723, 724, 278 S.E.2d 429, 430 (1981)).
45. *Id.* at 349, 634 S.E.2d at 159.
46. *Id.*
48. *Id.* at 754-55, 642 S.E.2d 810.
condemnor, would not reap a windfall and that permitting an election would only grant Orr, the condemnee, a windfall. The court of appeals fixed the date of the taking as the date that the petition was filed pursuant to O.C.G.A. section 22-2-109(a). 49

The Georgia Supreme Court granted certiorari and reversed the lower court, determining that the analysis and conclusion of the court of appeals was flawed. 50 The supreme court did not revisit the issue of whether the condemnee was entitled to elect the date of amendment as the date of the taking. Instead, the supreme court held that the court of appeals had erred in holding that the date of the taking was the date that the petition was filed. 51 The supreme court further observed that because the taking by GTC was for electrical lines and not for a public road, O.C.G.A. section 22-2-109(a) would not apply. 52 Ultimately, the supreme court held that the date of the taking was the date on which GTC paid the amount awarded by the special master into the registry of the trial court. 53

In City of Stockbridge v. Meeks, 54 the City sought to condemn property that the Meekses owned and operated as a family business. Prior to filing the condemnation action, the City declared the area to be a slum and adopted a resolution stating a need to build public facilities on the land. 55

A special master awarded the Meekses $325,000 for the property and $96,500 for fixtures, furniture, and relocation expenses. Upon review of the award, the trial court dismissed the petition for failing to set forth sufficient facts to establish a right to condemn the property. 56

On appeal, the City first argued that the dismissal was improper if it was based on a failure to plead a specific use. 57 The court of appeals upheld the trial court’s decision, holding the dismissal to be proper, because (1) the petition did not aver that the condemnation was for a public use and (2) the City presented no evidence before the special master showing that the property was needed for a public purpose. 58

50. Orr, 281 Ga. at 756, 642 S.E.2d at 811.
51. Id. at 757, 642 S.E.2d at 812.
52. Id. at 756-57, 642 S.E.2d at 811.
53. Id.
55. Id. at 343-44, 641 S.E.2d at 585.
56. Id. at 343, 641 S.E.2d at 585.
57. Id. at 344, 641 S.E.2d at 585.
58. Id.
The City also argued that the right to condemn for a valid public purpose is presumed, unless the condemnor's bad faith is shown. The court of appeals rejected this argument as well, holding that O.C.G.A. subsections 22-2-102.2(1) and (5) require a pleading of facts sufficient to show both the right to condemn and the necessity of condemnation by describing the public use for which the land is sought. The court of appeals held this showing was not presumed and the burden of making this showing was squarely on the condemnor.

In Mayo v. City of Stockbridge, Mayo was awarded $58,000 following the condemnation of her property by the City. The City paid the awarded funds into the court's registry and obtained title to the property. Mayo filed a notice of appeal and then withdrew the awarded sums from the court's registry. After a jury trial, Mayo was awarded $63,361. The City moved for, and obtained, an award of attorney fees.

On appeal, Mayo first challenged the trial court's refusal to hear evidence showing that the City had failed to establish that the taking was for a public purpose. The court of appeals held that while Mayo filed a notice of appeal challenging the valuation of the property, she did not file an exception to the special master's finding that would permit her to litigate non-value issues and, therefore, any such objection was waived. The court of appeals further held that Mayo, by withdrawing the money paid into the registry of the court, had acquiesced to the City's condemnation of the property.

Mayo also challenged the trial court's admission of testimony from the City's expert relating to the value of the residence located on the property because the expert did not examine the structure's interior. Noting that the witness had almost fifty years of experience, the court of appeals determined that there was no error in allowing the expert's testimony because it was based upon his observations and knowledge of the value of similar buildings.
Mayo further challenged the trial court's failure to instruct the jury that she would be liable for the City's attorney fees if the jury award did not exceed the special master's award by twenty percent. The court of appeals held that this instruction was not pertinent to the sole issue for the jury, namely, the value of the property. Mayo then challenged the award of attorney fees to the City for allegedly reducing the just compensation awarded. The court of appeals rejected this argument.

Finally, Mayo challenged the trial court's exclusion of certain documents obtained during mediation, including an appraisal with a higher valuation. The court of appeals rejected this final argument, holding that the trial court had not erred because although it had taken the City's motion under advisement, it had not actually excluded the documents.

V. EASEMENTS AND BOUNDARIES

Every year, cases concerning boundaries to real property and easements crossing boundaries continue to be hot topics on appeal. This year was no exception.

In Smith v. Tolar, the court reviewed legal descriptions contained in purported easements and held that while the law does not require "legal perfection" in an easement description, "the description must be sufficiently full and definite to afford [a] means of identification." The Tolars obtained title to property adjoining Smith's property. The Tolars claimed that their deed also granted them an express easement across Smith's land. A recorded easement in the chain of title in a 1941 deed conveyed an interest in "the right to use a road which leads from this land on North side of Creek up the creek and across [sic] the creek to grantees [sic] land on South side of creek." The Tolars contended that the purpose of the recorded easement was to give their predecessor in title, Cannon, "useable access from the north half to the south half" of the land. As successors to Cannon's
interest, the Tolars sought the same privilege. The Tolars submitted a 1964 recorded survey to the trial court purportedly showing the easement across Smith's land.\textsuperscript{81}

