VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 16th day of November, 2017.

Celebrate Virginia South, LLC, et al., Appellants,

against Record Nos. 161540, 161541, 161542, 161543 and 161544
Circuit Court Nos. CL15-778, CL15-838, CL15-880,
CL15-881 and CL15-897

City of Fredericksburg, Appellee.

Upon appeals from judgments
rendered by the Circuit Court of the City of
Fredericksburg.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is no reversible error in the judgments of the Circuit Court of the City of Fredericksburg.

In 2000, the City of Fredericksburg (the "City") created the Celebrate Virginia South Community Development Authority (the "CDA"). Celebrate Virginia South, LLC, CVAS Properties, LLC, CVAS 2, LLC, and CVAS Parkway, LLC (collectively "CVAS") own real estate within the CDA's geographic area. The real estate owned by CVAS is subject to various deeds of trust in favor of numerous holders of bonds issued by CVA South Bond Investors, LLC. The trustees of these deeds of trust are Lawyers Title Realty Services, Inc. ("Lawyers Title") and/or Celia A. Hodges and/or Timothy A. Lascko.

In late 2015, the City filed a number of complaints against CVAS seeking decrees of sale to satisfy the extensive tax and special assessment deficiencies on the real property owned by CVAS. The initial complaints identified the specific CVAS entity that owned the properties at issue and CVA South Bond Investors, LLC. Each complaint included an exhibit showing the

appraised value and the current liens on each property.[1] Each complaint further included an attachment listing the entities that had received notice of the City's intent to commence proceedings as required under Code § 58.1-3965(A).

CVAS responded to each complaint and opposed entry of the decrees. In its pleading, CVAS asserted, as an affirmative defense, that "[a] good faith dispute exists as to the value of the property at issue in this case" and sought to have the cases referred to a commissioner in chancery for an evidentiary hearing to determine the fair market value of each property. At a subsequent hearing, CVAS asserted that the City's actions should be dismissed because the City failed to provide Lawyers Title with notice at least 30 days prior to the institution of the present action, as required under Code § 58.1-3965(A).

In response, the City sought to cure its failure to provide notice to the trustees by seeking leave to amend its complaints to include the trustees as defendants to the actions. CVAS objected, arguing that the City's failure to provide notice to Lawyers Title or include them as a party defendant in the initial complaint deprived the trial court of jurisdiction over this matter. The trial court overruled CVAS's objection and granted the City leave to amend its complaints to include the trustees as defendants.

On appeal, CVAS argues that the City could not cure its deficiency by amending its complaint because the trial court lacked jurisdiction to grant such a request. This argument presents an issue of statutory interpretation, which is reviewed de novo. *Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 104, 639 S.E.2d 174, 178 (2007). The relevant portion of

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[1] The attachments established that the current liens on each respective property far exceeded the fair market value of that property.

Code § 58.1-3965(A) addresses where and to whom notice must be sent before a judicial proceeding seeking the sale of property due to delinquent taxes can be instituted. The statute provides that notice must be sent to the property owner's last known address, the address of the property at issue (if that address is different from the property owner's address), and "the last known address of any trustee under any deed of trust, mortgagee under any mortgage and any other lien creditor, *if such trustee, mortgagee or lien creditor is not otherwise made a party defendant under § 58.1-3967.*" *Id.* (emphasis added).

Code § 58.1-3967 states that "[a]ll necessary parties shall be made parties defendant" to judicial proceedings instituted to sell property due to delinquent taxes. Additionally, Code § 58.1-3967 states that "either the beneficiary or beneficiaries, or the trustee or trustees, under any deed of trust, security interest or mortgage securing a financial institution, or any lien creditor that is a financial institution, shall be necessary parties defendant."

CVAS contends that the City's failure to follow the requirements of Code §§ 58.1-3965(A) and -3967 in its initial complaint deprived the trial court of active jurisdiction over the matter. While it is true that, in the absence of Lawyers Title, a statutory necessary party, the trial court lacked active jurisdiction, *see McDougle v. McDougle*, 214 Va. 636, 637, 203 S.E.2d 131, 133 (1974) ("a court cannot render a valid judgment when necessary parties to the proceedings are not before the court"), it does not follow that the trial court lacked the authority to grant leave to amend the complaints. Indeed, the legislature has granted the courts broad authority to permit such amendments, especially with regard to the joinder of necessary parties. *See* Code § 8.01-5 (permitting the joinder of necessary parties "at any time as the ends of justice may require"). Accordingly, it was not error for the trial court to allow the City to amend its complaints to name Lawyers Title as a party defendant.

