

# NOT AN OFFICIAL DOCUMENT

Filed in Open Court

March 3, 2023

LAKE CIRCUIT COURT

STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

IN THE LAKE CIRCUIT COURT

CAUSE NO. 45C01-1909-TP-001617

L.I.A. ENTERPRISES, LLC )

Petitioner, )

PARCEL NUMBER:  
45-07-12-256-017.000-004

v. )

MICHAEL L BRITTON )

Respondents, )

GINA PIMENTEL  
RECORDER  
STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2023-009644

9:37 AM 2023 Mar 31

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come before the Court on January 6, 2023, for a bench trial on Respondent's Trial Rule 60(B) Motion for Relief from Order filed April 14, 2022. Petitioner, L.I.A. Enterprises, LLC appeared in person and by counsel, Michael Kavachkoff. Respondent, Michael Britton appeared in person and by counsel, Lonnie Randolph and the Lake County Auditor's office appeared by counsel Randy Wyllie. Hearing held, parties sworn, testimony and documentary evidence presented. At the conclusion of the final hearing, the Court took this matter under advisement and the Parties were ordered to submit Proposed Findings of Fact and Conclusions of Law.

When rendering this decision, the Court has carefully considered all of the testimony and evidence presented, and has given due consideration to all of the current statutes and case law. The Court renders these findings after having assessed the credibility of the witnesses and after giving due consideration to their testimony. The Court has seen witnesses, observed their demeanor, and has scrutinized their testimony as it came from the witness stand.

#### I. FINDINGS OF FACTS

##### PROCEDURAL HISTORY

1. On September 19, 2017, the *Treasurer* of Lake County sold 1344 Hanley Street, Gary, Indiana 46406 ("Property") for delinquent taxes and / or special assessments to Deed Grabber Tax Lien Fund, LLC.
2. Tax Sale Certificate Number: 451703495

**FILED**

MAR 31 2023

PEGGY HOLINGA KATONA  
LAKE COUNTY AUDITOR

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3. On October 31, 2017, an *Assignment of Tax Lien Certificate (Assignment)* was executed transferring the tax lien certificate from DeedGrabber Tax Lien Fund, LLC to L.I.A. Enterprises, LLC.
4. The Court finds Richard Dawson, Manager for DeedGrabber Tax Lien Fund, LLC, signed the *Assignment*, which was notarized by Lia Dawson.
5. On September 20, 2019, L.I.A. Enterprises, LLC, by its former counsel, David Braatz, filed a *Verified Petition for Issuance of Tax Deed (Petition for Tax Deed)* for the Property. Attached to the *Petition for Tax Deed* was the following:
  - Exhibit A: Title Work
  - Exhibit B: Documents / Receipts Evidencing Tax Sale Noticing
6. Exhibit A - Title Work: listed Michael Britton as the owner of the Property; and Exhibit B - Service List: including the following:  
Michael Britton, 1344 Hanley Street, Gary, IN, 46406,  
Paul Chael, Bankruptcy Trustee, 401 West 84<sup>th</sup> Drive, Suite C, Merrillville, IN, 46410,  
Teresa Britton c/o Attorney William Enslin, 142 Rimbach Street, Hammond, IN, 46320  
and Credit Acceptance Corporation, 25505 Twelve Mile Rd, Southfield, MI 48034.
7. The *Notice of Right of Redemption from Tax Sale*, pursuant to **Ind. Code § 6-1.1-25-4.5 (4.5 Notice)** was dated November 11, 2017, stating the redemption period would expire on September 19, 2018.
8. Certified Mail Tracking issued by the United States Postal Service demonstrated the 4.5 *Notice*, sent by certified mail, was left *unclaimed* with the final hold expiring on December 5, 2017. The *unclaimed 4.5 Notice*, sent by certified mail, was returned to its original sender on December 13, 2017.
9. Certified Mail Tracking issued by the United States Postal Service demonstrated the 4.6 *Notice*, sent by certified mail, was left *unclaimed / being returned to the sender*, on October 17, 2019. The *unclaimed 4.6 Notice*, sent by certified mail, was returned to its original sender on October 21, 2019.
10. The Property was not redeemed.
11. On December 5, 2019, this Court held a hearing on the *Petition for Tax Deed* filed on September 20, 2019. Attorney Braatz appeared on behalf of Petitioner, L.I.A. Enterprises, LLC and Respondent failed to appear. There were no other objectors present at the hearing and the Lake County Auditor had no objection to the issuance of the tax deed. This Court **GRANTED** said *Petition for Tax Deed*.

