

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. 02-01,734  
PARCEL NO. 31-3270-015603-000 : MOTION FOR RECONSIDERATION

*Date: March 13, 2003*

**OPINION and ORDER**

Before the Court for determination is Intervener's, Kenneth E. George, Motion for Reconsideration filed February 7, 2003. This Court had issued an Opinion and Order on January 31, 2003 that upset the tax sale at which George had bought the property. The Court reached this conclusion because the original property owner, Andrew R. Hartranft, had not received adequate notice. The notices sent by certified mail failed to instruct Hartranft about the proper payment method to save his property from the tax sale. George contends that this Court improperly considered the adequacy of the notices because Hartranft, as the original petitioner, had waived that issue and it was not properly before the Court. Upon reconsideration, the Court agrees with George that the adequacy of the notices was not properly before the Court. Therefore, the Court's prior opinion and order must be withdrawn in part.

The reasons for the Court's partial withdrawal of its opinion are twofold. First, it appears from the transcript that Hartranft waived the adequacy of the notices. A hearing was scheduled on December 24, 2002 to dispose of Hartranft's petition to set aside the tax sale. Hartranft did not attend the hearing. An agreement was reached among respective counsel that a stipulation of facts would be entered into that day, rather than the Court deciding if the case should be continued to a future hearing date for good cause. Prior to discussing the facts of the

case, the Court engaged Hartranft's counsel, Anthony D. Miele, Esquire, on the record to ascertain the basis for his petition.

The following is what transpired between the Court and Attorney Miele:

The Court: Now, the status of the matter, as I understand it Mr. Miele, if you want to confirm, your objections do not question the validity of the assessment notice and scheduling of the tax sale including publications as well as individual notice to your client.

Mr. Miele: That is right, Your Honor.

The Court: Okay. What is the basis of your objection to the sale?

Mr. Miele: The auction bid by the successful bidder. The amount of the bid was clearly disproportionate to the value of land.

Transcript of December 24, 2002 Proceedings, at 3, lines 9 – 20.

The response to the Court's line of questioning would indicate Hartranft's counsel only wanted to place the issue of disproportionate sales price before the Court. It would be understandable for one to conclude that the only issue Hartranft would be pursuing would be the disproportionate price when one considers this exchange between the Court and Attorney Miele. This is especially true considering that Hartranft did not raise the adequacy of the notices in the argument of his brief in support of the Petition to Set Aside the Tax Sale. Thus, it appears that Hartranft had waived the issue regarding the adequacy of the notices and the issue should not have been addressed by the Court in its January 31, 2003 opinion and order.

Even if it can be argued that Hartranft did not waive his objection to the adequacy of the notices, the Court cannot support its previous opinion and order based on the stipulated record of facts. After a careful review of the stipulated facts, it is apparent that

Hartranft had stipulated that the notice contained “a caveat that no personal checks would be accepted.” Transcript of December 24, 2002 Proceedings, at 4, lines 16 – 17. This would indicate that Hartranft had notice that personal checks would not be accepted as payment. If such was the case, then the basis supporting the Court’s January 31, 2003 opinion must fall and the opinion cannot stand. If Hartranft had notice that personal checks would not be accepted as payment to save the property from sale, then there would be no reason for the Court to conclude that he was not provided with adequate notice regarding the proper payment method. Therefore, the Court must withdraw the part of its opinion dealing with the adequacy of the notices and vacate the part of the order setting aside the tax sale because of inadequate notice.

The Court reaffirms and reasserts the rest of the opinion issued on January 31, 2003. The Court will not set aside the tax sale on the ground that the sale purchase price was disproportionate to the property’s value. Also, the Court will not set aside the tax sale because Hartranft returned to the courthouse with a sufficient cash payment after the sale was complete, but before the close of business. As such, there exists no sufficient ground for this Court to set aside the tax sale.

Despite this, the Court would still caution the Lycoming County Tax Bureau regarding its apparent policy of allowing sale purchasers to provide payment with personal checks while requiring property owners to provide either cash or certified check. The Court is still concerned that such a policy runs the risk of denying the property owner equal protection. The Court would urge the Tax Claim Bureau to examine its policy and also reverse the form of the notices it sends out to property owners so that the method of payment is clear and consistent.

**ORDER**

It is hereby ORDERED that Intervener's, Kenneth E. George, Motion for Reconsideration filed February 7, 2003 is granted.

Part of this Court's January 31, 2003 opinion is withdrawn. Specifically, beginning with the last two sentences on page five to the end of the opinion on page eleven.

The January 31, 2003 order granting Hartranft's Petition to Set Aside a Tax Sale is vacated. That petition is denied for the reasons stated in this and the January 31, 2003 opinion. The Tax Sale is hereby confirmed.

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)