In reaching its decision, the court quoted the following rule:

"The test as to the sufficiency of the description of property contained in a deed is whether or not it discloses with sufficient certainty what the intention of the grantor was with respect to the quantity and location of the land therein referred to, so that its identification is practicable."\textsuperscript{82}

Because the deeds provided no means to identify the dimensions of the easement, such as where it began, led, or ended, the court reversed the trial court's grant of summary judgment to the Tolars.\textsuperscript{83}

In \textit{McMurray v. Housworth},\textsuperscript{84} the court reviewed what easements were not. The Housworths sold twenty-four acres of land to the McMurrays. A lake created by a dam was situated on the property. After closing, the McMurrays discovered a recorded nonexclusive easement for the construction, operation, and maintenance of the dam, and for water flow and detention. The owner and operator of the dam retained the right to use it for any purpose not inconsistent with the grantee's rights and privileges under the easement. Having not been made aware of the easement before their purchase, the McMurrays filed suit against the Housworths seeking damages for breach of warranty of title.\textsuperscript{85}

The McMurrays moved for summary judgment on the issue of whether the floodwater detention easement constituted an encumbrance on the property which breached the warranty of title. The Housworths filed a cross-motion for summary judgment claiming that the easement did not breach the warranty.\textsuperscript{86} The trial court granted the Housworths' motion and denied the McMurrays' motion, finding that "floodwater detention easements, like easements for public roadways and zoning regulations, do not breach a general warranty of title."\textsuperscript{87} The trial court also found that the McMurrays had notice of the easement because it was recorded in the county real estate records and because it was visible on the

\begin{thebibliography}{87}
\bibitem{81} Id. at 407-08, 636 S.E.2d at 114.
\bibitem{82} Id. at 408, 636 S.E.2d at 114 (quoting Hedden v. Hilton, 236 Ga. 641, 642, 225 S.E.2d 39, 40 (1976)).
\bibitem{83} Id.
\bibitem{85} Id. at 281, 638 S.E.2d at 422-23.
\bibitem{86} Id., 638 S.E.2d at 423.
\bibitem{87} Id.
\end{thebibliography}
property. The trial court further found that the McMurrays had a duty to inquire about any use restrictions resulting from the easement. 88

The appellate court, in reversing the trial court, determined what the easement was not. The court determined that the easement was not akin to a public roadway and that the sellers' failure to disclose the easement to the McMurrays was a breach of warranty of title. 89 The court also held that easements were not akin to zoning regulations. 90

The court noted that the McMurrays had constructive notice of the easement because it was recorded, which normally would be a compelling reason to exempt an easement from operation of the warranty of title. 91 However, because O.C.G.A. section 44-5-63 92 provides that a general warranty of title covers defects in title even if they are known to the purchaser at the time the deed is given, the court was compelled to disregard the argument for constructive easement and thus reversed the trial court. 93

In Pierce v. Wise, 94 Pierce purchased a triangular-shaped lot with the wide end of the triangle being one-hundred feet fronting Lake Lanier. However, the tip of the triangular parcel gave him access of less than two feet to the public road. After the purchase, Wise orally gave Pierce permission to cross over his neighboring property so Pierce could access his own property. Thereafter, however, Wise and another neighbor, Hopeful, LLC ("Hopeful"), demanded that Pierce cease crossing their land to access his property. 95

Claiming that he had no access to his property, Pierce filed a condemnation suit seeking an easement of access. Following the trial court's denial of cross-motions for summary judgment, the matter went to trial and a jury found that Pierce had a means to access his property. Consequently, the trial court entered judgment for Wise and Hopeful. 96

The court of appeals reversed the trial court, 97 citing O.C.G.A. section 44-9-40(b), 98 which authorizes any property owner to file suit praying for a judgment condemning an easement of access, ingress, and egress

88. Id. at 281-82, 638 S.E.2d at 423.
89. See id. at 283, 638 S.E.2d at 424.
90. Id. at 284, 638 S.E.2d at 424-25.
91. Id., 638 S.E.2d at 424.
95. Id. at 709-10, 639 S.E.2d at 349.
96. Id. at 709, 639 S.E.2d at 349.
97. Id.
over and across the land of another if the condemnor can show he has no other reasonable means of access to the property.\textsuperscript{99}

The evidence showed that the only way Pierce could access his property was by either approaching the property from the water or parking some distance away and hiking there.\textsuperscript{100} The court of appeals determined that the access from Lake Lanier, even though navigable water, was not a reasonable way to access one's property.\textsuperscript{101} In reaching its determination, the court noted that pedestrian access from the two-foot strip at the public roadway was extremely cumbersome and inconvenient because Pierce was forced to park at the end of the street and then hike along the edge of Lake Lanier to his property.\textsuperscript{102}

The court further determined that the neighbors did not suffer any undue inconvenience because evidence showed that all three lots were previously rectangular in shape but became irregularly shaped when reconfigured due to a surveying error.\textsuperscript{103} The court consequently granted the private way, which restored the property's prior access.\textsuperscript{104}

Looking again to who could seek an easement by necessity, the court of appeals in \textit{Read v. Georgia Power Co.}\textsuperscript{105} determined that a tenant did not have an interest in real property owned by a landlord that would allow the tenant to pursue a statutory easement by necessity.\textsuperscript{106}

