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Supreme Court of Texas.  
AIC Management, Petitioner,  
v.  
Rhonda S. Crews, Curtis Caldwell Crews, Annette Crews, Denise Claudeen Crews,  
and Claude Crews, Jr., the Heirs of Emma Crews, Valda Crews, and Eva Fay Gross,  
and Aldine Independent School District, Respondents.  
No. 05-0270.

April 23, 2007.

Appearances:

Tracy J. Willi, Willi Law Firm, P.C., Austin, TX, for petitioner.  
Pamela H. Walters, Aldine Independent School District, Geoffrey W. Hutson, Houston TX, for respondents.

Before:

Chief Justice Wallace B. Jefferson, Don R. Willett, Harriet O'Neill, David M. Medina, Paul W. Green, Nathan L. Hecht, Dale Wainwright, Phil Johnson, Scott A. Brister, Supreme Court Justices.

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COURT ATTENDANT: Oyez, oyez, oyez. The honorable, the Supreme Court of Texas, all persons having business before the honorable. The Supreme Court of Texas are modest to draw near and give their attention for the court is now sitting. God save the State of Texas and this Honorable Court.

CHIEF JUSTICE JEFFERSON: Thank you, please be seated. Good Morning, the court has two matters on it's oral submission docket and the order of their appearance, they are: Docket Number 05-0270, AIC Management versus Rhonda S. Crews and others, from Harris County and the First Court of Appeals District; and 05-0587 Houston Municipal Employee Pension System versus Craig B. Perez Jr., and others, also from Harris County and the First Court of Appeal District. Justice Willet is not sitting in that cause. In each case, the court would allotted 20 minutes per side and we will take a brief recess between the first and the second argument. This proceeding is a video recorded and a link to the arguments should be posted on court website by the end of the day, today. The Court is now ready to hear argument in 05-0270 AIC Management versus Rhonda S. Crews and others.

COURT ATTENDANT: May it please the Court. Miss Willi will present argument for the petitioner. The petitioner will reserve, reserved five minutes for rebuttal.

ORAL ARGUMENT OF TRACY J. WILLI ON BEHALF OF THE PETITIONER

MS. WILLI: May it please the Court. There are two main issues in this case. The first thing is sufficiency of a property description in a summary judgment context. And the second thing, subject matter jurisdiction. A deed which conveys all of the persons interest in a particular tract, abstract, survey, county and state is not ambiguous as the matter of law. This ...

JUSTICE: Let me ask you about the facts. Is Tract 12 platinum?

MS. WILLI: I'm sorry.

JUSTICE: Is Tract 12 Platinum?

MS. WILLI: Yes. In the supplemental court's record. There is a copy of the document that was actually attached to the discount system or judgment that has Track 12 on it.

JUSTICE: And a Tract 12, the 24-acre tract, the 8-acre tract or something else?

MS. WILLI: I believed it's the 24-acre track.

JUSTICE: Track 12 is the 24-acre track that was partitioned.

MS. WILLI: Yes. Yes, your Honor. And it was the Crews family interest in that track that was, that was conveyed in the 1991 constable's deed.

JUSTICE: So something it shows that meet some boundary of Track 12 and something shows and the partition deed shows the 8-acre pertinent.

JUSTICE: Replacement. Although, plat you're talking about was done after conveyance by the subject of the city, all right?

MS. WILLI: No, there was a survey done after a- a-- I maybe it was second but I think the plat that is attach to his form suggest ...

JUSTICE: I thought that was done in 2000 and, and connection with that dispute, ah?

MS. WILLI: No. I don't think so. I think that was-- that's actually a copy from the Harris County tax payers rules. And it was a copy at the-- a certified the document from the [inaudible].

JUSTICE: What is the way the Harris County Appraisal District divided a plat tract?

MS. WILLI: Yes.

JUSTICE: It's certainly not any, any platted subdivision plat.

MS. WILLI: That's correct. But it isn't what appellant has described to any original petition for condemnation as well. They voted and -

JUSTICE: Voted and take a tax -

MS. WILLI: - a Track 12.

JUSTICE: - for tax platting not for subdivision plat.