At a subsequent hearing on the City's motions for decrees of sale, CVAS reasserted its position that a dispute existed as to the value of all of the properties and as to the title of one of the properties. According to CVAS, the City's appraiser over-valued the properties by failing to consider the fact that the properties were not meant to be immediately developed. CVAS took the position that, under its development timeline, several of the properties would remain undeveloped for a longer period of time, thereby decreasing the value of those properties. The trial court noted that an appraisal that over-values the properties is beneficial to CVAS. In response, CVAS claimed that, if the appraisal were lower, it might choose to redeem some or all of the properties based on that lower valuation.[2] After considering the parties' arguments, the trial court concluded that there was no need to receive evidence on the valuation issue or refer the matter to a commissioner in chancery as the difference in valuation was likely "de minimus." The trial court then issued a decree of sale and appointed special commissioners for all of the properties.[3]

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[2] In making this argument, CVAS was not seeking to "redeem" the properties in the manner provided under Code § 58.1-3965(B). Redemption under Code § 58.1-3965(B) requires a property owner to pay "all accumulated taxes, penalties, reasonable attorneys' fees, interest and costs" on the property. In the present case, CVAS explained that it was seeking to lower the appraised value of the properties in an effort to re-purchase the properties at the lower prices and avoid a public auction.

[3] During the pendency of this appeal, CVAS moved, with the consent of the City, to redeem a single parcel pursuant to Code § 58.1-3974 and withdraw its appeal as to that parcel. Specifically, CVAS agreed "to pay in full the taxes, special assessments, penalties, interest, fees, and costs so that all amounts will be marked by the City Treasurer as 'paid' as to Parcel 312-A-P6B." The parties have since informed the Court that CVAS has, in fact, redeemed the parcel. Accordingly, the motion to withdraw the appeal is granted as to only Parcel 312-A-P6B and the Parcel is released from this appeal.

On appeal, CVAS argues that the trial court erred in appointing special commissioners under Code § 58.1-3969 because a dispute as to value existed on the face of the pleadings and, therefore, the matter should have been referred to a commissioner in chancery to allow it the opportunity to further develop the record as to value. CVAS, however, never offered any evidence in support of its contention that such a dispute actually existed. Indeed, when the trial court noted that it "didn't have anything from [CVAS] other than just saying that [it didn't] agree with the appraisal of the valuation," CVAS responded that it did not think it needed another appraisal because it believed that the City's appraiser would come to a lower valuation if "[he] were asked the right questions." At the same time, CVAS acknowledged that it did not actually know what the appraiser would say if he were asked these questions.

In appealing the trial court's ruling, CVAS is essentially arguing that the trial court erred in excluding its evidence as to value. A trial court's decision to admit or exclude evidence is reviewed using an abuse of discretion standard. *John Crane, Inc. v. Jones*, 274 Va. 581, 590, 650 S.E.2d 851, 855 (2007). Absent an abuse of discretion, a trial court's decision to exclude evidence will not be disturbed on appeal. *Id.*

Under the Virginia Rules of Evidence, "[e]rror may not be predicated upon . . . exclusion of evidence, unless . . . the substance of the evidence was made known to the court by proffer." Va. R. Evid. 2:103(a)(2). However, CVAS has failed to proffer any evidence showing that the property would be appraised for a different amount if a different method was used. Indeed, the record demonstrates that CVAS's assertion that the appraisal would be lower amounts to nothing more than speculation. Thus, in the absence of any evidence demonstrating a dispute existed as to the value of the properties, it cannot be said that the trial court abused its discretion by

refusing to refer the matter to a commissioner in chancery.[4] Accordingly, the judgments of the trial court in the present cases are affirmed.

This order shall be certified to the Circuit Court of the City of Fredericksburg.

A Copy,

Teste:

Patricia L Harrington

Clerk

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[4] CVAS had also claimed that there was a good faith dispute as to the title to one of the properties due to the City's inclusion of M&T Bank as a respondent to one of the actions it filed because the land records indicated that M&T Bank held a Credit Line Deed of Trust that had not been marked as satisfied. CVAS claimed this was error because the Credit Line Deed of Trust had been satisfied.

At trial, the City explained that it included M&T Bank "out of an abundance of caution." It pointed out that M&T Bank had not filed any pleadings in this case and, even if it had, its interest in this case would only have entitled it to a claim to surplus proceeds after the tax liens were paid. Such surplus was likely nonexistent, given the deficit between the tax lien on the property and its appraised value. The City further stated that, "if there is a document that shows that they have divested their interest, then [the City] would remove them from the case."

Here, unlike the dispute related to the value of the properties, there is evidence in the record that supports CVAS's argument. Specifically, CVAS points to the title reports submitted by the City that indicate that M&T Bank has assigned its interest in the property to CVAS. However, to the extent that this demonstrates that a dispute existed as to the title of one of the properties, it still cannot be said that the trial court abused its discretion in refusing to appoint a commissioner in chancery. CVAS's own argument established that there was no need to refer this case to a commissioner in chancery, as there was no need to take further evidence. Rather, the matter could be determined by the title reports that were already in evidence.