

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SUSAN LINN THOMPSON,	:	
Plaintiff	:	DOCKET NO. 12-00,278
	:	CIVIL ACTION – LAW
vs.	:	
	:	
PENNMARC RESOURCES, LP; and	:	
LYCOMING COUNTY TAX CLAIM BUREAU,	:	
Defendant	:	

OPINION AND ORDER

AND NOW, this 16th day of July, 2012, following a hearing on Plaintiff’s Petition to Set Aside Tax Sale, the Court hereby enters the following Findings of Fact and Conclusions of Law.

I. Findings of Fact

Plaintiff and Property

1. Plaintiff is Susan Linn Thompson, an adult individual, who resides at Footprints No. 7, Tribe Road No. 1, Devonshire DV06 Bermuda.
2. Ms. Thompson acquired the title to the property in question by deed dated July 31, 2001. Exhibit P-1 (Lycoming County Record Book No. 3880, 276-79). The Lycoming County Recorder of Deeds filed this deed on August 3, 2001. This parcel is identified as Tax Parcel No. 56-292-118. *See* Exhibit P-1, pg. 2 (Lycoming County Record Book No. 3880, 277). *See also* Exhibit P-7 and Exhibit P-9. The property contains 31.377 acres and is located in Upper Fairfield Township, Lycoming County, Pennsylvania.
3. The above-mentioned deed lists Ms. Thompson’s precise address as: Footprints #7 Tribe Road #1, Devonshire, DV06, Bermuda. Exhibit P-1, pg. 4 (Lycoming County Record Book No. 3880, 279).

4. From July 31, 2001 to the present, Ms. Thompson has at all times resided at Footprints #7, Tribe Road #1, Devonshire, DV06, Bermuda (hereinafter “Bermuda address”).

Defendants

5. The Lycoming County Tax Claim Bureau (Bureau) is a bureau as defined under Section 102 of the Pennsylvania Real Estate Tax Sale Law (RETSL), 72 P.S. §§ 5860.101-5860.803, created for the purpose and charged with the duty of collecting delinquent real estate taxes from taxing districts located within Lycoming County, Pennsylvania. *See* 72 P.S. § 5860.102. The Bureau has a business address of 48 West Third Street, Williamsport, Lycoming County, Pennsylvania, 17701.
6. Pennmarc Resources, LP, (Pennmarc), is a Pennsylvania Limited Partnership with a business address of 306 East Locust Street, Clearfield, Clearfield County, Pennsylvania, 16803.

Tax Notices from 2002-2008

7. From 2002 to 2008, real estate tax bills were sent to Ms. Thompson at her Bermuda address from 2002 through 2008. Exhibit 2.
8. Ms. Thompson received the 2002-2008 tax notices sent to her Bermuda address.
9. Ms. Thompson paid all of the tax bills sent to her Bermuda address.

Construction on Property

10. Ms. Thompson constructed an enclosed one-story basement on the property in 2006 and 2007. The basement consisted of poured concrete walls that protruded ten (10) to twelve (12) feet above the surface of the ground.
11. On February 5, 2007, Upper Fairfield Township issued a Certificate of Occupancy to Ms. Thompson. This certificate pertained to the construction of the enclosed basement on the

property. The certificate listed the site location as: 290 Mountain Road, Montoursville, PA 17754. The certificate listed Ms. Thompson as the owner, with a mailing address as: #7 Tribe Road #1, Devonshire, Bermuda. Exhibit P-3.

12. Ms. Thompson received the Certificate of Occupancy that Upper Fairfield Township sent to her Bermuda address.

13. On May 29, 2007, the Lycoming County Assessment Office (Assessment Office) notified Ms. Thompson that the assessed value of her property, specifically Tax Parcel No. 56-292-118, increased as a result of the construction of this enclosed structure.¹ The Assessment Office sent this notification to Ms. Thompson at: Footprints 7 Tribe Rd 1 Devonshire DV06 Bermuda.