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12. On February 5, 2020, the Respondent, by counsel, John Craig and Megan Craig of Craig and Craig, LLC filed an *Ind. Trial Rule 59 and 60*, requesting to set aside the tax sale and the subsequent issued tax deed for the following reasons: *Proper certification and notice (4.5 and 4.6) was not provided to all persons with a substantial interest of public record; Proper statutory proceedings were not followed due to Respondent's bankruptcy proceedings.*
13. On March 17, 2021, attorneys John Craig and Megan Craig withdrew as counsels.
14. On April 7, 2021, Respondent, Michael Britton, self-represented, renewed his *Motion to Set Aside the Tax Deed* by filing a handwritten *Motion* citing lack of notice of the 4.5 and 4.6 notices and stating, *"4.5 and 4.6 letters were not sent to me by certified mail"*.
15. On April 22, 2021, this Court held a Pre-Trial hearing wherein attorney Richard Dawson substituted as counsel for attorney David Braatz and appeared as counsel for Petitioner, L.I.A. Enterprises, LLC and the Respondent appeared in person and self-represented. The parties reported no agreements and a bench trial date of July 22, 2021, was scheduled by the Court.
16. On July 22, 2021, a full evidentiary hearing was held. Attorney Dawson appeared as counsel for Petitioner and Respondent appeared in person and self-represented. The Lake County Auditor appeared by its counsel, Randy Wyllie. The parties submitted the presentation of evidence and testimony and the Court took the matter under advisement.
17. On July 28, 2021, this Court issued its **ORDER** denying Respondent's *Motion to Set Aside Tax Deed*.
18. On August 27, 2021, Respondent, by his counsel, Lonnie Randolph filed an *Ind. Trial Rule 59 Motion to Correct Error* citing nine counts (I-IX).
19. On November 29, 2021, Respondent, by counsel, filed a *Motion to Amend Respondent's Trial Rule 59 Motion to Correct Error*.
20. On December 2, 2021, a hearing was held on Respondent's *Ind. Trial Rule 59 Motion to Correct Error* and his *Motion to Amend Respondent's Trial Rule 59 Motion to Correct Error*.
21. On December 3, 2021, this Court issued its **ORDER** ruling as follows:
  - (1) *No newly discovered evidence was produced by Respondent that did not exist at the time of the hearing on July 22, 2021.*
  - (2) *That Respondent failed to demonstrate he acted with due diligence in attempting to discover the evidence before the July 22, 2021 hearing.*

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- (3) Respondent was provided sufficient time to obtain counsel to represent him at the July 22, 2021 hearing.
- (4) As such, Respondent's Motion to Correct Errors is **DENIED**.

22. On April 14, 2022, Respondent, by counsel, filed *Defendant, Michael L. Britton's Trial Rule 60(B) Motion for Relief from Order* stating this Court failed to address the Counts I-IX listed in Respondent's *Motion to Correct Error*, specifically the allegation of fraud upon the Court.
23. On April 14, 2022, Petitioner, by its counsel, filed an *Objection to Michael L. Britton's Trial Rule 60(B) Motion for Relief from Order*.
24. On April 28, 2022, this Court entered an **ORDER** denying Respondent's *Trial Rule 60(B) Motion for Relief from Order*.
25. On May 20, 2022, Respondent, by counsel, filed a *Motion to Correct Error* citing error by the Court for the following reasons: the trial Court failed to state findings of facts and conclusions of law and a failure to make findings on material issues raised by the pleadings.
26. On May 20, 2022, Petitioner, by its counsel, filed an *Objection to Motion to Correct Errors*.
27. After numerous continuances, on December 1, 2022, this Court held a hearing on Respondent's *Motion to Correct Errors* and Petitioner's *Objection to Motion to Correct Errors*.
28. On December 1, 2022, this Court entered its **ORDER GRANTING MOTION TO CORRECT ERROR** and scheduled a full evidentiary hearing on Respondent's *Trial Rule 60(B) Motion for Relief from Judgment filed on April 14, 2022 (Counts I-IX, including the allegations of fraud upon the Court)* on January 6, 2023.

## II. DEEDGRABBER TAX FUND, LLC

29. The Court finds DeedGrabber Tax Lien Fund, LLC is an Indiana corporation, created on May 2, 2017. (*Respondent's Exhibit W*).
30. The Court finds Richard Dawson, of 9812 Twin Creek, Munster, IN, 46321 is listed as a Manager, and Lia Dawson, of 9300 Walnut Drive, Munster, IN, 46321 is listed as a Manager on the Indiana Secretary of State Business record, printed on March 12, 2021, for DeedGrabber Tax Lien Fund, LLC (*Respondent's Exhibit W*).
31. The Court finds a Tax Sale Certificate No.451703495 was issued to DeedGrabber Tax Lien Fund, LLC, 9812 Twin Creek Blvd, Munster, IN 46321 on September 19, 2017. (*Respondent's Exhibit Q*).



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32. The Court finds Richard Dawson is a licensed Indiana attorney, admitted in September 2020, who practices law before this Court.
33. The Court finds Richard Dawson testified he is also a real estate developer and he purchases properties for himself, entities he owns, and sometimes with others.
34. The Court finds Richard Dawson testified he owned Tab Title Services, LLC since November 27, 2017.
35. The Court finds an *Assignment* was executed by Richard Dawson assigning and transferring said certificate to L.I.A. Enterprises, LLC as follows:  
DeedGrabber Tax Lien Fund LLC, Managing Member  
Signed by Richard Dawson, Manager, DeedGrabber Capital LLC (*Respondent's Exhibit R*)
36. The *Assignment* was dated October 31, 2017, and was notarized by Lia Dawson, Notary Public, with a commission expiration date of 2/21/22. (*Respondent's Exhibit R*)
37. The Court has insufficient evidence to determine the extent DeedGrabber Capital LLC is relevant to this instant case as no evidence was presented.
38. The Court finds the original tax sale purchaser, DeedGrabber Tax Lien Fund, LLC was an eligible bidder as defined by Ind. Code § 6-1.1-24-5.7.