Read leased property at Lake Rabun owned by Georgia Power. Read's property was landlocked on two sides and bounded by the lake on two sides.\textsuperscript{107} The fifteen-year lease provided: "This lease shall create the relationship of landlord and tenant only between Lessor and Lessee. No estate shall pass from Lessor to Lessee hereunder, Lessee shall have a usufruct only, not subject to levy, sale or attachment."\textsuperscript{108} The lease also provided that Georgia Power "reserves the unrestricted right to grant the right to locate or relocate, and thereafter use, roadways, right-of-way and utility easements, on, across or adjacent to the Premises."\textsuperscript{109}

\textsuperscript{99} \textit{Pierce}, 282 Ga. App. at 710-11, 639 S.E.2d at 350 (citing O.C.G.A. § 44-9-40(b)).
\textsuperscript{100} \textit{Id.}, at 711, 639 S.E.2d at 349.
\textsuperscript{101} \textit{Id.}, 639 S.E.2d at 350 (citing \textit{Int'l Paper Realty Corp. v. Miller}, 255 Ga. 676, 677, 341 S.E.2d 445, 446 (1986)).
\textsuperscript{102} \textit{Id.} at 711-12, 639 S.E.2d at 350.
\textsuperscript{103} \textit{Id.}, at 712, 639 S.E.2d at 351.
\textsuperscript{104} \textit{Id.}
\textsuperscript{105} \textit{283 Ga. App. 451, 641 S.E.2d 680 (2007)}.
\textsuperscript{106} \textit{Id.}, at 453, 641 S.E.2d at 681.
\textsuperscript{107} \textit{Id.} at 451, 641 S.E.2d at 680.
\textsuperscript{108} \textit{Id.}
\textsuperscript{109} \textit{Id.}
Read sought permission from Georgia Power to build a driveway from his leased property to the public road for emergency access on account of his ill health, but the request was denied. Read acknowledged that years before, when the adjoining property owner asked him to join in building a driveway, he refused because he was unable to pay for the construction.\(^{110}\)

Read then filed a complaint seeking an easement by necessity, pursuant to O.C.G.A. section 44-9-40(b), over his leased property and that of his neighbors, arguing that he had no means of ingress or egress to the public road and that he had a legal interest in the leased property. At a motion for summary judgment, the trial court found for Georgia Power and the adjacent lessors. The court found that Read's argument that he maintained an estate for years was rebutted by the language of the lease, which created only a usufruct. The trial court further found that an easement could not exist because Georgia Power owned both the servient estate (the adjoining lands) and the dominant estate (Read's land). Finally, the trial court found that Read had waived his right to seek an easement when he refused to join his neighbor in constructing a driveway.\(^{111}\)

The issue before the appellate court was whether Read "owned an 'interest' in the property that would allow him to pursue a private way across the [adjoining] property.”\(^{112}\) Deciding that the lease provided Read with a mere usufruct, the court held that no property interest passed to the tenant.\(^{113}\) The court further held that Read's argument that he possessed an estate for years failed because "an estate for years does not involve the relationship of landlord and tenant, in which relationship the tenant has no estate but merely has a right of use.”\(^{114}\)

VI. TRESPASS

In Tacon v. Equity One, Inc.,\(^{115}\) the appellate court reviewed, among other things, whether language in a security deed granted a lender authority to enter upon the property of its borrower when the lender had conflicting information regarding whether the property was occu-

\(^{110}\) Id.

\(^{111}\) Id. at 452, 641 S.E.2d at 681.

\(^{112}\) Id.

\(^{113}\) Id. at 453, 641 S.E.2d 681 (citing O.C.G.A. § 44-7-1(b) (1991); Richmond County Bd. of Tax Assessors v. Richmond Bonded Warehouse Corp., 173 Ga. App. 278, 280, 325 S.E.2d 891, 892 (1985)).

\(^{114}\) Id.

Equity One held a security deed on property owned by Tacon. When Tacon defaulted in repayment of the mortgage, Equity One referred the loan to its foreclosure counsel and contacted a local vendor, First American Field Services ("First American"), to inspect the property and determine whether it was occupied or vacant. First American reported that the property was occupied. As part of the foreclosure process, Equity One sought to obtain a price opinion from REO National ("REO"). REO then hired a local realtor, Century 21, to access the property and to report whether it was vacant.

When the real estate agent entered the property, she reported that it was in poor condition and appeared vacant. REO relayed that information to Equity One, and Equity One authorized the realtor to change the locks and winterize the property. When the realtor returned to the property, she found it open, although it had been re-keyed, and she reported to REO that the property was not secured. REO then instructed the realtor to return and secure the property. Upon her return, the realtor spoke with the neighbors who indicated that a tenant had resided in the house but had vacated several months prior. The realtor also retrieved several items of value from the premises and stored them for safekeeping.

Thereafter, Tacon returned to his property and found it had been entered and property was missing. Upon contacting the realtor, Tacon was told that it appeared that the property had been ransacked. Tacon accused the realtor of taking the items, and although the items in storage were returned, Tacon filed suit against REO, the real estate company, and the realtor for trespass. Tacon also filed suit against the lender, Equity One, for negligence in "failing to establish and follow procedures and policies which would prevent the type of wrongs suffered by [Tacon]."