MS. WILLI: That's correct. They-- but they want it. That's, that is the description who is in the original petition for condemnation. That how this case all-- came about was their description. And then attached to that documents was also need some balance, any original petition that was brought. The actual-- Crews claimed for-- by the Crews Family was not final to control after the eminent-domain proceeding had concluded and a judgment for the amount of \$259,000 for the value of property had been entered. This is an easier case than the J. Hiram Moore case that this Court had, a few years back. In that case, there was a lightning defects in the, in the deed because there were basically, two descriptions that were competing before another and

it cause a internal inconsistency within the documents. This case actually falls within Justice Medina's dissenting opinion of that case. And if you read that, you see how this case really fits into that category where you have a deed that conveys all of the persons interest in a particular case of property. And in that sort of an instance we don't have any ambiguity who has something that can be read and a sufficiently certain specially of-- with-- well, let me back up. They, they attempt to show an ambiguity. First, by attaching the documents to their motion for summary judgment. They attached by the partition deed. And they attempt to show that this property description is deficient by attaching another document. Well, that sort of begs the question as they have to attach another document. You must be saying that this is fine if you're really not in that states. And you're saying, "Because if you look at something else, then it doesn't make sense," that's creating a way to ambiguity. This case is more likely as State vers-- State Mortgage versus Groos case. There the shares deed conveyed all of their interest, then the east part of their property. Then there was other evidence that was used to show what those people longing. This is very typical way doing the sheriffs' deed. It conveys all the interest to a property that was covered in the judgment for a tax deficiency suit.

JUSTICE: But the problem in this case is we, we have to go back to the description in the lawsuit, don't we?

MS. WILLI: Well, first that I think you need to. I think that if you look at the face of these documents, we have to remember this is a summary judgment context. And so if you look at the face of these documents it describes the tract and a plat and this-- and a county in a state. It has everything in it that you would expect to see. And the only thing that they can try to choose down forward is to bring in another document to say, "Oh, see, it doesn't makes sense." Well, that's showing a late ambiguity. Once you bring in that, well, we get to bring in the other things as well. If there's one thing that I would like to give Crews to this Court is, is I think that the Moore case. The way they stated the general rule or [inaudible].

JUSTICE: Well, let me ask you about that -

MS. WILLI: Yes.

JUSTICE: - because in Moore when an ambiguity was determined on the deed, the court said, "You have to look at the parties intent, and doing that you look at the conveyors intents that conveying the property." What do you do when the conveyor is the government? How do you determine the government's intent other than through the tax foreclosure suit favoring?

MS. WILLI: Well, this is where I think the Moore case goes right. And then they were talking about-- you're talking about the Moore case, you-- he ascended back and look to parties intent. And I think actually that the rule is broader than that. You look at the extrinsic evidence and the extrinsic evidence would be; for example, the underlying case that is, that is actually sorted in the deed it's part of how the properties is just an -

JUSTICE: All right. But I mean, when you look at the Moore

MS. WILLI: extrinsive-- extrinsic evidence to show the conveyor's intent.

JUSTICE: Exactly, what the sheriff intended to convey.

JUSTICE: And what would you look at here?

MS. WILLI: I would look at, the very documents that we already have in this case. The-- I would look at-- number one, the 1991 constable's deed which told us all of the interest of the Crews family

arising out of this tax suit and it has the tax-suits to mention.

JUSTICE: Well, but here is the problem. It says, all of the interests being 6 acres, and you just want to rid out that the 6 acres.

MS. WILLI: Well, it doesn't say that the tax-suit

JUSTICE: doesn't say that.

JUSTICE: The tax state refers to the lawsuit -

MS. WILLI: Refers to the lawsuit.

.JUSTICE: - and the lawsuit seeks to foreclose 6 acres.

MS. WILLI: The judgment, however does not. The judgment says, the Crews family and it says "This property, Track 12 it does not - say 6 acres on the judgment." The problem, the problem that I've had with this case is that I feel like the Crews family is trying to set back into the position of challenging that judgment. They can't challenge the judgment, all they can do is talk about these deeds and what they say, these deeds are appropriate. They've lost their opportunity. They have their opportunity to challenge that judgment when it was being formed. They were, they're-- they decided not to fight about it, they didn't care if they foreclose on that property. And so the fact that it foreclosed on all 8.5 of their acreage is a done deal. It's, it's a final judgment and they weren't there to defend that to say "Hey, wait," they should say 6 acres instead of 8.5. The judgment is what it is and they weren't there to defend that. They didn't stand up and say, it should be 6 instead 8.5. I think now, you can't go back and say "Oh well, that judgment didn't exactly meet what happened in"-- what it should have been what the evidence supported in that case ...

JUSTICE: What if that 6 says, that we going to foreclose on all the interest you have in 6 acres and judgment as granted on that claim. How can the judgment before Moore than all you have in 6 acres?

MS. WILLI: A judgment, let's take a simple trial and regular simple trial. Well, you can have a judgment.