### III. L.I.A. ENTERPRISES, LLC

39. The Court finds L.I.A. Enterprises, LLC is an Indiana corporation created on October 12, 2017 with a principal office address of 9300 Walnut Drive, Munster, IN, 46321 (*Respondent Exhibit P*)
40. The Court finds Lia Dawson, of 9300 Walnut Drive, Munster, IN, 46321 is listed as the single Member on the Indiana Secretary of State Business record, printed on June 29, 2021, for L.I.A. Enterprises, LLC (*Respondent's Exhibit P*).
41. The Court finds Lia Dawson is Richard Dawson's former wife; the parties' marriage was dissolved on January 28, 2008.
42. The Court finds, at time the January 6, 2023 hearing was held, Lia Dawson was a licensed Indiana Notary Public.
43. The Court finds Lia Dawson testified she has a homestead exemption on her primary residence located at 9300 Walnut Drive, Munster, Indiana 46321 and she has not applied for any other homestead exemptions for any other properties.
44. The Court finds Lia Dawson testified she is a real estate broker who manages real estate properties.

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## IV. RESPONDENT, MICHAEL BRITTON

45. The Court finds the Respondent is employed as a cross-country truck driver.
46. The Court finds the Respondent testified he is sometimes on the road for three to four weeks at a time and he obtained a post office box for receipt of his mail. He further testified he obtained the post office box to ensure his mail does not pile up in his mailbox and so others are not aware when he is not home.
47. The Court finds the Respondent testified he never received notice of the tax sale.
48. The Court finds the Respondent filed for Chapter 13 bankruptcy on July 20, 2016 said cause docketed as 16-22025-jpk, which was **DISMISSED** on April 25, 2017, for failure to comply with the bankruptcy repayment plan.
49. The Court finds the Respondent filed for Chapter 13 bankruptcy on September 14, 2018, said cause docketed as 18-22441-jra which was **DISMISSED** on June 17, 2019, for failure to comply with the bankruptcy payment plan (*Auditor's Exhibit 1*).
50. The Court finds the Respondent testified he was not aware that L.I.A. Enterprises, LLC was listed as a creditor on his Chapter 13 bankruptcy petition filed on September 14, 2018.
51. The Court finds the real property taxes had not been paid for the Property by the Respondent since 2016.
52. The Court finds the original tax sale for the Respondent's Property was filed under cause number 45C01-1810-TP-001868 and subsequently **DISMISSED** on June 8, 2021, pursuant to Ind. T.R. 41(E) (*Respondent's Exhibits A and B*).
53. The Court finds the instant cause was filed on September 20, 2019, and docketed as cause number 45C01-1909-TP-001617.
54. The Court is unpersuaded by the Respondent's assertion that the two cases caused him confusion and as such violated his due process rights. The Court finds the record demonstrated the Respondent hired an attorney, attended pre-trial hearings, exchanged evidence, presented evidence and testimony at trial, and subsequently hired new counsel to participate in the instant cause.

## V. ASSIGNMENT OF TAX SALE CERTIFICATE

55. The Court finds Richard Dawson testified he asked Lia Dawson to notarize the *Assignment* in this case and that there was no intention to violate Ind. Code § 33-42-13-3.
56. The Court finds Richard Dawson testified Lia Dawson notarized the *Assignment* unexpectedly because of the large volume of Assignments he asked her to notarize at that time. The Court finds this testimony by Richard Dawson incredible.