The court of appeals affirmed the trial court's decision that the security deed gave Equity One the right to enter the property under certain circumstances, including default in repayment of the mortgage. Specifically, the security deed provided that "Lender may do and pay for whatever is necessary to protect the value of the Property . . . includ[ing] . . . entering on the Property to make repairs."
Although Tacon argued that the language of the security deed limited the actions of a lender to those described in the deed, the court broadly interpreted the deed language as "examples of what the lender may do or is permitted to do if the borrower defaults, rather than an exclusive list of actions."\textsuperscript{123}

As to Tacon's remaining claims for negligence against the lender, the court of appeals held that there was no trespass and that the trial court's ruling on the other issues properly disposed of the negligence claim.\textsuperscript{124}

In Ceasar v. Shelton Land Co.,\textsuperscript{125} the court of appeals determined who has proper standing to bring a suit for trespass of a cemetery existing on another's land.\textsuperscript{126} The property at issue was sold by the plaintiff's family members to the predecessors of Shelton Land Company ("SLC") in the 1960s. A cemetery of approximately one acre lay on the property and held the remains of Ceasar's family. The cemetery was fenced and the graves were marked until 1995 when SLC burned its property, including the cemetery. Later, when SLC bulldozed the land to make it into a field, Ceasar and his family brought suit for trespass, continuing trespass, and intentional infliction of emotional distress and sought a declaratory judgment. The trial court granted summary judgment to SLC on the basis of standing, abandonment, expiration of the statute of limitations, and lack of proof of the identity of the persons allegedly buried in the cemetery.\textsuperscript{127}

On appeal, the court of appeals held that although SLC owned the land, the plaintiffs were heirs at law of the original owners of the family cemetery and of the persons buried there, and therefore they had standing to bring the trespass action.\textsuperscript{128} The court noted:

"To hold that only those invested with the legal title or easement for burial purposes in the soil where the remains of their deceased loved ones are reverently laid at rest, can maintain an action for the desecration of their graves, would deprive thousands of our rural people whose deceased relatives are buried in cemeteries such as are herein outlined of the right to protect the graves of those whose memory they hold so dear."\textsuperscript{129}

\textsuperscript{123} Id. at 188-89, 633 S.E.2d at 604.
\textsuperscript{124} Id. at 189-90, 633 S.E.2d at 604.
\textsuperscript{126} Id. at 423, 646 S.E.2d at 691.
\textsuperscript{127} Id. at 422, 646 S.E.2d at 690.
\textsuperscript{128} Id. at 423, 646 S.E.2d at 690-91 (citing Jacobus v. Congregation of Children of Isr., 107 Ga. 518, 520-22, 33 S.E. 853, 855 (1899)).
\textsuperscript{129} Id., 646 S.E.2d at 691 (quoting Turner v. Joiner, 77 Ga. App. 603, 611, 48 S.E.2d 907, 913 (1948)).
The court further held that even if the Ceasar family did not "tend" to the cemetery in a formal manner, that failure was insufficient to prove abandonment or to justify summary judgment. A question of fact on the issue of abandonment was created by the fact that the Ceasar family left the cemetery in what they called its "lovely" natural state and had, in the 1960s, contacted the authorities (without success) to stop its desecration.

Upon review of whether the four-year statute of limitations for trespass actions had expired, the court looked to the record, which showed that although the land was burned in 1995, destroying markers and the like, all evidence of the cemetery was not destroyed until the bulldozing in 1999. Because suit was brought in 2002, within three years of the final destruction, the statute had not expired.

Finally, the appellate court determined that the trial court erred by granting summary judgment on the basis that the Ceasars had failed to provide a sufficient legal description of the property. The court stated, "In most actions of this kind involving rural family cemeteries, it would be unusual for there to exist a formal metes and bounds description at the land on which the cemetery stood." Even though the formerly existing boundaries had been destroyed, it was sufficient that the location of the cemetery was generally known and that there was other evidence of its location.

VII. FORECLOSURE

In Gregorakos v. Wells Fargo National Ass'n, the court of appeals addressed the interplay between foreclosure and deed reformation. The property at issue contained both a primary residence and a guest house in which the borrower's mother lived. The borrower obtained a loan from Washington Mutual Bank ("Washington Mutual") that the borrower believed would be secured solely by the primary residence. Soon after closing, the borrower discovered that the loan was actually secured by
the entirety of the property. The borrower contacted a representative of
Washington Mutual, who agreed that there had been an error. Washing-
ton Mutual then directed the closing attorney to correct the deed, but the
correction was never made. The borrower then transferred the guest
house to his mother by quitclaim deed. 139

Subsequently, Washington Mutual assigned the loan to Wells Fargo
National Association ("Wells Fargo"), the borrower defaulted, and Wells
Fargo initiated foreclosure. The borrower's mother then filed a lawsuit
seeking reformation of the security deed, injunctive relief, and claiming
wrongful foreclosure. Wells Fargo filed a motion for summary judgment,
alleging that the borrower's mother lacked standing to seek a reforma-
tion because she was a stranger to the original document. Wells Fargo
also argued that it was a bona fide purchaser for value and, as such, was
immune to any equitable claims. The trial court granted Wells Fargo's
motion, and the mother appealed. 140