14. Ms. Thompson received the notice of increased in assessed value of her property that the Assessment Office sent to her Bermuda address.

Change of Contact Information

15. On July 16, 2008, the Assessment Office changed Ms. Thompson's contact information as it related to her Mountain Road property, specifically Tax Parcel No. 56-292-118. The Assessment Office changed Ms. Thompson's address from: Footprints 7 Tribe Rd 1 Devonshire BV06 Bermuda, to: 296 Mountain Road, Montoursville, PA 17754. Exhibit P-5, 2.

16. Ms. Thompson did not request or approve of this change in contact information.

17. The Assessment Office did not notify Ms. Thompson as to this change in contact information.

18. To date, Ms. Thompson has never made arrangements for mail to be delivered to her property on Mountain Road.

¹ This Court notes that the letter lists the address of the tax parcel as: 1131 Mountain Road. Exhibit P-4.

19. At all times, the Assessment Office had access to Ms. Thompson's Bermuda address.

Tax Notices from 2009-present

20. Real estate tax bills were sent to Ms. Thompson at the Mountain Road address for 2009, 2010, and 2011.

21. Ms. Thompson did not receive these tax bills.

22. Ms. Thompson did not pay her real estate tax bills for 2009, 2010, and 2011.

Posting on Property

23. The Lycoming County Tax Claim Bureau hired an independent contractor, Palmetto Posting, Inc. (Palmetto), to post Plaintiff's property. Exhibit P-8/D-4.

24. An employee of Palmetto, Roy Brinkley, posted the property known as Lycoming County Tax Parcel No. 56-292-118. This posting occurred on July 16, 2011. Exhibit P-8/D-4 (posting placed at the location indicated by the white star) and Exhibit D-4A.

25. A neighbor of Ms. Thompson, Sgt. John Nettling, Jr., of the Pennsylvania State Police, testified that he is regularly on Ms. Thompson's Mountain Road property. Sgt. Nettling testified that he rides ATVs and hunts on Ms. Thompson's property with his friends. Sgt. Nettling specifically testified that he is on the driveway in Ms. Thompson's property weekly. Sgt. Nettling testified that he never saw a posting on Ms. Thompson's property. Sgt. Nettling testified that if Ms. Thompson's property was posted, he would have seen the posting throughout his weekly excursions on the property.

26. This Court finds Sgt. Nettling to be credible.

27. This Court finds that Mr. Brinkley failed to post the property conspicuously or in such a matter that would result in the posting being seen by the landowner and/or the public.

Initial Scheduled Tax Upset Sale

28. Ms. Thompson's property was listed for the tax upset sale scheduled for September 14, 2011. Exhibit D-2A and Exhibit D-3.
29. On or about May 17, 2011, the Bureau sent a notice of public sale to Ms. Thompson. The Bureau sent this notice to: 296 Mountain Road, Montoursville, PA, 17754. The Bureau sent this notice via certified, U.S. mail, restricted delivery, return receipt requested. Exhibit D-1 and Exhibit D-2.
30. The May 17, 2011 notice was returned to the Bureau with the notation: Return to Sender, No Such Number, Unable to Forward. Exhibit D-1.
31. At the time scheduled for the September 14, 2011 sale, the sale was postponed until October 5, 2011, by oral announcement.
32. On or about September 14, 2011, the Bureau sent a notice of public sale to Ms. Thompson. The Bureau sent this notice to: 296 Mountain Road, Montoursville, PA, 17754. This Bureau sent this notice via regular, U.S. mail. Exhibit D-6.
33. The Bureau did not send a notice of public sale to Ms. Thompson's Bermuda address.
34. The September 14, 2011 notice was returned to the Bureau with the notation: Return to Sender, No Such Number, Unable to Forward. Exhibit D-6.
35. After the return of the September 14, 2011 announcement, the Bureau attempted to find an accurate address for Ms. Thompson. The Bureau memorialized its attempts on Exhibit D-6. *See also* Exhibit D- 5.
36. The Bureau did not review records on file in the Office of the Recorder of Deeds of Lycoming County, where Ms. Thompson's proper address was on record.