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57. The Court finds Lia Dawson admits to notarizing the *Assignment* and acknowledges that the transfer directly benefitted her since she was the owner of L.I.A. Enterprises, LLC.
58. The Court finds Richard Dawson admitted Lia Dawson directly benefitted from the *Assignment* and as an attorney, he was aware that a notary who notarizes a legal document which he/she directly benefits from is a violation of Ind. Code § 33-42-13-3.
59. The Court finds testimony was given that attorney Lonnie Randolph has filed a complaint against Lia Dawson with the Indiana Secretary of State for alleged misconduct and/or violations of Ind. Code § 33-42-13-3 relating to the *Assignment*.
60. The Court finds Lia Dawson testified the Indiana Secretary of State officially notified her about three (3) months ago wherein the Secretary of State requested an explanation from her about the *Assignment*.
61. The Court finds Lia Dawson admitted the *Assignment*, which transferred the tax lien certificate from DeadGrabber Tax Lien Fund, LLC to L.I.A. Enterprises, LLC, directly benefitted her.
62. The Court finds Lia Dawson presented as an incredible witness.
63. The Court finds Lia Dawson testified she has notarized legal documents, including *Assignments*, for Richard Dawson on other properties, including for Orgen Labrowski, LLC and QRP Krisbi, LLC.
64. The Court finds Lia Dawson testified she does not know if she was managing properties for QRP Krisbi, LLC at the time she notarized an *Assignment* involving QRP Krisbi, LLC for Richard Dawson. The Court finds this testimony by Lia Dawson as incredible.
65. The Court finds the *Assignment* transferring the tax lien certificate to L.I.A. Enterprise, LLC by Lia Dawson as improper and potentially violates Ind. Code § 33-42-13-3.
66. The Court finds the Petitioner failed to disclose to this Court the potential notary misconduct and/or violation of Ind. Code § 33-42-13-3 relating to the *Assignment* which was attached as part of Petitioner's *Petition for Tax Deed*.
67. The Court finds Ind. Code § 33-42-13-3 does not permit it the authority to invalidate the *Assignment* based on alleged notary misconduct and/or violations of Ind. Code § 33-42-13-3.
68. The Court finds the actions by Petitioner in failing to disclose to the Court the potential notary misconduct and/or violation of Ind. Code § 33-42-13-3 relating to the *Assignment* was misleading and the Court's decision to grant the *Petition for Tax Deed* was influenced by the validity of the *Assignment*.

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69. The Court, if given the benefit of disclosure prior to ruling on the *Petition for Tax Deed*, could have ordered Petitioner to seek an advisory opinion from the Indiana Secretary of State Office regarding the potential misconduct, violation, defect and *lor* cure of the *Assignment*.
70. The Court finds the evidence demonstrated a pattern by Lia Dawson of notarizing legal documents, which she directly benefitted from.
71. The Court finds the evidence demonstrated Petitioner engaged in an unconscionable plan to improperly influence the Court's decision and its conduct prevented the Respondent from fully and fairly presenting its case or defense.
72. The Court finds the actions by Petitioner constitute fraud upon the Court.

## VI. INDIANA TAX SALE NOTICING AND DUE PROCESS

73. The Court finds this tax sale was a Treasurer's tax sale and as such, the time period for noticing is nine (9) months.
74. The Court finds Richard Dawson testified he sent the *4.5 Notice* to the Respondent by first class mail and certified mail.
75. The Court finds the *4.5 Notice*, sent by certified mail, was returned to Richard Dawson as *unclaimed* and the first class mail was not returned (Respondent's *Exhibit DD*).
76. The Court finds Richard Dawson testified he sent the *4.6 Notice* to the Respondent by first class mail and certified mail.
77. The Court finds the *4.6 Notice*, sent by certified mail, was returned to Richard Dawson as *unclaimed* and the first class mail was not returned.
78. The Court finds Richard Dawson testified he did not issue additional notice by publication or by posting on the property.
79. The Court finds Petitioner has substantially complied with the statutory noticing requirements of *Ind. Code §§ 6-1.1-25-4.5 and 4.6*. and has afforded the Respondent minimal Due Process under the United States Constitution.

## VII. HOMESTEAD EXEMPTIONS

80. The Court finds Jessica Dec, Lake County Tax Sale supervisor's testimony relating to the process for applying for homestead exemptions in Lake County as credible.
81. The Court finds Respondent's *Exhibits I, J, and K* are Lake County Treasurer property reports which show homestead exemptions listed for each property; the property record reports are not applications for homestead exemptions.
82. The Court finds the Lake County homestead exemptions are removed from the real property upon an ownership transfer; transfer of ownership triggers removal of the

homestead deduction until the new owner applies for it so a property report would show a homestead exemption listed from the previous owner.

83. The Court finds Lia Dawson did not apply for homestead exemptions on properties other than her primary residence located at 9300 Walnut Drive, Munster, IN, 46321.

### VIII. CONCLUSIONS OF LAW

84. **Ind. T.R. 60 Relief from judgment or order:**

(A) Clerical mistakes. Of its own initiative or on the motion of any party and after such notice, if any, as the court orders, clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the trial court at any time before the Notice of Completion of Clerk's Record is filed under Appellate Rule 6. After filing of the Notice of Completion of Clerk's Record and during an appeal, such mistakes may be so corrected with leave of the court on appeal.

(B) Mistake — Excusable neglect — Newly discovered evidence — Fraud, etc. On motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons:

- (1) mistake, surprise, or excusable neglect;
- (2) any ground for a motion to correct error, including without limitation newly discovered evidence, which by due diligence could not have been discovered in time to move for a motion to correct errors under Rule 59;
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) entry of default or judgment by default was entered against such party who was served only by publication and who was without actual knowledge of the action and judgment, order or proceedings;
- (5) except in the case of a divorce decree, the record fails to show that such party was represented by a guardian or other representative, and if the motion asserts and such party proves that
  - (a) at the time of the action he was an infant or incompetent person, and
  - (b) he was not in fact represented by a guardian or other representative, and
  - (c) the person against whom the judgment, order or proceeding is being avoided procured the judgment with notice of such infancy or incompetency, and, as against a successor of such person, that such successor acquired his rights therein with notice that the judgment was procured against an infant or incompetent, and

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- (d) no appeal or other remedies allowed under this subdivision have been taken or made by or on behalf of the infant or incompetent person, and
- (e) the motion was made within ninety (90) days after the disability was removed or a guardian was appointed over his estate, and
- (f) the motion alleges a valid defense or claim;
- (6) the judgment is void;
- (7) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in subparagraphs (1), (2), (3), and (4).

