

UNDERWRITING BULLETIN TO LOUISIANA AGENTS

From: Stephen G. Sklamba, State Underwriting Counsel

Dated: October 23, 2012

Bulletin No: LA12-04

Name: Tax Sales

A September 28, 2012 order of the Louisiana Supreme Court makes it clear that a tax sale purchaser may not have a merchantable title despite the fact that he has obtained a judgment confirming tax title and quieting title.

The Court's recent grant of writ application in *Chase Bank, USA et al v. Webeland, Inc. et al*, was accompanied by an order reversing the decision of the First Circuit Court of Appeal, reported at 2011 WL 6779555. The order reinstated the district court's denial of defendant's exceptions of prescription and res judicata.

The First Circuit in this case had refused to follow the holding of the Fourth Circuit decision in *Sutter v. Dane Investments, Inc.*, 2007-1268 (La. App. 4th Cir. 6/4/08).

In *Sutter*, the Fourth Circuit allowed the tax debtor to maintain his suit to annul the tax sale of his property after a judgment in favor of the tax sale purchaser had been rendered in a suit to confirm the tax sale and quiet title.

The First Circuit in *Chase Bank, USA* took the position that the *Sutter* decision was in error as it disregarded "the preclusive effect of *res judicata*," and "cast doubt upon the efficacy of a suit to quiet a tax title."

The Louisiana Supreme Court, in deciding the conflict between the First and Fourth Circuits, has adopted the rationale of the Fourth Circuit. Thus, a tax debtor

may seek to annul a tax sale even after there has been a final judgment in a suit to quiet title.

The Louisiana Supreme Court in *Smitko v. Gulf South Shrimp, Inc.*, 11-2566 (La. 7/2/12), in annulling tax sales where the owner did not receive notice prior to the tax sale, held that the tax debtor is not precluded from challenging the tax sales after the prescriptive period has run. Prescription did not run where the tax sale was an absolute nullity due to failure of the sheriff to notify the tax debtor prior to the sale.

Underwriting Guidelines

WFG will only insure a tax title under a tax deed prior to 2009 if:

- 1) There is sufficient documentation indicating that all owners of the property and those holding mortgages (conventional and judicial) have received **prior** notice of the tax sale, i.e. notice before the tax sale occurred.
- 2) A judgment in a suit to quiet title recites that there has been a finding that proper notice was received by all owners and mortgage holders, and
- 3) Evidence of the notices is filed in the quiet title action.

If you are attempting to insure any title containing a tax sale in the chain of title and believe that an exception should be made for a particular title, please contact underwriting.

This bulletin only pertains to tax sales under the old tax sale law. We will be monitoring cases under the new statute (effective January 1, 2009) and will from time to time be updating this bulletin, as cases under the new statute are reported.

The Supreme Court of the State of Louisiana

CHASE BANK USA, N.A., AND DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR JP MORGAN MORTGAGE ACQUISITION TRUST 2007-CH3, ASSET BACKED PASS-THROUGH CERTIFICATES, SERIES 2007-CH3 NO. 2012-CC-0240

VS.

WEBELAND, INC., MALISE PRIETO, IN HER OFFICIAL CAPACITY AS CLERK OF COURT FOR ST. TAMMANY PARISH, AND RODNEY STRAIN, JR., IN HIS OFFICIAL CAPACITY AS SHERIFF AND EX-OFFICIO TAX COLLECTOR FOR ST. TAMMANY PARISH

IN RE: Chase Bank USA N.A. et al.; Deutsche Bank National Trust Company as Trustee for JP Morgan Mortgage Acquisition Trust 2007-CH3 Asset Backed Pass-Through Certificates Series 2007-CH3; - Plaintiff(s); Applying For Supervisory and/or Remedial Writs, Parish of St. Tammany, 22nd Judicial District Court Div. F, No. 2010-12725; to the Court of Appeal, First Circuit, No. 2010 CW 2180;

September 28, 2012

Granted. The district court did not err in denying the exceptions of prescription and res judicata. See *Smitko v. Gulf South Shrimp, Inc.*, 11-2566 (La. 7/2/12), So. 3d ; *Sutter v. Dane Investments, Inc.*, 07-1268 (La. App. 4 Cir. 6/4/08), 985 So. 2d 1263, writ denied, 08-2154 (La. 11/14/08), 996 So. 2d 1091; see also *C & C Energy, L.L.C. v. Cody Investments, L.L.C.*, 09-2160 (La. 7/6/10), 41 So. 3d 1134. Accordingly, the judgment of the court of appeal is reversed, the judgment of the district court is reinstated, and the case is remanded to the district court for further proceedings.

BJJ

JPV

JTK

JLW

GGG

MRC

Supreme Court of Louisiana
September 28, 2012



Deputy Clerk of Court
For the Court