37. The Bureau did not inquire with officials of Upper Fairfield Township as to Ms. Thompson's correct address.
38. After the September 14, 2011 announcement, the Bureau did not send any subsequent notices of the impending tax sale to Ms. Thompson at any address. In particular, the Bureau did not send a notice to Ms. Thompson at her Bermuda address, even though the Assessment Office's records indicate the Bermuda address as Ms. Thompson's address prior to her information was updated to reflect the 296 Mountain Road address. *See* Exhibit P-5, 2.

Upset Tax Sale

39. On October 5, 2011, a tax upset sale took place regarding Ms. Thompson's Mountain Road property. At this sale, the Bureau sold the property identified as Lycoming County Tax Parcel No. 56-292-118. Exhibit Pennmarc-C.
40. Defendant Pennmarc purchased Ms. Thompson's property at that time for an upset sale price of \$7,587.00, including costs. This amount represented tax delinquencies on the property for 2009 and 2010, respectively \$3,960.81 and \$3,626.19. Exhibit Pennmarc-C.
41. Relating to this sale, Defendant Pennmarc paid additional costs of \$41.00. Exhibit Pennmarc-C.
42. Relating to this sale, Defendant Pennmarc paid state and local transfer taxes, respectively \$2,030.14 and \$2,030.14, totaling \$4,060.28. Exhibit Pennmarc-C.

Post-Sale Notices

43. On October 7, 2011, the Bureau sent post-sale notices to Ms. Thompson. The Bureau sent these notices to: 296 Mountain Road, Montoursville, PA 17754. Exhibit D-7.

44. The October 7, 2011 notices were returned to the Bureau with the notation: Return to Sender, No Such Number, Unable to Forward. Exhibit D-7.

Notification

45. Ms. Thompson's brother notified her of the transfer of her Mountain Road property to Defendant Pennmarc. Ms. Thompson's brother saw the transfer listed in the Williamsport Sun-Gazette. In particular, the Sun-Gazette listing indicated that Ms. Thompson sold a property on Mountain Road in Upper Fairfield Township to Defendant Pennmarc for \$206,426. Exhibit P-6.

46. Upon learning that this transfer listed in the Sun-Gazette was a result of an upset tax sale, Ms. Thompson filed the pending petition to set aside the tax sale.

II. Conclusions of Law

1. Within the Commonwealth, tax sales are governed by the Real Estate Tax Sale Law (RETSL), 72 P.S. §§ 5860.101-5860.803.
2. In order for a tax sale to be valid, the applicable tax claim bureau must strictly comply with the three notice provisions set forth in Section 602 of the RETSL. 72 P.S. § 5860.602; *Steinbacher v. Northumberland County Tax Claim Bureau*, 996 A.2d 1095, 1099 (Pa. Cmwlth. Ct. 2010); *In Re: Upset Sale Tax Claim Bureau of Luzerne County*, 990 A.2d 136, 140 (Pa. Cmwlth. Ct. 2010); *Fernandez v. Tax Claim Bureau of Northampton County*, 925 A.2d 207, 212 (Pa. Cmwlth. Ct. 2007). These three notice provisions include publication, certified mail, and posting. *Id.* If any of these three notices are defective, the tax sale that took place pursuant to these defective notices is invalid. *Fernandez*, 925 A.2d at 212.

