

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: LYCOMING COUNTY TAX : CIVIL ACTION – LAW  
CLAIM OBJECTION TO TAX SALE/ :  
PETITIONER ANDREW R. HARTRANFT: NO. 02-01,730  
Parcel No. 31-3270-015603-000 :

*Date: January 31, 2003*

**OPINION and ORDER**

Before the Court is the Petition to Set Aside a Tax Sale held on September 12, 2002, as to parcel no. 31-3270-015603-000, filed by Petitioner, Andrew R. Hartranft, on November 4, 2002. A conference was held in Chambers attended by Anthony D. Miele, Esquire, for the Petitioner, Peter Burchanowski, Esquire, for the Lycoming County Tax Claim Bureau, and J. Michael Wiley, Esquire, for the successful bidder and tax sale purchaser, Kenneth E. George, who has intervened. At the conference, a stipulation of facts was made and entered on the record.

The following is a brief summary of the pertinent stipulated facts of record. Petitioner was the owner of tax parcel no. 31-3270-015603-000. The Petitioner had not paid the taxes on the property for the year 2000. Petitioner had been notified that the property was to be sold pursuant to the Real Estate Tax Sale Law 72 P.S. § 5860.601, *et seq* for his failure to pay the taxes. The public sale was set for September 12, 2002. Approximately five to ten minutes before the sale was to begin that date at 10:00 a.m., Petitioner arrived and presented to the tax claim bureau officer in charge of the sale a third party check made by Petitioner's father endorsed over to him as payment for the delinquent taxes. This personal check was refused, because it was not certified. Petitioner was instructed that he should obtain cash in order to pay the taxes. Petitioner left the courthouse to secure the appropriate cash funds.

Petitioner returned to the courthouse the same day after the close of business, but after the sales were completed. Petitioner offered the cash to redeem his property, but was informed that it had been sold. Subsequently, Petitioner filed objections. The upset price was \$2,309.62. The sale price was \$2,309.00. The fair market value of the property was \$34,820.00. The assessed value was \$26,155.00. Based upon the calculations of Petitioner's counsel, the sales price was fifteen percent of the fair market value and eleven percent of the assessed value of the property,

The main issue before the Court is whether the Court should set aside the tax sale. Petitioner has presented three sub-issues that the Court must address to resolve the central issue. The first is whether the tax sale should be set aside when the sale purchase price meets the upset price, but is fifteen percent of the fair market value and eleven percent of the assessed value of the property. The second is whether Petitioner made timely efforts to pay the delinquent taxes before the sale of the property, but was improperly rejected by the Tax Bureau. The third sub-issue before the Court is whether Petitioner was given adequate notice when the certified mail notices he received did not indicate the proper method of payment to rectify the tax delinquency and save the property. The Court will now address each sub-issue in turn.

The Court will not set aside the tax sale on the ground that the sale purchase price was disproportionate to the property's value. A tax sale will not be set aside where "a statutorily satisfactory price has been obtained at a sale conducted in accord with the provisions of the statute." *Lapp v. County of Chester, Tax Claim Bureau*, 445 A.2d 1356, 1358 (Pa. Cmwlth. 1982). The Commonwealth Court has held that "as long as the upset price is bid, the

sale may be consummated.” *Tracey v. County of Chester*, 463 A.2d 1251, 1254 (Pa. Cmwlth. 1980), *rev’d on other grounds*, 489 A.2d 1334 (Pa. 1985); *Lapp*, 445 A.2d at 1358. Therefore, a statutorily satisfactory price is the upset price, and as such is the appropriate standard to judge the adequacy of the purchase price. The upset price is “the sum of Commonwealth tax liens, outstanding tax liens and interest, tax judgments and interest, accrued taxes, municipal claims, and the costs of the sale.” *Tracey*, 463 A.2d at 1254; 72 P.S. § 5860.605.

In *Tracey*, the purchase price for the property was \$400. 463 A.2d at 1254. The market value of the property was between \$9,000 and \$10,000. *Ibid.* Despite this large disparity between price and value, the Commonwealth Court would not set aside the sale on this ground. The Commonwealth Court reached this conclusion because the amount paid exceeded the upset price. *Ibid.* In *Lapp*, the property was purchased at a tax sale for the price of \$2,400. 445 A.2d at 1357. The Appellants had purchased the property five years earlier for \$40,000. *Ibid.* The purchase price exceeded the upset price, so the Commonwealth Court would not set aside the sale because the price was grossly inadequate as the Appellants claimed. The tax sale was conducted in accordance with the provisions of the Real Estate Tax Sale Law and exceeded the upset price, so the Commonwealth Court confirmed the sale. *Id.* at 1358.