The court of appeals affirmed the trial court's decision. 141 First, it
held that the equitable remedy of reformation "is limited to those who
are either parties to the original deed or are in privity with such original
parties." 142 The court defined privity in this context in a limited
manner. 143 "[P]rivity denotes successive relationship to the same right
in the same property . . . ." 144 Because the mother held no cognizable
legal interest in the property at the time the security deed was executed,
the court of appeals held that she could not be in privity with Wells
Fargo, and thus, she lacked standing to seek reformation. 145 The court
of appeals explicitly distinguished this factual scenario from that
addressed by the Georgia Supreme Court in Amin v. Guruom, Inc. 146
In that case, the original grantor conveyed a portion of property to one
party, who then sold it to a third party. 147 The supreme court held
that the original grantor could seek reformation of the deed against the
third party because the third party, having taken successive interests in
the property, was in privity with the original grantor. 148

139. Id. at 745, 647 S.E.2d at 290.
140. Id. at 745-46, 647 S.E.2d at 290-91.
141. Id. at 748, 647 S.E.2d at 292.
142. Id. at 746, 647 S.E.2d at 291 (citing Empire Land Co. v. Stokes, 212 Ga. 707, 709,
95 S.E.2d 283, 285 (1956)).
143. See id. at 746 n.8, 647 S.E.2d at 291 n.8.
144. Id. (quoting Hilton v. Hilton, 202 Ga. 53, 54, 41 S.E.2d 880, 881 (1947)).
145. Id. at 746, 647 S.E.2d at 291.
146. Id. at 746-47, 647 S.E.2d at 291-92; 280 Ga. 873, 635 S.E.2d 105 (2006).
147. Amin, 280 Ga. at 873, 635 S.E.2d at 105.
148. Id. at 874-75, 635 S.E.2d at 106.
In *Gregorakos* the court of appeals further held that because the security deed could not be reformed, the mother's remaining claims, including her claim for wrongful foreclosure, were moot.\(^{149}\) Because the crux of her wrongful foreclosure claim was that the bank should not have foreclosed on the guest house because of the error she sought to reform, the court held that "her inability to 'correct' the deed essentially eviscerate[d] her claim for wrongful foreclosure."\(^{150}\) The court of appeals also noted that her wrongful foreclosure claim was barred by her failure to prove any legal duty owed to her by Wells Fargo.\(^{151}\)

In *Greer v. The Provident Bank, Inc.*,\(^{152}\) The Provident Bank, Inc. ("Provident") sued M.G. Greer, as trustee for the Watkins Drive Trust (the "Trust"), seeking a declaration that Provident's lien was in first position by equitable subrogation.\(^{153}\) The proceeds of the note secured by Provident's lien were used in part to satisfy two prior liens. The Trust obtained its interest in the property by purchase at a nonjudicial foreclosure sale resulting from the borrower's default on a lien junior to those paid off by Provident. The Trust challenged Provident's reliance on equitable subrogation and asserted that its lien was in first position because it was filed, though not indexed, prior to Provident's lien.\(^{154}\)

Reviewing the trial court's denial of the Trust's motion for summary judgment, the court of appeals noted that equitable subrogation is applied for the purpose of ensuring "'complete, essential, and perfect justice between all the parties, without regard to form.'"\(^{155}\) Applying that standard, the court held that Provident's interest would be subrogated if Provident was not guilty of inexcusable neglect, if the superior equity of other parties would not be prejudiced, and if the exercise of the right of subrogation would not substantially prejudice the Trust's rights.\(^{156}\)

The Trust argued (1) that equitable subrogation could not be applied to prejudice a purchaser at a nonjudicial foreclosure sale and (2) that it was protected by its status as a bona fide purchaser for value.\(^{157}\) The court of appeals denied both arguments, noting that at the time it purchased the property, the Trust had actual notice of the existence of

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150. *Id.*
151. *Id.* at 747-48, 647 S.E.2d at 292.
153. *Id.* at 566, 639 S.E.2d at 378.
154. *Id.* at 567, 639 S.E.2d at 379.
155. *Id.* at 568, 639 S.E.2d at 380 (quoting Davis v. Johnson, 241 Ga. 436, 439, 246 S.E.2d 297, 300 (1978)).
156. *Id.* at 569, 639 S.E.2d at 380.
157. *Id.*
the prior liens paid off by Provident. Because the Trust took its interest in the property subject to the prior liens, and Provident sought only to subrogate its interest to the status of these liens, the court of appeals held that the Trust could not be prejudiced by the application of equitable subrogation.

The Trust presented evidence that prior to purchasing the property, it contacted the lien holders and verified that the previous liens had been satisfied. Even though the prior liens remained open of record, the Trust claimed it justifiably relied on the information that the liens were satisfied. The court of appeals refuted this argument, concluding that while the Trust verified the loans were satisfied, it failed to determine the circumstances under which the satisfaction occurred. Because it was possible that the previous loans were satisfied with the proceeds of a new loan, the court held that the Trust’s reliance on their reported status was misplaced.

The court of appeals ultimately held that the Trust had notice of the facts underlying Provident’s equitable subrogation claim and that, as a result, the Trust could not prove as a matter of law that it would be substantially prejudiced by the claim.