The motion shall be filed within a reasonable time for reasons (5), (6), (7), and (8), and not more than one year after the judgment, order or proceeding was entered or taken for reasons (1), (2), (3), and (4). A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(C) Appeal — Change of venue. A ruling or order of the court denying or granting relief, in whole or in part, by motion under subdivision (B) of this rule shall be deemed a final judgment, and an appeal may be taken therefrom as in the case of a judgment. No change of venue in such cases shall be taken from the judge or county except for cause shown by affidavit.

(D) Hearing and relief granted. In passing upon a motion allowed by subdivision (B) of this rule the court shall hear any pertinent evidence, allow new parties to be served with summons, allow discovery, grant relief as provided under Rule 59 or otherwise as permitted by subdivision (B) of this rule.

(E) Infants, incompetents, and governmental organizations. Except as otherwise provided herein, this rule shall apply to infants, incompetents, and governmental organizations. The time for seeking relief against a judgment, order or proceedings allowed or recognized

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under subdivision (B) of this rule or any other statute shall not be tolled or extended as to such persons.

- 85. Grounds for Relief from Final Judgment, Order or Proceeding, Fraud, Misconduct & Misrepresentation:** Pursuant to Ind. R. Trial P. 60(B), there are three ways to attack a judgment on the grounds of fraud on the court. The second method is an independent action for fraud on the court pursuant to the savings clause of Rule 60(B), which provides that Rule 60 does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or for fraud upon the court. Independent actions are usually reserved for situations that do not meet the requirements for a motion made under Rule 60(B)(3). For example, the fraud might not be chargeable to an adverse party, the movant might be seeking relief from a court other than the rendering court, or, more often, the one-year time limitation for Rule 60(B)(3) motions has expired. An independent action is subject to the doctrine of laches and its remedy is extremely limited. The third method, which also arises out of the savings clause of Rule 60(B), invokes the inherent power of a court to set aside its judgment if procured by fraud on the court. Relief in these circumstances is not dependent upon the filing of a motion by a party to the original judgment. Rather, the court may assert this power *sua sponte*. In addition, there is no time limitation for these proceedings.
86. Regardless of which procedural avenue a party selects to assert a claim of fraud on the court, the party must establish that an unconscionable plan or scheme was used to improperly influence the court's decision and that such acts prevented the losing party from fully and fairly presenting its case or defense. Fraud on the court has been narrowly applied and is limited to the most egregious of circumstances involving the courts. Further, to prove fraud on the court, it is not enough to show a possibility that the trial court was misled. Rather, there must be a showing that the trial court's decision was actually influenced.
87. The principle that balances the competing interests of finality of judgments and the need for relief from fraudulently procured judgments is found in the rule that an independent action for relief from a judgment may not be entertained if there was an opportunity to have the ground now relied upon to set aside the judgment fully litigated in the original action. This principle is a recognition that an independent action, which in many circumstances is a collateral attack on a judgment, is subject to the doctrine of *res judicata*. Under such doctrine, what actually was and could have been litigated in the underlying

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proceeding may not be relitigated in an independent action to set the underlying judgment aside.

**88. Ind. Code § 33-42-13-3 Actions not permitted by notary public:**

(a) A commission as a notary public does not allow a person to do the following:

- (1) Provide legal advice or otherwise practice law.
- (2) Act as an immigration consultant or provide advice on immigration matters.
- (3) Represent a person in an administrative or judicial proceeding related to citizenship or immigration.
- (4) Use an initial or name, other than the initial or name under which the notary public has been commissioned, to sign an acknowledgment.
- (5) Take an acknowledgment or administer an oath to any person the notary public knows at the time to be:
  - (A) adjudicated mentally incompetent; or
  - (B) under a guardianship described in IC 29-3.
- (6) Take an acknowledgment from any person who is blind without first reading the record to the person who is blind.
- (7) Take the acknowledgment of any person who does not speak or understand the English language unless the nature and effect of the record is translated into a language the person speaks or understands.
- (8) Take the acknowledgment of a record without witnessing a signature or receiving an acknowledgment from the principal that the signature is authentic.
- (9) Take a verification of an affidavit or oath in the absence of an affirmation of truth by the affiant.
- (10) Perform a notarial act for:
  - (A) oneself;
  - (B) one's spouse; or
  - (C) any party;that may directly benefit a person described in clause (A) or (B).
- (b) A notary public may not engage in false or deceptive advertising.
- (c) A notary public, other than an attorney licensed to practice law in Indiana, may not use the term "notario" or "notario publico".
- (d) Except as provided in subsection (g), a notary public may not advertise or represent that the notary public can draft legal documents, provide legal advice, or otherwise



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practice law. Any notary public who advertises notarial services shall include the following statement in each advertisement:

"I am not an attorney licensed to practice law in Indiana. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities."