The sale of Petitioner’s property will not be set aside on the grounds of disproportionate price. The upset price for the property was \$2,309.28. The purchase price was \$2,309.00. Although short twenty-eight cents, this is of no consequence. The purchase price met the upset price; therefore a statutorily satisfactory price has been obtained. As such, the Court will not set aside the tax sale on this basis.

Now turning to the attempted payment of the delinquent taxes. The Court will not set aside the tax sale because Petitioner returned to the courthouse with a sufficient cash payment after the sale was complete, but before the close of business. A property owner can redeem his property and remove it from threat of sale prior to the actual sale of the property. 72 P.S. § 5860.501(c); 72 P.S. § 5860.603. The right of redemption “is no longer exercisable after that event.” *In re Upset Sale of September 8, 1980 of the Montgomery County Tax Claim Bureau*, 495 A.2d 221, 222-23 (Pa. Cmwlth. 1985); *In re Lawrence County Tax Claim Bureau for Sale of Properties Held in 1977 for Delinquent Taxes*, 431 A.2d 1116, 1117 (Pa. Cmwlth.1981). The term “sale” as used in the Real Estate Tax Sale Law refers to “the actual auction of the properties at which bidding occurs, and at which the properties are struck down to the highest bidder.” *In re Lawrence County Tax Claim Bureau*, 431 A.2d at 1117. The sale, and consequently the right of redemption, ends “at the fall of the auctioneer’s hammer.” *In re Upset Sale of September 8, 1980*, 495 A.2d at 222.

Petitioner’s attempted payment before the close of business but after the sale of his property was not timely. Petitioner’s property was sold prior to his return with the cash payment. The sale of the property terminated Petitioner’s right of redemption. The fact that Petitioner returned before the close of business that day is of no consequence, despite the notice published in the Williamsport Sun-Gazette on August 12, 2002, which appears to make this attempted post-sale payment significant, and the case of *In re Upset Sale of September 8, 1980 of the Montgomery County Tax Claim Bureau*, *supra*. The newspaper notice of August 12, 2002, states that payments for delinquent taxes will be accepted “until the close of business at 5:00 p.m. on September 11, 2002.” Tax Bureau’s Consolidated Return, Exhibit C. In the same

paragraph, the notice states “THERE IS NO REDEMPTION AFTER THE SALE.” *Ibid.* In *In re Upset Tax Sale of September 8, 1980*, the Tax Bureau had advertised and included in the notices it sent out to all interested parties that sales would not become final “where delinquent taxpayers made payments of at least twenty-five percent of their overdue taxes to the bureau before the close of business on the day of sale.” 495 A.2d at 222. The Commonwealth Court determined that the terms of the tax sale provided that a sale would not occur until the end of the day provided no owner paid the delinquent taxes on the property. *Id.* at 223. The Tax Bureau had redefined when a sale would occur, and as a consequence redefined when the right of redemption would be extinguished.

In the case *sub judice*, the Tax Bureau has not executed such a change. The newspaper notice of August 12, 2002, states that payments will be accepted until the end of business on September 11, 2002, the day preceding the sale date. The newspaper notice does not, nor does any other notice, state that a sale would not occur until the close of business on the day of sale provided no redemption had occurred. Without such an explicit notification, a sale occurs when the property is auctioned to the highest bidder. *In re Upset Sale of September 8, 1980*, 495 A.2d at 222; *In re Lawrence County Tax Claim Bureau*, 431 A.2d at 1117. Therefore, the sale occurred when Petitioner’s property was sold and not at the close of business. As such, Petitioner’s attempted payment at the close of business was not timely under the Real Estate Tax Sale Law or the terms of sale as set forth by the Tax Bureau. Thus, the sale will not be set-aside on this ground.

However, the Court must set aside the tax sale because Petitioner was not given adequate notice as to the proper method of payment to rectify the tax delinquency and save the

property in the certified mail notices he received. “It is a fundamental provision of both our state and federal constitutions that no person shall be deprived of property except by the law of the land or due process of law.” *March v. Banus*, 151 A.2d 612, 615-616 (Pa. 1959) (quoting *Hess v. Westerwick*, 76 A.2d 745, 748 (Pa. 1950)). To satisfy due process, the property owner, at a minimum, must be notified by the government before his property is forfeited by the state. *Tracey v. County of Chester, Tax Claim Bureau*, 489 A.2d 1334, 1339 (Pa. 1985). When dealing with tax sale case, it is important for a court to remember that “it is a momentous event under the United States and the Pennsylvania Constitution when a government subjects the citizen’s property to forfeiture for the non-payment of taxes.” *In re Tax Sale*, 615 A.2d 870, 872 (Pa. Cmwlth. 1992)(quoting *Tracey*, 489 A.2d at 1339). It is also important to remember that the “purpose of a tax sale is not to strip an owner of his property, but rather to insure the tax on the property is collected.” *Murphy v. Monroe County Tax claim Bureau*, 784 A.2d 878, 883 (Pa. Cmwlth. 2001). That is why the notice provisions of the Real Estate Tax Sale Law are to be strictly construed, and “strict compliance with the notice provision is essential to prevent the deprivation of property without due process.” *Id.* at 883; *Ban v. Tax Claim Bureau of Washington County*, 698 A.2d 1386 (Pa. Cmwlth. 1997).