JUSTICE: Judgment for \$100,000, we saved \$100,000 ...

MS. WILLI: And you could have a 150 and I don't challenge that on appeal? I'm stuck with a 150.

JUSTICE: Well, that's more than a stuff form, enough.

MS. WILLI: No, it's, it's really-- I didn't, I didn't defend it. I got a default judgment against me for a 150. And it's-- and, and let's say it's a post-answer to default. I mean we're getting into some hypothetical is here but you had the opportunity, we're served, you decided not to participate and you got a judgment against you for 150,000. You can't think about to say, oh five years, ten years later. "You know, I don't like that judgment, I'd really like to challenge that and shouldn't the amount be it a 100,000." A judgment specially in these tax, tax cases. I be willing to bet that a lot of people don't show up for those, specially they don't think properties worth much.

JUSTICE: So what the exactly do we trying to, to determine what Tract 12 infers to 3681524?

MS. WILLI: I think that the Crews family answer that themselves and ...

JUSTICE: They did. I'm sorry.

MS. WILLI: I think the Crews family answer that themselves when the attached the partition deed. The, the constable's deed said, all of their interest in this land. The original condemnation proceedings said "We're going to buy that land describe defend way is our constable's deed's project." The Crews family stood up and said, "Oh, you must be talking that-- this land that's described in our partition deed." They basically admitted that's the same property, that's why they're is-- trying to get the 259 thou-- 59,000 dollars salary registry of the

court because they're saying that their partition deed is that property.

JUSTICE: Let's talk about the subject matter jurisdiction right here.

MS. WILLI: Yes, your Honor.

JUSTICE: To, to-- let me hear that?

MS. WILLI: Well, Harris County Government Code 251032. It provides some additional county court jurisdiction. However, there is a phrase that applies only to eminent-domain cases but does not apply to issues regarding title. And that is regardless of the amount in controversy. That phrase does not apply to the section where it says you can determine title. In the county court at law and the statutory county court in Harris County Texas have. So they fall back for-- they don't have any increase or decrease. There's also-- as if you look at that statute, there's also another section in there that actually lowers the jurisdiction limit for some tax of cases. Lowers attempted at \$200 dollars for a specific type of case and raises it for eminent-domain cases but the rest of them, the legislature didn't touched it.

JUSTICE: But this wasn't condemnation case.

MS. WILLI: It started out as a condemnation case, your Honor, that's correct, but the Groos claim was filed after the condemnation proceedings ended in a final determination by the commissioners of the valued property. The money was placed in the registry.

JUSTICE: Well, why, why does that condemnation cases end before we deal out the money? That's the main point of a condemnation proceedings.

MS. WILLI: That's true, that's true. But the title dispute is ...

JUSTICE: It's just don't over who's going to get the condemnation proceeds.

MS. WILLI: Well, it's up to who has a titles to the property to get the tit-- you has to determine property, Who's going to get that-- to determine who's going to get that money.

JUSTICE: All right. But it's ...

MS. WILLI: And when it's on-- and when it's-- you know-- if they were being-- if it were a \$100,000, I have to say yes we have to do that, we have to determine that title. And I think-- you know, I'm not here to also defend the case wherein ...

JUSTICE: But that's always going to be the case. If you got to-- seems to me you're saying-- I mean a condemnation case, no question that's got to be in the county court and it's a properties worth. Your-- the land condemned this more than a \$100,000 and there's a fight over it. Then fine, that's got to -

MS. WILLI: The fight has been ...

JUSTICE: - if that's got to be somewhere else we've got-- we're interpreting these two statutes that Crews purposes, 'cause one says it has to be in the county court, one say it can't be.

MS. WILLI: Well, I don't think there's always a fight about a ...

JUSTICE: Sure. But the only one said are interesting the other one said "We ever see," I wonder there is a fight.

MS. WILLI: Sure. Well, the thing is that the legislature could have the map if they wanted to. In fact, they did that in Dallas County. If you look at Dallas County there this must a statute ...

JUSTICE: But they're not, but they're not really-- I mean for the fighting over title or fighting over to get some money. 'Cause the bottom line is they don't want to loose, they end up with the titles and the cities going to end up with the title.

MS. WILLI: Well, this was absolutely over title, because not only

do they fight about whether constable's deeds were void, then they have a judge trial over at first position, that is the title issue. In fact their pleading calls that I think [inaudible].

JUSTICE: But the end result to the cases not that either one of you gets the property.

MS. WILLI: Well, you get the money for the property.

JUSTICE: - or let's-- that's different in that.