(e) The statement described in subsection (d) shall be translated into every language used in an advertisement.

(f) If size or space restrictions make it impossible for the statement to be incorporated into an advertisement, the statement described in subsection (d) shall be prominently displayed at the site where the notarial act is performed. A display described in this subsection must be shown before the performance of a notarial act.

(g) Subsections (c) through (f) do not apply to a notary public who is licensed to practice law in Indiana.

(h) Unless otherwise permitted by law, a notary public may not withhold access to or possession of an original record provided by a person seeking the performance of a notarial act by a notary public.

(i) A notary public who violates this chapter may have the notary public's commission revoked by a judge with jurisdiction in the county in which the notary public resides or is primarily employed.

(j) A notary public whose commission has been revoked may not reapply for a new commission until five (5) years after the revocation.

(k) A notary public who has been convicted of notario publico deception under section 4 [IC 33-42-13-4] of this chapter may not reapply for a new commission.

(l) If the secretary of state revokes the commission of a notary public, the notary public may not reapply for a new commission for five (5) years.

(m) A notary public may not perform a notarial act when the notary public's commission is suspended or revoked.

89. A notary public who fails to carry out notary duties correctly may be subject to civil liability for any damages caused by the failure or error. If the notary's error enables a forgery, false writing or other crime to occur, the notary also may be held criminally liable as an accessory to the crime. The Secretary of State also may revoke the notary's commission. Indiana Code 33-42-13-1.

90. Ind. Code § 6-1.1-24-5.7 Statement of eligibility to purchase at a tax sale:

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(a) The county treasurer shall require each person who will be bidding at the tax sale to sign a statement in a form substantially similar to the following:

"Indiana law prohibits a person who owes delinquent taxes, special assessments, penalties, interest, or costs directly attributable to a prior tax sale of a tract or item of real property listed under IC 6-1.1-24-1 from bidding on or purchasing tracts or items of real property at a tax sale. I hereby affirm under the penalties for perjury that I do not owe delinquent taxes, special assessments, penalties, interest, costs directly attributable to a prior tax sale, amounts from a final adjudication in favor of a political subdivision, any civil penalties imposed for the violation of a building code or county ordinance, or any civil penalties imposed by a county health department. I also affirm that I am not purchasing tracts or items of real property on behalf of or as an agent for a person who is prohibited from purchasing at a tax sale. Further, I hereby acknowledge that any successful bid I make in violation of this statement is subject to forfeiture. In the event of forfeiture, the amount by which my bid exceeds the minimum bid on the tract or item or real property under IC 6-1.1-24-5(e), if any, shall be applied to the delinquent taxes, special assessments, penalties, interest, costs, judgments, or civil penalties I owe, and a certificate will be issued to the county executive. I further acknowledge that a person who knowingly or intentionally provides false information on this affidavit commits perjury, a Level 6 felony."

(b) If a person purchases real property that the person was not eligible to purchase under section 5.1, 5.3, or 5.4 [IC 6-1.1-24-5.1, IC 6-1.1-24-5.3, or IC 6-1.1-24-5.4] of this chapter, the sale of the real property is subject to forfeiture. If the county treasurer determines or is notified not more than forty-five (45) days after the date of the sale that the sale of the real property should be forfeited, the county treasurer shall:

- (1) not more than five (5) days after the county treasurer is notified, notify the person in writing by first class mail that the sale is subject to forfeiture if the person does not pay the amounts the person owes within fifteen (15) days of the date the written notice is mailed;
- (2) if the person does not meet the conditions described in subdivision (1) within fifteen (15) days after the written notice is mailed, apply the surplus amount of the person's bid, if any, to the delinquent taxes, special assessments, penalties, and interest on the real property;
- (3) remit the amounts owed from a final adjudication or civil penalties in favor of a political subdivision to the political subdivision;
- (4) notify the county auditor that the sale has been forfeited; and

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- (5) file with the county recorder a certification identifying the forfeited sale that includes:
- (A) the date of the sale;
  - (B) the name of the buyer;
  - (C) the property identification number of the real property;
  - (D) the real property's legal description; and
  - (E) a statement that the sale has been forfeited and is null and void because the buyer was not eligible to purchase the real property.

Upon being notified that a sale has been forfeited, the county auditor shall issue a certificate to the county executive under section 6 [IC 6-1.1-24-6] of this chapter.

(c) A county treasurer may decline to forfeit a sale under this section because of inadvertence or mistake, lack of actual knowledge by the bidder, substantial harm to other parties with interests in the real property, or other substantial reasons. If the treasurer declines to forfeit a sale, the treasurer shall:

- (1) prepare a written statement explaining the reasons for declining to forfeit the sale;
- (2) retain the written statement as an official record; and
- (3) file with the county recorder a certification that includes:
  - (A) the date of the sale;
  - (B) the name of the buyer;
  - (C) the property identification number of the real property;
  - (D) the real property's legal description; and
  - (E) a statement that the sale has not been forfeited and is valid.