The Real estate Tax Sale Law requires the tax bureau “to provide three separate methods of notice: publication at least thirty days prior to the sale, notification by certified first class mail, and posting of the property at least ten days prior to the sale.” *In re Upset Tax Sale Held 11/10/97, Tax Parcel No. 48-020-119*, 784 A.2d 834, 836 (Pa. Cmwlth 2001). A tax sale is valid only if all three of the notice requirements are performed. *Ibid.* If any of these requirements are defective, then the sale is void and shall be set aside. *Krumbine v. Lebanon*

*County Tax Claim Bureau*, 663 A.2d 158 (Pa. 1995) (Tax sale set aside when notice by certified mail was deficient, even though notice by publication and posting was sufficient); *Perma Coal-Sales v. Cambria County Tax Claim Bureau*, 638 A.2d 329, 330 (Pa. Cmwlth. 1994); *In re Upset Price Tax Sale*, 615 A.2d 870, 872 (Pa. Cmwlth. 1992).

In the case *sub judice*, Petitioner has not received adequate notice because the certified mail notice was defective for failing to inform Petitioner that if he were to redeem the property before the sale the Petitioner would need to provide either cash or certified check as payment. The notice published in the Williamsport Sun-Gazette on August 12, 2002 does provide information regarding the appropriate method of payment. The notice says, “Only CASH, (U.S. dollars) CERTIFIED CHECK OR MONEY ORDER will be accepted by the Bureau as payment of these taxes (no wire transfers or credit cards accepted).” However, if one method of notice is deficient, then the tax sale is still void. *Krumbine*, 663 A.2d 158; *Perma Coal-Sales*, 638 A.2d at 330; *In re Upset Tax Sale*, 615 A.2d at 872. The notices received via certified mail dated June 5, 2002 and June 26, 2002 have information regarding the terms of sale. The notices state, “TERMS OF SALE; CASH OR CERTIFIED CHECK PAYABLE TO LYCOMING COUNTY TAX CLAIM BUREAU AT THE TIME THE PROPERTY IS STRUCK DOWN.” And underneath that statement, the notice reads “**NO PERSONAL CHECKS.**” The proximity and placement of the “**NO PERSONAL CHECKS**” statement leads the Court to conclude that it referred to the terms of sale and not the payment of the taxes. This notice does not advise the property owner that personal checks will not be accepted to pay the tax bill in advance of the sale nor that cash or a certified check is so required.

Notice is required to give the property owner the opportunity to protect his property rights. In order to do this, it is necessary to tell the property owner more than just the who, what, where, and when of the tax sale. The property owner needs to know the how. The property owner needs to know how he can pay the delinquent taxes and protect his property interest. Without the how, all the notice does is give the property owner a chance to get a front row seat and watch as his property is sold.

To make the property owner more than a spectator at the tax sale, the notice must contain information regarding how he can make the appropriate payment to redeem the property. The Real Estate Tax Sale Law is not designed to strip an owner of his property as a punishment, but is a means of ensuring that the taxes on the property are collected. *Murphy*, 789 A.2d at 883. Including in the notice sent to the property owner information on the appropriate payment method will achieve this purpose. This valuable information will allow the property owner to take the appropriate action to save the property. This way the notice fulfills the twin aims of providing the property owner with the information needed to protect his property rights and the payment of taxes.

The Court is not adding a new requirement to the notice provisions. The Real Estate Tax Sale Law requires that the notice “set forth (1) the purposes of such sale, (2) the time of such sale, (3) the place of such sale, (4) the terms of the sale including the approximate upset price, (5) the descriptions of the properties to be sold as stated in the claims entered and the name of the owner.” 72 P.S. §5860.602(a). The requirement that the notice contain information regarding the proper method of redemption gives true effect to the notice requirement as intended. The notice provision of the Real Estate Tax Sale Law is designed to

apprise the property owner of the impending tax sale. It gives him the information needed to attend the tax sale and save the property. Therefore, the requirement of telling the owner how to redeem is in line with the purpose of the notice requirement.