In Mitchell v. Interbay Funding, LLC, a dispute arose between Interbay Funding, LLC (“Interbay”) and Samuel and Susan Mitchell, its borrowers, regarding Interbay’s demand that the Mitchells obtain flood insurance on the property at issue. The Mitchells claimed the requirement was fraudulent because the original loan documents stated that such insurance was unnecessary. Interbay then secured coverage and told the Mitchells that their monthly payment would increase to cover the cost of the premiums. The Mitchells continued to pay their standard monthly payment but refused to tender any additional money. After several months, Interbay returned one payment for insufficient funds and explained that the Mitchells would have to pay the entire balance owed. Several months later, the Mitchells declared bankruptcy. Pursuant to their bankruptcy plan, the Mitchells made several payments which Interbay accepted. Eventually, the Mitchells ceased making payments, and Interbay foreclosed on the property.

158. Id.
159. See id.
160. Id. at 570, 639 S.E.2d at 380-81.
161. Id.
162. See id., 639 S.E.2d at 381.
163. Id.
165. Id. at 323-24, 630 S.E.2d at 910.
In response to a dispossessory proceeding, the Mitchells filed a counterclaim for wrongful foreclosure alleging that the insurance billing was fraudulent and that Interbay acted in bad faith. The trial court granted Interbay's motion for summary judgment on the counterclaim, and the Mitchells appealed.\(^{166}\)

The court of appeals upheld the trial court's decision.\(^{167}\) Even if the Mitchells were justified in refusing to pay the insurance premiums, the court held that their failure to make their standard monthly payment justified the foreclosure.\(^{168}\) The court also denied the Mitchells' argument that because Interbay had rejected an earlier payment, any further monthly tender would have been useless.\(^{169}\) The court stated, "It is true that 'a tender is unnecessary where the person to whom the money is due states that the tender would be refused if made.'"\(^{170}\) The court noted, however, that Interbay had in fact accepted subsequent payments and concluded that because the Mitchells provided no evidence supporting their claim that Interbay would not accept future payments, their wrongful foreclosure claim was properly denied.\(^{171}\)

In *Riverview Condominium Ass'n v. Ocwen Federal Bank, FSB*,\(^{172}\) a dispute arose between the parties over the distribution of proceeds received from a foreclosure conducted by Ocwen Federal Bank, FSB ("Ocwen"). Riverview Condominium Association, Inc. ("Riverview") was the owner of the property at the time of foreclosure as a result of a sheriff's sale it initiated for unpaid condominium assessments. While Riverview admittedly owned the property subject to Ocwen's interest, Riverview disputed Ocwen's contention that the sale generated no excess proceeds. Riverview filed the lawsuit seeking an equitable accounting of proceeds from the foreclosure sale.\(^{173}\) The trial court denied Riverview's claim in this regard, and the court of appeals affirmed the denial.\(^{174}\)

A party's right to a distribution of excess proceeds is governed by the terms of the security deed.\(^{175}\) The security deed at issue required that

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166. *Id.* at 324, 630 S.E.2d at 910-11.
167. *Id.* at 325, 630 S.E.2d at 911.
168. *Id.*
169. *Id.*
171. *Id.*
173. *Id.* at 7, 645 S.E.2d at 6-7.
174. *Id.* at 9, 645 S.E.2d at 8.
175. *Id.* at 8, 645 S.E.2d at 7 (citing Gordon v. S. Cent. Farm Credit, 213 Ga. App. 816, 817, 466 S.E.2d 514, 515 (1994)).
foreclosure proceeds first pay "the costs and expenses of said sale, the expenses of protecting the property and an attorney's fee of Seventy-five Dollars ($75.00) or one per centum (1%) upon the amount of the sale."\textsuperscript{176} Riverview alleged that this provision limited the total fees payable to one percent of the sale price.\textsuperscript{177} The court disagreed, concluding that the one-percent limitation applied solely to attorney fees.\textsuperscript{178} Subtracting the total amount of the costs and expenses of the sale as well as the principal and interest owed from the total amount paid at the sale, the court of appeals concluded that there were no excess proceeds.\textsuperscript{179}

Because there were no excess proceeds, the court concluded that Riverview was not entitled to an equitable accounting: "The sufficiency of a petition for an equitable accounting depends 'upon whether the facts alleged showed that on an accounting the petitioner will likely be entitled to recover judgment for some amount."\textsuperscript{180}

VIII. TAXATION OF REAL PROPERTY

Although O.C.G.A. section 48-5-299(c),\textsuperscript{181} which precludes the reassessment of real property for a period of two years after a value has been calculated by a county's board of equalization,\textsuperscript{182} has long been in effect, in \textit{Mundell v. Chatham County Board of Tax Assessors},\textsuperscript{183} the court of appeals further explored the timing of the stay on reassessment.\textsuperscript{184}

Real property owned by the Mundells was assessed with a value of $137,500 in 1999, increasing from a previous tax value of $51,500. The Mundells appealed the assessment to the Chatham County Board of Equalization, which subsequently established the property value as $120,000. The Mundells appealed the board's decision to the superior court.\textsuperscript{185}

In 2000, while the superior court action was pending, the Board of Tax Assessors notified the Mundells that the property had again been reassessed, setting the new value at $137,000. The Mundells appealed