3. Under the facts set forth in the above-captioned matter, the tax upset sale that took place on October 5, 2011, regarding Lycoming County Tax Parcel No. 56-292-118, is invalid because the Lycoming County Tax Claim Bureau (Bureau) did not strictly comply with the notice requirements of 72 P.S. § 5860.602.
4. The applicable tax claim bureau has the burden of establishing that it complied with the notice requirements as set forth in Section 602 and the reasonable efforts requirements as set forth in Section 607. *Luzerne*, 990 A.2d at 140; *Fernandez*, 925 A.2d at 213.
5. Under the facts set forth in the above-captioned matter, the Bureau failed to strictly adhere to the statutory requirements of the RETSL.
6. The Bureau did not strictly comply with the notice requirements regarding certified mail and reasonable efforts, pursuant to Section 602 and Section 607a of the RETSL.
7. Section 602 provides that:
 - (1) At least thirty (30) days before the date of the sale, by United States certified mail, restricted delivery, return receipt requested, postage prepaid, to each owner as defined by this act.

72 P.S. § 5860.602(e)(1).
8. When notification of a pending tax sale is required to be mailed, and the mailed notification is returned in such a way that would raise a significant doubt as to the receipt of the notification, Section 670a of the RETSL provides for additional notification efforts to be made by the applicable tax claim bureau. 72 P.S. § 5860.607a.
9. The applicable portion of Section 607a provides that:
 - (a) When any notification of a pending tax sale... is required to be mailed to any owner... and such mailed notification is either returned... under other circumstances raising a significant doubt as to the actual receipt of such notification by the named addressee or is not... acknowledged at all, then, before the tax sale can be conducted or confirmed, the bureau must exercise *reasonable efforts* to discover the whereabouts of such person... and notify him. The

bureau's efforts shall include, but not necessarily be restricted to, a search of the current telephone directories for the county and *of the dockets and indices of the county tax assessment offices, recorder of deeds office and prothonotary's office, as well as contacts made to any apparent alternate address or telephone number which may have been written on or in the file pertinent to such property.*

72 P.S. § 5860.607a(a) (emphasis added).

10. In *Fernandez*, our Commonwealth Court held:

[a] reasonable investigation is one that “use[s] *ordinary common sense business practices to ascertain proper addresses...*” This ordinary common sense “must go beyond the mere ceremonial act of notice by certified mail,” but does not require “the equivalent of a title search...”

925 A.2d at 213 (citing *In re Tax Sale of Real Property Situated in Jefferson Township (Ruffner)*, 828 A.2d 475, 479 (Pa. Cmwlth. Ct. 2003)) (emphasis in original) (citations omitted).

11. Under the facts set forth in the above captioned matter, the Bureau did not meet its burden in establishing that it complied with Section 602 and Section 707 of the RETSL.
12. The October 5, 2011 tax upset sale of Lycoming County Tax Parcel No. 56-292-118 is invalid because the Bureau failed to take reasonable steps to ascertain Ms. Thompson's address, after learning its on-file address for Ms. Thompson was incorrect. *See Fernandez*, 925 A.2d at 213-14. Specifically, the Bureau should have reviewed Plaintiff's deed, located in the Office of the Recorder of Lycoming County, contacted Upper Fairfield Township officials, or sent notices to the prior address shown in the assessment records.
13. The failure of the Bureau to contact the Lycoming County Assessment Office provides a sufficient basis to require the tax sale to be set aside. *See Fernandez*, 925 A.2d at 214.
14. The Bureau did not strictly comply with the notice requirements regarding posting, pursuant to Section 602 of the RETSL.