(d) If a sale is forfeited under this section and the tract or item of real property is redeemed from the sale, the county auditor shall deposit the amount of the redemption into the county general fund and notify the county executive of the redemption. Upon being notified of the redemption, the county executive shall surrender the certificate to the county auditor.

(e) If a county treasurer does not take action under subsection (b) within forty-five (45) days of the date the county treasurer determines or is notified that a sale should be forfeited, the person is deemed to be an eligible purchaser for that sale of that real property.

(f) If a tax deed is issued for real property under IC 6-1.1-25-4, this section cannot be invoked to invalidate, rescind, or set aside the tax deed.

91. **Ind. Code §§ 6-1.1-24-1 to 14 Tax Sale Code** When an owner of real estate fails to pay property taxes, the property may be subject to sale in settlement of delinquent taxes. *I.C. 6-1.1-24-1 to 14*. A purchaser can acquire title to property by purchasing it at a tax sale. If

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the property offered for sale is not sold in the county tax sale, the county executive acquires the tax lien for the property in the amount of the minimum sale price and is issued a tax sale certificate. The county does not pay any money to acquire this lien. *I.C. 6-1.1-246(c)*.

92. The county executive has the same rights as a purchaser, *I.C. 6-1.1-24-6(b)*, the same responsibilities as the purchaser, *Northern Indus. V. Board of Comm'rs*, 627 N.E.3d 1319 (Ind. Ct. App. 1994), and may offer the properties in a left-over sale, commonly referred to as the commissioners' certificate sale. *I.C. 6-1.1-24-6.1*.
93. If the owner of record does not redeem the property from the commissioner's sale within the required period, the purchaser may petition the trial court for issuance of the tax deed. The purchaser must provide notice of the petition to the owner of record in the same manner set forth in *I.C. 6-1.1-25-4.5* and *4.6*.
94. A purchaser or the purchaser's assignee of a certificate of sale under *I.C. 6-1.1-24-6.1* is entitled to a tax deed to the property for which the certificate was sold only if:

- (1) the redemption period specified in section 4(c) of this chapter has expired;
- (2) the property has not been redeemed within the period of redemption specified in section 4(c) of this chapter; and
- (3) not later than ninety (90) days after the date of sale of the certificate of sale under *I.C. 6-1.1-24*, the purchaser gives notice of the sale to:
  - (A) the owner of record at the time of the tax sale; and
  - (B) any person with a substantial property interest of public record in the tract or item of real property. *I.C. 6-1.1-25-4.5(c)*; and

The person required to give the notice under subsection (a), (b) or (c) shall give ***the notice by sending a copy of the notice by certified mail, return receipt requested***, to:

- (1) the owner of record at the time of the:
  - (A) sale of the property;
  - (B) acquisition of the lien on the property under *I.C. 6-1.1-24-6*; or

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(C) sale of the certificate of sale on the property under IC 6-1.1-24; at the last address of the owner for the property, as indicated in the records of the county auditor; and

(2) any person with a substantial property interest of public record at the address for the person included in the public record that indicates the interest.

However, if the address of the person with a substantial property interest of public record is not indicated in the public record that created the interest and cannot be located by ordinary means by the person required to give the notice under subsection (a), (b), or (c), the person may give notice by publication in accordance with IC 5-3-1-4 once each week for three (3) consecutive weeks. I.C. 6-1.1-25-4.5(d).

95. The title conveyed by a tax deed may be defeated if the notices required by Section 6-1.1-25-4.5(a) were not in substantial compliance with the manner prescribed by statute. *Indiana Code 6-1.1-25-16(7)*.
96. The purpose of the post-sale notice is to inform interested parties that the tax lien on the property has been sold for delinquent taxes and to apprise them of the right to redeem and when that right expires. Notice to interested parties of the right to redeem is required as an element of due process. *Marion County Auditor and McCord Investments v. Sawmill Creek, LLC*, 964 N.E.2d 213, 217 (Ind. 2012). The post-tax sale noticing must be done in substantial compliance with the statutes governing the notice and must satisfy the due process requirements of the United States Constitution. *Id.*
97. The United States Supreme Court has stated that prior to the government taking a property for unpaid taxes, owners and those with a substantial interest, are entitled to notice pursuant to the Due Process Clause of the Fourteenth Amendment. In *Jones v. Flowers*, the Court asserted, "This action by the state [the action of taking one's property and selling it at the tax sale] conflicts with the rights of the property owner thus [b]efore a State may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner "notice and opportunity for hearing appropriate to the nature of the case". *Marion County Auditor and McCord Investments v. Sawmill Creek, LLC*, 964 N.E.2d 213, 217 (Ind. 2012) (citing *Jones v. Flowers*, 547 U.S. at 220, 223 (U.S. 2006), 126 S. Ct. at 1712, 164 L. Ed. 2d at 423) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 308, 313, 70 S. Ct. 652,