MS. WILLI: Well, I, I, I think what's your-- I see where you going about but the bottom line is, this is a-- they have to prove the case, what case do they have to prove.

JUSTICE: But -

MS. WILLI: They have to prove the title case.

JUSTICE: - but that, that'll, that will be true on all times of nation, won't it? if there's a fight.

MS. WILLI: No. All I know is ...

JUSTICE: Why would you, why would you have, why would you have a claim condemnation proceeds if you don't have any title?

MS. WILLI: You can have a claim on the condemnation proceeds as long as it's stick in a \$100,000 and more than 500. And I think that if they had wanted to give jurisdiction to all these cases, they could have and that's what they did in Dallas County. They said that the dis- - the county court has conquered a judge-- jurisdiction instead in constable's cases regardless of the amount in controversy. Here they split it up then they say "Will you can hear these things that traditionally a county court can't hear but we're not increasing your jurisdictional limit on it." I think you have a different to. There's going to-- you, you must seek some cases where you have what sort of looks likes a title dispute going on an eminent-domain case. But you'll notice it never one of those cases, it's the title dispute issue going on between the owners and the state. The state entity tried to do the eminent-domain. You, you-- I, I challenge you and as I have tried I have not found any cases where there was a title dispute between two owners that the hurt in an eminent-domain context.

JUSTICE: Counsel is here, in times was expired. And there any other questions. Thank you, then the Court is ready to hear arguments from the respondents.

COURT ATTENDANT: May it please the Court. Mr. Hutson and Mr. Walter will present arguments for their respondents. Mr. Hutson you only have the first 15 minutes.

MR. HUTSON: May it please the Court. This is the case, is the condemnation case and it's a-- and a summary judgment case. I think it measurably in response to Ms. Willi's argument about whether they-- the property conveys all the interest that a property owner has in that county. There is no summary judgment evidence, that this was the only property that the court just didn't owned in Harris Count.

JUSTICE: Some of the property down on Tract 12, 8.5 acres

MR. HUTSON: Yes. I think that, that the family off at 1.9, a lot of property out there.

JUSTICE: Do you agree that Tract 12 was a 24-acre tract?

MR. HUTSON: No. I did not, Judge. I think that's the, the issue in this case, is what Tract 12 was the subject of the tax-suit . What Tract 12 was the-- was in the constable's deed and the-- that, that would issue.

JUSTICE: That's why you can't locate the property on the plat.

JUSTICE: Is it platted somewhere? You say is Tract 12 is an abstract.

MR. HUTSON: But that's not the Tract 12 that was sued on by the

City Houston and, and the-- well, the law firm that, you know, does a collection from the City of Houston.

JUSTICE: Well, my first question now is if, if a, a track 12 was describe and is that the 24-acre tract? Tract 12 F-Tract 639, T.S. Roberts Survey.

MR. HUTSON: If you're extrapolate on the cryptic description in the constable's deed as the, as the petitioner would say that's their argument.

JUSTICE: Well, this is ...

JUSTICE: Well, I understand that. I may ask in him now, here is the Tract 12 now? And surely it was plated somewhere and you can't tell or we can't tell where it is.

MR. HUTSON: I don't think you can tell. I think there is that tract. But there was also tracts that were sued upon by the, by the City of Houston that to my contention is the Tract 12 in the constable's deed -

JUSTICE: I understand that.

MR. HUTSON: - which is either 6 acres or 3 acres depending on the tax and information that I have attached to my motion for summary judgment.

JUSTICE: I understand all that. But if somebody told me, "I'm only give Tract 12 and the Abstract 659 and the T.S. Roberst Survey in Harris County, Texas." Could I brought to some court's office and find that and then go find that own grammar or not. That's all on it. That's ...

MR. HUTSON: I think you could. But I think that the issue in this case is the 8 and-- is the condemnation case for 8 1/2 acres for the extension of the North Runway which is a continental airport. And my issue of one motion for summary judgment was my clients who used partition deed, headed the, the subscribe by meets and the bounds that 8 1/2 acres. And in fact the 8 1/2 acres that's platted by the surveyor, uses the Crews' partition deed to the delineate the property that the City of Houston was hoping to condemned. The, the other issue that one consideration to it is the constable's deed is a quick climbed deed that he gives-- the constable's giving him what he has, now without any warrantee or any guarantee about what is conveying to it. And I think that's, I think that's implicit in the tax sale process that in a whether, whether AIC thought they were getting 24 acres for \$110 or 15 acres for \$110 and for 8 acres for \$110 or for 6 acres for 110 dollars.