\textsuperscript{176.} Id. at 9, 645 S.E.2d at 8.
\textsuperscript{177.} Id. at 8, 645 S.E.2d at 7.
\textsuperscript{178.} Id. at 9, 645 S.E.2d at 8.
\textsuperscript{179.} Id.
\textsuperscript{180.} Id. at 8, 645 S.E.2d at 7 (quoting Charles S. Martin Distrib. Co. v. Roberts, 219 Ga. 525, 134 S.E.2d 587, 588 (1964)).
\textsuperscript{182.} See id.
\textsuperscript{184.} Id. at 391, 634 S.E.2d at 182.
\textsuperscript{185.} Id. at 389, 634 S.E.2d at 180.
the subsequent assessment, and the Board of Equalization set the value of the property for the 2000 tax year at $120,000. The Mundells appealed the decision regarding the year 2000 tax value to the superior court on the grounds that the statute precluded an increase of the taxable value.\textsuperscript{186}

Shortly after the second appeal was initiated, the superior court entered a consent judgment in the appeal of the first case which established the property's 1999 tax value at $51,500. With the consent order in hand, the Mundells sought summary judgment in the second appeal, arguing that the consent judgment (the first case) entitled them to a ruling that the value of the property for the tax year 2000 was $51,500 because O.C.G.A. section 48-5-299(c) precluded the increase in assessed value.\textsuperscript{187} The Mundells relied upon language in the statute providing,

"Real property, the value of which was established by an appeal in any year, that has not been returned by the taxpayer at a different value during the next two successive years, may not be changed by the board of tax assessors during such two years for the sole purpose of changing the valuation established or decision rendered in an appeal . . . ."\textsuperscript{188}

The County responded that the Mundells' theory was flawed because it would give them an additional "freeze year" that was not contemplated by the statute.\textsuperscript{189} The superior court granted summary judgment to the Mundells to the extent that the property valuation for 1999 was $51,500, which would apply to the 2000 and 2001 taxes, but the court stipulated that the freeze would not apply to the 2002 taxes. The Mundells appealed.\textsuperscript{190}

The court of appeals, applying rules of statutory construction, held that "a ruling pursuant to [O.C.G.A. section] 48-5-299(c) does not 'establish' the value of the real property as contemplated by that Code provision so as to entitle a taxpayer to an additional two-year period of protection."\textsuperscript{191} Accordingly, although the Mundells were given the benefit of the first appeal and the ensuing property assessment of $51,500 for the 2000 and 2001 tax years, that value would not apply for the 2002 tax year.\textsuperscript{192}

\textsuperscript{186} Id., 634 S.E.2d at 181.
\textsuperscript{187} Id.
\textsuperscript{188} Id. (quoting O.C.G.A. § 48-5-299(c)).
\textsuperscript{189} Id.
\textsuperscript{190} Id. at 390, 634 S.E.2d at 181.
\textsuperscript{191} Id. at 391, 634 S.E.2d at 182.
\textsuperscript{192} See id.
In *Hamilton v. Renewed Hope, Inc.* ("Hamilton II"),\(^{193}\) the appellate court reviewed whether a purchaser of a tax deed exercised reasonable diligence in attempting to locate the taxpayer to give notice of the foreclosure and of her right to redeem property previously sold at a tax sale.\(^{194}\)

The court had previously heard the case in *Hamilton v. Renewed Hope, Inc.* ("Hamilton I")\(^{195}\) on the issue of personal service upon the taxpayer, Hamilton.\(^{196}\) The record of *Hamilton I* indicated that Hamilton did not reside at the property and that personal service was attempted only at that property. The record failed to show whether Renewed Hope, Inc. ("Renewed Hope") made any other efforts to locate Hamilton.\(^{197}\) Accordingly, in *Hamilton I* the court held that after a failure of personal service, the purchaser of the tax deed "was required to 'make reasonably diligent efforts beyond the use of tax and real estate records in order to ascertain the address of the delinquent taxpayer.'"\(^{198}\)

On remand from *Hamilton I*, Renewed Hope presented additional evidence, and the trial court granted summary judgment. The trial court found that Renewed Hope had made the required reasonable, diligent efforts to locate Hamilton for personal service and that when it could not do so, service by publication was sufficient.\(^ {199}\)

In *Hamilton II*, the supreme court held that Renewed Hope had made diligent efforts to locate Hamilton including "'additional reasonable steps'" available to it.\(^{200}\) These additional steps included attempting to speak with Hamilton's tenants in order to discover her location, posting a notice on the door of the property, placing notices under the door, seeking information from the on-site property management company, and attempting to get information from Hamilton's mortgage company.\(^ {201}\)

Hamilton contended that Renewed Hope should have attempted to locate her by researching the docket of the State Court of Fulton County (Atlanta), and had they done so, they would have found her current contact information in that court's records. She further contended that Renewed Hope should have used the telephone directory to contact her

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194. Id. at 393, 637 S.E.2d at 413.
196. *Hamilton II*, 281 Ga. at 393, 637 S.E.2d at 413.
197. Id.
198. Id. (quoting *Hamilton I*, 277 Ga. at 468, 589 S.E.2d at 85).
199. Id.
200. Id. at 393-94, 637 S.E.2d at 413 (quoting Jones v. Flowers, 547 U.S. 220, 223 (2006)).
201. Id. at 394, 637 S.E.2d at 414.
and that her correct address was listed in the phone book.\textsuperscript{202} The court did not agree, noting that the phone directory upon which Hamilton relied was out-of-date and for use only in the month that personal service was initially attempted.\textsuperscript{203} The court further observed that because Renewed Hope had no reason to know that Hamilton did not live at the property until after it attempted service, that particular phone book was useless in this case.\textsuperscript{204} Consequently, the supreme court affirmed the trial court's decision.\textsuperscript{205}