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656-57, 94 L. Ed. 875, 873 (1950)). While actual notice is not required, the government must attempt notice in a way desirous of actually informing the property owner that a tax sale is looming. *Id.* If the government becomes aware that its notice attempt was unsuccessful, such as through the return of certified mail, it must take reasonable steps to notify the owner of the property if practical to do so. *Id.*

98. It is an "elementary and fundamental requirement" of the Due Process Clause of the Fourteenth Amendment that before it institutes an action to sell a delinquent property, "a State must provide "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 795, 103 S.Ct. 2706, 2709, 77 L.Ed. 180 (1983) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 875 (1950)).
99. In *Ind. Land Tr. Co. v. XL Investment Properties, LLC*, 20S-MI-62 (Sup. Ct., October 27, 2020), the issue presented to the Supreme Court was framed as rather, when notice of a tax sale is mailed to the owner and returned undeliverable, the government must take additional reasonable steps to provide notice before taking the owner's property. *Id.* at 223, 126 S.Ct. at 1712. Applying the facts of *Jones* to this framework, someone desirous of actually informing a property owner that his house was subject to a tax sale would surely take "additional reasonable steps" to give notice if a mailing were returned. *Id.*, 126 S.Ct. at 1716. In *Ind. Land Tru. Co.*, the Court held that the county auditor satisfied due process requirements because, under the circumstances of that case, the auditor's actions provided notice reasonably calculated, under all circumstances, to apprise Trust 4340 of the pendency of the action and afforded them an opportunity to present their objections. *Id.* However, the Court observed that posting notice on bare, unimproved land was not practical. *Id.*
100. Applying the analytical framework of *Jones* to the facts in this case, the Court must consider the following:
- First, the Due Process Clause of the Fourteenth Amendment requires the government to provide "notice and opportunity for hearing appropriate to the nature of the case" *Id.*
- Second, "actual notice" is not required by due process. *Id.* Rather, due process requires the government to provide "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and to afford

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them an opportunity to present their objections." *Id.* The government must take additional reasonable steps if practical when notice via certified mail is returned. *Id.*

Third, to assess the adequacy of a particular form of notice, a Court must balance the interest of the State against the individual interest sought to be protected by the Fourteenth Amendment. *Id.*

101. Here, the Respondent was sent both the 4.5 and 4.6 Notices via certified mail and first-class mail.
102. The evidence demonstrated the 4.5 and 4.6 Notices, sent by certified mail, were returned *unclaimed* and sent back to the original sender.
103. The evidence demonstrated the 4.5 and 4.6 Notices, sent via first-class mail, were not returned and were presumed delivered to the Respondent.
104. Applying the analytical framework of *Ind. Land Tr. Co. v. XL Investment Properties, LLC*, and its holding, the Petitioner gave adequate notice reasonably calculated to inform the Respondent of the tax sale of the property as the Petitioner's actions satisfied the minimal due process requirements under the Fourteenth Amendment because the Petitioner sent contemporaneous notice of the sale via *certified and first-class mail*, while the certified mail was returned, there was no evidence the first-class mail was ever returned to its sender; and, given that actual notice was not required, the Petitioner should not be left to speculate whether the first-class mail was truly delivered. *Id.*

## IX. ORDER

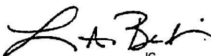
105. Based on the foregoing, the Court finds Petitioner's failure to disclose to the Court the potential notary misconduct and/or violation of **Ind. Code § 33-42-13-3** relating to the *Assignment* was misleading, and since the Court's decision was influenced by the validity of the *Assignment*, constitutes a fraud upon the Court.
106. On the issue of fraud upon the Court, the Court hereby **GRANTS Respondent's Trial Rule 60(B) Motion for Relief from Order** filed on April 14, 2022.
107. The *Order issuing Tax Deed* entered by this Court on December 5, 2019, is hereby **VACATED**.
108. The Respondent shall have thirty (30) days from the date of this **ORDER** to redeem the Property.
109. Although the Court's finding and order on fraud preclude the need to address the issue of lack of notice, due to the submission of a lengthy presentation of evidence and arguments relating to the said issue at the Hearing, although not determinative, the Court is compelled to include its ruling on the issue of noticing in this **ORDER**.

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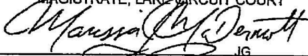
110. On this issue of substantial compliance with the Indiana tax sale noticing requirements and Due Process as required by the Fourteenth Amendment of the United States Constitution, the Court finds the Petitioner substantially complied with and gave adequate notice, pursuant to **Ind. Code § 6-1.1-25-4.5** and **Ind. Code § 6-1.1-25-4.6** and the Due Process Clause of the United States Constitution, to Respondent and any party who may have a substantial interest in the property that would have informed them or reasonably calculated to have informed them of their right to redeem the property from the Lake County Treasurer's Tax Sale.

SO ORDERED:



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MAGISTRATE, LAKE CIRCUIT COURT



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JUDGE, LAKE CIRCUIT COURT

DISTRIBUTION:

All parties and attorneys of public record