JUSTICE: But if, but if-- their point is that the judgment says, he's got all of it. It maybe wrong. He didn't have all of it but the judgment says he does. And if not in collateral tax to south announced they know, he does.

MR. HUTSON: I don't think so, Judge, because I don't think I-- you know, Judge, Judge, Justice Hecht was asking me, you know, if, if it's says Tract 12 and Abstract 359, there's a, there's a case out of the First Court of Appeals -

JUSTICE: Let's just say ...

MR. HUTSON: - that talks about using the short hand from Harris County Appraisal District, that's inadequate, that doesn't, you know, is it, is it 6 acres, is it 3-- not there is ACD 8 acres. This tract means tract, and I, and I think subsequently that have-- the taxing authority has changed this, this [inaudible].

JUSTICE: If I can get a word from in each lab -

MR. HUTSON: I'm, I'm sorry, Judge.

JUSTICE: - how far, how far off to does it have to be. In other

words, instead of being 6 rather an 8.5., one-one, what if it's 8 and what if they say, tax suit on the judgment it's 8.509. There're 2/1000 of an acre off. Is that toward to?

MR. HUTSON: I don't think that would be a problem, Judge.

JUSTICE: So where's the the money?

MR. HUTSON: I don't think, I don't think, I don't think it would be a problem at all if the tax suits said tract, you know, but they-- where is-- doing the remainder of Tract 12 form of partition deed, you know, in describe the property. I think that's the, the problem that AIC has is that this, this doesn't described the tract of land. One of the Crewses own and two, that the prop-- that the city was seeking to condemn. Because, because we have the, the-- in the First Court for Appeals' opinion, you know, we start out with our meets and bounds description. And the-- and AIC for these constable's deeds attempts to Forbes superior titles but their problem is, as, as Justice O'Neill was saying, "What is the intent of parties when a taxing authority is taking your land." What's the int-- intent of a-- of the municipality when it selling it? And I think you do have to look at the, at the tax suit as to what they're-- what they were looking to do? What were they looking to take?

JUSTICE: But this isn't approved in tempt to expressed in the words of the deed not the-- after subjective. No, telling what they weretrying to do but the question is, "What, what would I think the-- when they wrote all of the acres in this tract?"

HUTSON: Well, can you, can you convey that without given the party notice that this is what we're taking from it. You, you know, as, you know, it-- saying together, say you get suit for tax judgment and it says "We're sue and therefore the 3 acres that you owned out by the airport," and you say "Oh, it's, you know, it's the sand pet, that's mud and I don't want to paid for it. You know, I'm just got to let that go." And so you, you don't answer and then you-- they got a judgment in the XU and saw no, you know, we're taking a, you know, we're taking another 50 acres that were out-- was out there.

JUSTICE: Don't you have to fill it?

MR. HUTSON: Well, if you had notice up ...

JUSTICE: All they got was send you to Judge. I mean, if you didn't get notice at a judgment, that's one thing, but if you know what the judgment is and it's wrong, looks like you've got to appeal, or you're stuck on one.

MR. HUTSON: But I think I don't, I don't think it's a, a valid transfer of, of real property interest, because you're not-- you know, it goes back to the idea--the intent of the parties to, to convey, you know, what they intended to say. And that's what I what I think is ...

JUSTICE: That's pretty risky position to take. Because I do -

MR. HUTSON: - of, of the ...

JUSTICE: - if you have notice of this condemnation and you decide not to sue it because you think there-- you, you, you decide not respond to it ' cause you think, perhaps it's only a sand pet not 50 acres. And then you going to take a chance that-- were you not going to response and then there's a judgment entered against you, not going to get to set aside.

MR. HUTSON: I agree with you, Judge, but I certainly as a, as a-- as an attorney or a business person that you know, you wouldn't do that. But's-- but as a laying person you met. The, the, the, the background on this case was that the-- these are, are the three meeting the hands of the buyers that I represent now. And prior to that their father my, client's grandfather, owned lots of acres out there around