If 72 P.S. 5860.603, which allows a property owner to redeem his property prior to the sale by paying the entire delinquent amount of taxes or to enter into an agreement with the Tax Bureau to do so after paying twenty-five percent of the delinquent taxes, is to be given effect, then the owner must be told how he can redeem. How can an owner pay the taxes and save the property without knowing how to do this? Without such knowledge the owner cannot. If a property owner cannot pay the taxes because of lack of knowledge regarding the proper payment method, then how useful is 72 P.S. §5860.603? Therefore, the certified mail notices must contain information as to how the property owner can pay the delinquent taxes and redeem the property.

To hold otherwise would be inconsistent with the purpose and letter of the Real Estate Tax Sale Law. It is presumed that the General Assembly does not intend a result that is absurd. 1 Pa. C.S.A. §1922(1); *Commonwealth v. Diakatos*, 708 A.2d 510, 512 (Pa. Super. 1998). It is also presumed that the General Assembly intends for the entire statute to be effective and certain. 1 Pa. C.S.A. §1922(2). “When interpreting a statute, a court must ascertain and effectuate the intent of the legislature and give full effect to each provision of the statute if at all possible.” *Galloway v. Workers Compensation Brd*, 756 A.2d 1209, 1213 (Pa. Cmwlth. 2000). “Further, when construing one section of a statute courts must read that section not by itself, but with reference to and in light of, the other sections because there is a

presumption in drafting the statute, the General Assembly intended the entire statute to be effective.” *Ibid.*

Petitioner did not receive adequate service. The service was deficient because the certified mail notices were defective for not containing information on how Petitioner was to render payment and redeem the property. Therefore, the tax sale must be set aside as the notice requirement was not fulfilled.

After having disposed of the matters presented in the petition, the Court still feels the need to voice its concern about the apparent policy of the Tax Claim Bureau that would seem to deny the property owner equal protection. Even if the certified mail notices had provided information telling the property owner that a cash or certified check would be accepted as appropriate payment of the delinquent taxes, the Tax Claim Bureau has acknowledged that a personal check would be accepted, at their discretion, from a third party purchaser at the tax sale – despite a contrary statement in the pre-sale notices. This classification drawn by the Tax Claim Bureau between property owner and purchaser probably cannot withstand an equal protection challenge.

The Tax Claim Bureau has suggested that the reason for not accepting personal checks from the property owner attempting to redeem his property prior to sale is the concern that the check could bounce and the property would have to be put on the list for the next sale. The Bureau wants the payment to be guaranteed in order to cancel the sale. This does not provide a rational basis for the distinction, since there is an equal concern that the purchaser’s personal check could bounce and the property would have to be re-listed. Also, in the tax payment method which allows the owner to pay 25% of the amount due and the balance in

installments (72 P.S. §5860.603) similarly puts the Tax Claim Bureau in a position of removing the property from the tax sale list without guaranteed payment. The property owner should be afforded the same opportunity as the purchaser. As such, the Tax Claim Bureau should not be allowed to distinguish between a property owner and a purchaser as it has here by allowing the purchaser to use a personal check and not the property owner.

**ORDER**

It is hereby ORDERED that the Petition to Set Aside a Tax Sale, filed by Petitioner Andrew R. Hartranft, on November 4, 2002 is GRANTED, on the following conditions:

1. Petitioner shall cause to be paid to the Tax Claim Bureau of Lycoming County the sum of \$2,309.62 by cash or certified check not later than 5:00 p.m. March 7, 2003.
2. Upon such payment the Lycoming County Tax Claim Bureau shall cause a deed of re-conveyance of the parcel #31-3270-015603-000, Kenneth E. George, to be prepared and executed by the tax sale purchaser of the property, and shall refund to said purchaser the amount of purchase price paid to the Tax Claim Bureau at the sale; said refund to be made in exchange for the appropriately executed deed from the tax sale purchaser.
3. The tax sale purchaser shall execute and acknowledge the deed of re-conveyance and deliver it to the Tax Claim Bureau in return for and upon repayment to him of the purchase price.

4. The Tax Claim Bureau shall deliver the executed deed of re-conveyance to Petitioner who shall forthwith record the same and pay the expenses of recording. Recording of the deed shall divest any lien or encumbrance placed upon the property under the name of the tax sale purchaser.
5. If Petitioner does not make timely payment as set forth above. The Tax Claim Bureau and tax sale purchaser may file a joint praecipe to that effect, with a verification of non-payment, and upon the filing of such praecipe this order as to setting aside the tax sale shall be deemed vacated and the tax sale shall instead be confirmed absolute and the petition to set aside the sale dismissed with prejudice.

BY THE COURT:

William S. Kieser, Judge

cc: Anthony D. Miele, Esquire  
Peter Burchanowski, Esquire  
J. Michael Wiley, Esquire  
Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)