15. Section 602 provides that: “(1) Each property scheduled for sale shall be posted at least ten (10) days prior to the sale.” 72 P.S. § 5860.602(e)(3).
16. In *Schooley v. Beaver County Tax Claim Bureau*, 4 A.3d 797 (Pa. Cmwlth. Ct. 2010), our Commonwealth Court held that the RETSL’s “notice requirement includes the requirement that notice be posted such that it can be seen by the public, is conspicuous, and is placed in such a manner so as to attract the attention of an ordinary passerby.” *Id.* at 800-01. *See also Ban v. Tax Claim Bureau of Washington County*, 698 A.2d 1386, 1388-89 (Pa. Cmwlth. Ct. 1997).
17. The October 5, 2011 tax upset sale of Lycoming County Tax Parcel No. 56-292-118 is invalid because the Bureau did not properly post the property in advance of the sale. In particular, the Bureau did not conspicuously post the property as required by controlling case precedent. The Court bases this conclusion on the credible testimony of Sgt. Nettling.
18. In *Jones v. Flowers*, 547 U.S. 220, 234 (2006), while citing to the Fourteenth Amendment, the United States Supreme Court held that:
- People must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property. But before forcing a citizen to satisfy his debt by forfeiting his property, due process requires the government to provide adequate notice of the impending taking.
- Id.*
19. In response to *Jones*, our Commonwealth Court has held that:
- in reviewing whether due process requirements have been met, “the focus is not on the alleged neglect of the owner, which is often present in some degree, but on whether the activities of the Bureau comply with the requirements of the statute.”
- Fernandez*, 925 A.2d at 215 (citing *Smith v. Tax Claim Bureau of Pike County*, 824 A.2d 1247, 1251 (Pa. Cmwlth. Ct. 2003)). *See also Steinbacher*, 996 A.2d at 1099.

20. Under the facts set forth in the above-captioned matter, the Bureau violated Ms.

Thompson's due process rights when it failed to comply with the applicable sections of the RETSL in regards to the upset tax sale of Lycoming County Tax Parcel No. 56-292-118, including, but not limited to, mailing the notice of sale to Ms. Thompson's last known recorded address.

III. Discussion

Under the facts of this case, the tax sale of Ms. Thompson's Mountain Road property cannot be upheld. The Bureau has failed to meet its burden that it strictly complied with the three notice requirements of the Real Estate Tax Sale Law in regard to its October 5, 2011 sale of Ms. Thompson's property. This Court finds that the Bureau failed to employ reasonable efforts to ascertain Ms. Thompson's correct address and that the Bureau failed to properly post Ms. Thompson's property prior to the tax sale.

Initially, the Bureau failed to employ reasonable efforts to ascertain Ms. Thompson's correct address upon the return of the Bureau's mailings to the Mountain Road address. At all times, the Assessment Office had on record Ms. Thompson's Bermuda address. At all times, the Office of the Recorder of Deeds had on record the deed to the Mountain Road property that listed Ms. Thompson's Bermuda address. Also, Upper Fairfield Township had on record Ms. Thompson's Bermuda address. This Court cannot uphold the tax sale of Ms. Thompson's property when it believes that the Bureau failed to employ reasonable efforts to provide Ms. Thompson notice of the impending sale. Therefore, based on this finding alone, the tax sale of Ms. Thompson's property is not valid. Irrespective of statutory requirements, the Court cannot sanction the government taking a citizen's land, when the proper mailing address was available in at least three places within local bodies' records.

Additionally, the Bureau failed to properly post Ms. Thompson's property prior to sale. This Court does not question that Ms. Thompson's property was posted. However, this Court finds credible Sgt. Nettling's testimony. Sgt. Nettling testified that he drives on the driveway on Ms. Thompson's property weekly. If the property was posted in a conspicuous manner to put the public and landowner on notice, this Court believes that Sgt. Nettling would have seen this posting. The Court notes that the driveway that Sgt. Nettling testified to was the only defined path that a vehicle could take to access the property. Therefore, based on this finding alone, the tax sale of Ms. Thompson's property is not valid.

ORDER

AND NOW, this 16th day of July, 2012, for the foregoing reasons, it is hereby ORDERED and DIRECTED that Plaintiff's Petition to Set Aside Tax Sale is GRANTED. The October 5, 2012 tax upset sale of Lycoming County Tax Parcel No. 56-292-118 is hereby VACATED.

BY THE COURT,

Richard A. Gray, J.

RAG/abn

cc: Fred Holland, Esquire
Pete Burchanowski, Esquire
Kim C. Kesner, Esquire – 212 South Second Street, Clearfield, PA 16803
Gary L. Weber, Esquire (Lycoming County Reporter)