in the airport, the purpose is the airport. So this is property that's been in the family for, for a long time. Just, just to give you some background on, you know, how does, how does it came about. But I agree with you. So that is, that is a dangerous option to take. It's, it's, it's not in the record before this Court but it's in the record of the tax suit which would be part of cases that's were-- if it's remanded where one of the ladies wrote a letter of response to the court-- you know that, that said, "These properties going to divided. I don't know in this property. Don't send me anymore notices about this." And I think part of that goes to the-- they have tush description in the tax suits of whether it's Tract 12 locks sic-- 6 acres or 3 acres. The, the case that I was referring to about using HCAD property description and inadequacy of it is a Mayer versus Garcia. Actually, it is a Texarkana but it is a Harris County case. Where they-- where the, the-- they assumed citizens without the benefit of the turnings. And he used the short hand in the HCAD description to describe his property. And it was being-- then adequate. And somewhat to this case is it, is it lot 14 or lot 14A because the-- a place in these were chop-chop the properties sometimes and there the tax suit. I wanted, I wanted to talk to briefly on the jurisdiction issue that I think are-- I think the argument isn't impractical that for mere position if you're, if you're in the condemnation case, your arguing a title, you're having a trial or your-- and, and all of a suddenly, they determine that the value of the property is a \$120,000. You have to stop and go across the street in Harris County. I don't think that ...

JUSTICE: What about the, what about the-- on West case? What we do of that.

MR. HUTSON: I, I believe that predated case. The modification of the, of the statute.

JUSTICE: Well, no question admit. Does it matter? I mean, the statute looks likes it's best to say.

MR. HUTSON: Well, I, I think it being impractical.

JUSTICE: But then-- so as Westroad?

MR. HUTSON: I, I, I, I'm not sure, Judge.

JUSTICE: We've asked for your position if it work.

JUSTICE: Well, I hand the ball to Ms. Walters, or are you going to

...

MR. HUTSON: I think just-- just in summation. I was-- Rena recent court case by this Court about the adverse possession of the driveway in West University place. And there was a, a comment from the court that the, you know, the adverse possession is harsh but it's a harsh remedy because it's taking property from another person. And I think in this case, if they-- taxing authority is taking property for, for unpaid taxes that it's in coming upon them to properly describe it's-- to properly to give the taxpayer notice of what possibly they're looking before close upon and be able to describe that property and well take them grant. Thank you.

ORAL ARGUMENT OF PAMELA H. WALTERS ON BEHALF OF THE RESPONDENT

MS. WALTERS: May it please the Court. My name is Pamela H. Walters. And I represent Aldine Independent School District, respondent in this matter before the Honorable Court. At this time I would like to shift the focus from title to tax liens, and direct the court's

attention to Lavic Ice Tea versus Owens . This is a case in 1948, out of Emerald law which has an extremely similar fact scenario to the underlying tax suit. In that case, the State of Texas and the County suit for Texas on 21 lots but were delinquent. They thank the judgment, sold the property. It was struck off to them but for sale. And then 20 years later, they resold the property, the Owens. City of LaVic and Lavic Ice Tea were not parties to the underlying tax suit. And the issue before the court was, what is effect of the tax sales by some taxing units on the liens that taxing units not joining them in the law suit. The Court held that all tax liens has equal dignity. They found of taxes cases on point but they look to the majority of jurisdiction and found that other states held the enforcement of the lien merely was suspended until the property was purchased by an individual from the taxing units. The Court held that the liens of the taxing units not joined, were not affected but rather only those included in a judgment were extinguished. And the liens of the taxing units not included in this suit, became paramount and the purchaser took the properties subject to those liens.

JUSTICE: There's thing to do someone dispute about whether the school district here was served and 1991 case.

MS. WALTERS: Your Honor, that is true.

JUSTICE: But why, why is there that dispute? Can everybody agree that they were, they weren't.

MS. WALTERS: Well, I think that the records clearly indicate as attach to our motion for summary judgment that Aldine was not a party to the underlying suit. The only thing that they point out to the court is that the name of the attorney and Barna Burns have quote was in the judgment. Tax collection cases were small closenet family. We all know who represents each other we're all in the same court all the time together. The fact that they put that and then should have be learning to the-- of City of Houston that they had made an error and not including all the previous case but Aldine was not surging that case. And in fact there was an admission made by the AIC Management and they're bridge to the Court of Appeals on page 17, they stated pursuant to Section 33-44, Texas Tax Code, Aldine was necessary to the party-- necessary party to the law suit and it was not a party to the judgment. So I think despite all of the arguments, they considered not a party to them, to the management as well. The court in Lavic Ice Tea versus Owens went on to say that it is the duty of purchase to determine from the taxes's of collector of each taxing unit. The amount of taxes doing the property at the time of purchased. The scenario here is almost exactly the same. The City of Houston, county, and the State of Texas obtained the judgment on the property to that-- Aldine was not party. And I'm asking the court to take the same approach to find that all tax liens had equal dignity and then the liens of Aldine were unaffected by the underlying tax suits. I'd also like to talk about that manner of attachment and character of tax liens. And not because they attached to the lien without any type of perfection that the word of the proceeds-- from the condemnation proceed, the word of the tax claims from the condemnation proceeds is proper regardless of who owns title to the property. Tex. Code Section 32.01 says that, "The tax lien attaches to the property. The secured opinion of taxes final season interest on January 1st of each year." Texas Constitution Article VII section 15, states that, "The taxes to the property and the liens that attaches to that property permits the sell of the property to satisfied delinquent taxes." Since our liens are dense to property and attached there too, the issue of title is not relevant to Aldine's payment from the first