In Marathon Investment Corp. \textit{v.} Spinkston,\textsuperscript{206} the supreme court again reviewed the diligence required in providing notice to taxpayers and decided that in certain situations, failure to give such notice was a violation of constitutional due process protections.\textsuperscript{207}

Marathon Investment Corporation ("MIC") was the successful bidder at a tax sale for property titled to the trustees of the Hills Avenue Baptist Church (the "Church"). Following expiration of the one-year statutory period,\textsuperscript{208} MIC filed notice of foreclosure of the right to redeem and served the trustees of the Church. The Church did not tender the redemption price, and thereafter MIC filed a quiet title action. The trustees answered the action, asserting that as property of the Church, the realty was tax exempt and the tax sale was therefore void or voidable. Following the approval and adoption of a special master's report finding in favor of the Church, MIC appealed.\textsuperscript{209}

The first issue for the court was whether the property, which was a vacant lot used for parking and located adjacent to the Church, was exempt from \textit{ad valorem} taxes pursuant to the statute exempting places of religious worship from taxation.\textsuperscript{210} The court held that the exemption statute does not limit tax exemption to sanctuaries because it uses the general term of "all places of religious worship" and does not "employ the terms "house" or "church" of religious worship."\textsuperscript{211} Therefore, the court concluded that the vacant lot used by the congregants for parking was appropriate for tax exemption.\textsuperscript{212}

\begin{itemize}
\item \textsuperscript{202} \textit{Id.}
\item \textsuperscript{203} \textit{Id.} at 395, 637 S.E.2d at 414.
\item \textsuperscript{204} \textit{Id.}, 637 S.E.2d at 414-15.
\item \textsuperscript{205} \textit{Id.} at 396, 637 S.E.2d at 415.
\item \textsuperscript{206} 281 Ga. 888, 644 S.E.2d 133 (2007).
\item \textsuperscript{207} \textit{Id.} at 890-91, 644 S.E.2d at 135.
\item \textsuperscript{208} \textit{See} O.C.G.A. § 48-4-42 (Supp. 2006).
\item \textsuperscript{209} Marathon, 281 Ga. at 888, 644 S.E.2d at 133-34.
\item \textsuperscript{210} \textit{Id.}; \textit{see} O.C.G.A. § 48-5-41(a)(2.1)(A) (Supp. 2006).
\item \textsuperscript{211} Marathon, 281 Ga. at 888, 644 S.E.2d at 134 (quoting Roberts \textit{v.} Atlanta Baptist Ass'n, 240 Ga. 503, 508, 241 S.E.2d 224, 228 (1978)).
\item \textsuperscript{212} \textit{Id.} at 888-89, 644 S.E.2d at 134.
\end{itemize}
Next, the court looked to the notice provided to the trustees that ad valorem taxes were due and noted that the trustees did not contest the tax assessment or claim a tax exempt status because they received no notice of taxes due.\textsuperscript{213} The court also observed that all tax notices were sent to an address where neither the trustees nor any church member had ever resided.\textsuperscript{214} The court further noted that there was no evidence that after the notices to the incorrect address were returned, any additional effort was made by MIC to locate the trustees, even though they were listed in the past and current telephone directories.\textsuperscript{215}

Turning from the law that "'defects in following the notice provisions of the tax sale statute may give an injured party a claim for damages, but will not render the tax sale or the deed therefrom void,'"\textsuperscript{216} the court held that the failure to give proper notice to owners of tax exempt property is "potentially of constitutional magnitude."\textsuperscript{217} The court observed that as a practical matter, the trustees, and thus the Church, had no notice at all that taxes were due.\textsuperscript{218} The court noted the special master's conclusion that "'it [was] uncontroverted that neither [Trustee] expected a tax billing statement as the [s]ubject [p]roperty was thought to be tax exempt due to its use solely by the Church.'"\textsuperscript{219} The court therefore held that because the trustees were not given notice "'reasonably calculated ... to apprise [them] of the pendency of a tax sale,'"\textsuperscript{220} their due process rights were violated by the sale, and the tax deed to MIC was void.\textsuperscript{221}

MIC further argued that the trustees lacked standing to contest the sale because they or the Church failed to tender the unpaid taxes.\textsuperscript{222} The court did not agree, holding that "'the requirement that the redemption price be tendered before the validity of [the] tax deed can be challenged does not apply'" if taxes were not due at the time of the sale.\textsuperscript{223} Here, because the property in question was tax exempt, no

\textsuperscript{213} Id. at 889, 644 S.E.2d at 134.
\textsuperscript{214} Id.
\textsuperscript{215} Id.
\textsuperscript{216} Id., 644 S.E.2d at 135 (quoting GE Capital Mortgage Servs. v. Clack, 271 Ga. 82, 83, 515 S.E.2d 619, 621 (1999)).
\textsuperscript{217} Id. at 890, 644 S.E.2d at 135.
\textsuperscript{218} Id.
\textsuperscript{219} Id. (brackets in original).
\textsuperscript{220} Id. (quoting Hamilton I, 277 Ga. at 467, 589 S.E.2d at 84).
\textsuperscript{221} Id. at 891, 644 S.E.2d at 135.
\textsuperscript{222} Id.
\textsuperscript{223} Id.
taxes were ever due, and no redemption was required to challenge the validity of MIC's claim.\textsuperscript{224}