seeking of registry of the court. Who, who serve in the condemnation case as a defendants to put forth our claim and defend our respective interest in the property. The court granted our motion for summary judgment without objection. It's a separate motion that was granted giving us moneys in the court and your pay from the proceeds which is proper because the liens are on the land. And we deserve to be compensate to taking as well. There was several issue that AIC attempt to raise for the first time before the Supreme Court. And because I don't have a lot of time, I'm going to let my brief addressed those, but they did waived several issues regarding Aldine. In summary, the trial court did error in granting all-- did not error in granting all these motion for summary judgment and in entering a judgment dismissing AIC gross plans. Just like in the Lavic Ice Tea case Aldine's tax liens are title to equal dignity with those who of the taxing units who are joined in that law suits. Since Aldine was not properly joined in the underlying tax suit, the liens are unaffected by the judgment or the subsequent tax sales. And since liens attached to the land, the tax liens attached to the land. It was proper for Aldine to having tax claims satisfied from the proceeds of the condemnation proceedings regardless of who is determines in this case the whole title. Aldine respectfully tries that this Honorable Court of-- from the judgment of the trial court. I thank you for your time consideration. It's been enough.

REBUTTAL ARGUMENT OF TRACY J. WILLI ON BEHALF OF PETITIONER

MS. WILLI: Waterhouse versus Gallup has the best description on how to determine whether a property is sufficient to describe the mandate. I think the Morrow case kind of a twist this, I don't think it gives the court's a good enough rubric for working out whether a proper description is sufficient. If you read Waterhouse versus Gallup it says, the test is whether the land can, by aid of extrinsic evidence, be identified from the description given in the conveyance. A very brief description is often sufficient to identified the object. If one owns only one farm or one tract of land of 100 acres a deep by such person describing "The land as my farm, my tract of 100 acres," and, and giving the county in which it situated is sufficient. This is going back again to the, dissenting opinion in the J. Hiram Moore case.

JUSTICE: What about the taxes? How come AISD line tackle to the taxes.

MS. WILLI: The biggest problem with the summary judgment that AISD got is it ask for summary judgment on the ground of our past taxes are not extinguish. It got summary judgment on the-- there is a specific grounds stated by the trial court that they cannot because ...

JUSTICE: But, but if it's in the, if it's in the motion, we confirm base on the right reading even the trial court pick them all at once.

MS. WILLI: No, your Honor. They didn't even moved forward on the other ground. This was just boots strap by the judge. She wrote in because AIS-- because AIC Management does not hold the title. That's why she granted a the summary judgment and it's [inaudible] ...

JUSTICE: But I mean, we could, we could affirm if it used-- I thought you said it was in their motion -

MS. WILLI: Yeah.

JUSTICE: - but then-- because it wouldn't extinguished.

MS. WILLI: If wasn't in their motion ...

JUSTICE: Was it the extinguish worth?

MS. WILLI: They only all moved-- I'm sorry. They only moved for summary judgment on the basis that, that you cannot extinguish past taxes.

JUSTICE: Which is what I've just said.

MS. WILLI: Yes.

JUSTICE: And therefore we could affirm on that basis.

MS. WILLI: No, because she stated a, specifically the ground she granted.

JUSTICE: We're not communicating. If I moved for summary judgment on grounds A and B -

MS. WILLI: Yes.

JUSTICE: - trial judge rejects A but grants on B. No questions. The Supreme Court or Court of Appeals can affirm on A -

MS. WILLI: Absolutely.

JUSTICE: - so we can affirm on their liens not extinguished. And if we could, I need to hear from you wa-- that's wrong.

MS. WILLI: Okay. Well, and, and I think we're still not communicating too, because the problem with the order is that when you have a judge who specifically says, "This is what I ruled on." Then, you can't used another ground. You have to only rule on that ground.

JUSTICE: You have a case from this Court? That's probably [inaudible].

MS. WILLI: Yes I'd-- yes, your Honor. I didn't bring it up from within, but I did cite to it in my briefing.

JUSTICE: Okay.

MS. WILLI: But that's-- when a, when a trial court -

JUSTICE: If -

MS. WILLI: - said that ...

JUSTICE: - if -

MS. WILLI: Okay.

JUSTICE: - if I happened to disagree ...

MS. WILLI: Okay.

JUSTICE: - could I affi-- why couldn't I affirm this case for AISD on that their liens not extinguish. Whoever got-- whoever gets the money in the end, got to pay the taxes.

MS. WILLI: Well, I think another issue is that is it in intertwined with the resident, whose got what and what the title is. I think the home extinguished ...

JUSTICE: So it's thatthis? It's a subject matter jurisdiction problem ...

MS. WILLI: Yes. I think the whole thing goes back to subject matter jurisdiction as well.

JUSTICE: Let me ask you this, if, if you went behind the judgment, the tax deficiency judgment. And if you had to look at the property description that was contained in the tax suit. We agree that, that the conveyance could be void, are-- well, let me put this way. Do you agree that you can't-- you couldn't them locate the property conveyed on the ground? If the judgment had said, 6 acres. If the Judgment has said, Tract 12 is being the 6 acres.

MS. WILLI: Then it depends on what the constable's deed then would say because the constable to-- constable's deeds still does refer to the entire law suit and the law suit refers to the partition deed. So I think it's still get there. The constable's deed it's been, 1991 constable's deed. At the very top of the document it's says, "This is

deed arising out of this lawsuit". And then it's state the name of the lawsuit and the public property are on this. And so I mean-- I think that the, I think the biggest point here is that there's more than one way to describe property. You described property by a lot of different ways. This case ...

JUSTICE: Well, I understand that, but the problem that I understand we have here, is the legal description in the lawsuit with 6 acres suit, and that is been the problem.

MS. WILLI: Well, it's only the legal description in the petition of the lawsuit. The judgment says I have to tell that based [inaudible].

JUSTICE: Well, I'm to tell, all that the, the, the taxing authority suit to foreclose with 6 acres.

JUSTICE: You know, the petition that gives some party notice though?

MS. WILLI: Yes. The, the petition ...

JUSTICE: That's, that's significant to me.

MS. WILLI: Well, that's true. I mean I agree that significant but again they are invited to come to that, that discussion to change that lawsuit.

JUSTICE: I mean the, the judgment ...

MS. WILLI: And, and the fact that the judgment ended up saying all of their interests in this Tract 12. You know, apparently, the court note that was all their interest in Tract 12. Well, it wasn't. It that they a have a little bit more than 6 acres.

JUSTICE: Well, let's look at the judgment. The judgment says, it's order that plaintiff recover judgment against the defendants for taxes, penalties, et cetera, levied and assessed by the City of Houston. And then it looks like the City of Houston, levied and assessed on tract 12, 6 acres.

MS. WILLI: We didn't have acres. What I recall it's in the-- I think it's in the second page of the judgment where it talks about what the-- it, it says-- or it could be at the bottom of the first page, it talks about the tract and that Justice Braggs he says, "We're talking about Tract 12."

JUSTICE: Well, but it says it doesn't say it's, it's for the amount of money that the city levied and assessed on Tract 12. It doesn't -

MS. WILLI: Right.

JUSTICE: - waived Tract 12.

MS. WILLI: Well, actually -

JUSTICE: It says ...

MS. WILLI: - the down it says, "We authorized writ of execution to foreclose on Tract 12." That's how they get to the constable's deed.

JUSTICE: A lot say that in here. All I say is we're covered judgment for a taxes duly led by Harris County on Tract 12.

MS. WILLI: There's also another provision that allows that foreclosure sell. I can find if, if you want to me to pull out my record at [inaudible].

JUSTICE: Counsel.

JUSTICE: You said you sell the property. It doesn't identified [inaudible].

MS. MS. WILLI: Okay. Sell the property and then it describe the property before as, as tract 12.

JUSTICE: Described the property as what the city assessed on Tract 12.

MS. MS. WILLI: Well, it authorizes him to sell that property for

what the city assessed. As not ...

JUSTICE: Set-- you assessed, you don't assessed -

MS. WILLI: Right.

JUSTICE: - properties?

MS. WILLI: Right. You can sell the property for-- and to pay those assessments. But the property that it's going to sell is the Tract 12.

CHIEF JUSTICE JEFFERSON: There any further question. Thank you, Counsel. The cause is submitted and the court will take a brief recess.

COURT ATTENDANT: All rise.

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