

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LESTER COHICK,	:	NO. 15 – 00,524
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	
LYCOMING COUNTY TAX CLAIM	:	
BUREAU and SARATOGA PARTNERS, LP,	:	
Defendants	:	Petition to Set Aside Upset Tax
	:	Sale of September 10, 2014

OPINION AND ORDER

Before the court is the Petition to Set Aside Upset Tax Sale of September 10, 2014, filed by Lester Cohick on February 25, 2015. A hearing thereon was held March 10, 2015.

At the Upset Tax Sale held on September 10, 2014, the Tax Claim Bureau sold to Saratoga Partners, LP the property located at 14080 Route 287 Highway, Pine Township, Lycoming County, Pennsylvania, otherwise known as parcel 47-2260-0129, the record owners of which were Lester Cohick and Lynda Pierce.¹ Mr. Cohick contends the tax sale must be set aside because the Tax Claim Bureau did not make reasonable efforts to determine his correct address, and further, did not personally serve him with notice of the sale. The court finds that Petitioner is correct in both respects.

The notice required, as it applies in this case, is set forth in the Real Estate Tax Sale Law, as follows:

¹ Lester Cohick and Lynda Pierce are siblings.

§ 5860.602. Notice of sale

(a) At least thirty (30) days prior to any scheduled sale the bureau shall give notice thereof, not less than once in two (2) newspapers of general circulation in the county, if so many are published therein, and once in the legal journal, if any, designated by the court for the publication of legal notices. Such notice shall 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.

...

(e) In addition to such publications, similar notice of the sale shall also be given by the bureau as follows:

(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.

(2) If return receipt is not received from each owner pursuant to the provisions of clause (1), then, at least ten (10) days before the date of the sale, similar notice of the sale shall be given to each owner who failed to acknowledge the first notice by United States first class mail, proof of mailing, at his last known post office address by virtue of the knowledge and information possessed by the bureau, by the tax collector for the taxing district making the return and by the county office responsible for assessments and revisions of taxes. It shall be the duty of the bureau to determine the last post office address known to said collector and county assessment office.

(3) Each property scheduled for sale shall be posted at least ten (10) days prior to the sale.

72 P.S. Section 5860.602. The Bureau contends this is the only provision of the Real Estate Tax Sale Law with which it must comply, and offered the following evidence of such compliance:

- 1) The notice required by Subsection (e)(1) was sent certified mail, return receipt requested, restricted delivery, on or about May 14, 2014, to the address on file with the collections office, 118 Mountain Lane, Trout Run, Pennsylvania.²
- 2) Since the notice sent to Mr. Cohick was returned as “unclaimed”, another notice was sent June 16, 2014, by first class mail to the address on file with the assessment office (which was the same as the address to which the first notice had been sent).³
- 3) The second notice was not returned.
- 4) The posting of the property required by Subsection (e)(3) was accomplished on June 24, 2014.
- 5) The advertising required by Subsection (a) was accomplished on August 6, 2014 and August 8, 2014.

While the court agrees that the Bureau did comply with this particular section of the Real Estate Tax Sale Law, it appears Mr. Cohick is correct in his assertion that because the certified mail was returned as unclaimed, the Bureau was required to “exercise reasonable efforts to discover [his] whereabouts”, pursuant to Section 607.1 of the Act.

Section 607.1 provides, in pertinent part, as follows:

§ 5860.607a. Additional notification efforts

(a) When any notification of a pending tax sale ... is required to be mailed to any owner, ... and such mailed notification is either returned without the required receipted personal signature of the addressee or under other circumstances raising a significant doubt as

² As the property was owned by both Mr. Cohick and his sister, two separate notices were sent to the address.

³ The notice sent to Lynda Pierce was received by her, as evidenced by the return of a signed receipt.

to the actual receipt of such notification by the named addressee or is not returned or 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 or entity and notify him. The bureau's efforts shall include, but not necessarily be restricted to, a search of 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. When such reasonable efforts have been exhausted, regardless of whether or not the notification efforts have been successful, a notation shall be placed in the property file describing the efforts made and the results thereof, and the property may be rescheduled for sale or the sale may be confirmed as provided in this act.

(b) The notification efforts required by subsection (a) shall be in addition to any other notice requirements imposed by this act.

72 P.S. Section 5860.607a. The Bureau argues that Section 602 requires only that a notice be sent by first class mail to the address on file with the Assessment Office and that Section 607.1 does not come into play. At first glance, the two sections do appear to conflict, as the former requires only that the Bureau “determine the last post office address *known to said collector and county assessment office*”, while the latter requires far more. Section 607.1(b) declares, however, that the provisions of Section 607.1(a) are *in addition to* any other notice provisions of the Act. Further, that Section 607.1 applies to the instant situation was made clear in Dwyer v. Luzerne County Tax Claim Bureau, 2015 Pa. Commw. LEXIS 74 (February 17, 2015). There, the notices mailed to two individuals at the same address were both signed for by one person. The person who did not sign for a notice moved to set aside the sale and the Commonwealth

Court specifically held that “[b]ecause Dwyer did not sign for the certified mail addressed to him, in accordance with section 607.1(a) of the Law, the Bureau was required to further investigate Dwyer's whereabouts”. Id. Because the Bureau in that case “conceded that although Dwyer did not sign for the certified mail addressed to him, the Bureau did not make any effort to discover Dwyer's whereabouts and notify him”, the Court held that “the trial court properly concluded that the Bureau failed to comply with the Law's notice provision.” Id. In the instant case, the Bureau’s Director testified that the Bureau did not search any records other than those of the Assessment Office, contending there was no obligation to do so. Thus, in accordance with Dwyer, the sale must be set aside.

The sale must be set aside for the further reason that Section 601 of the Act was not complied with. That Section provides, in relevant part, as follows:

§ 5860.601. Date of sale

...

(3) No owner-occupied property may be sold unless the bureau has given the owner occupant written notice of such sale at least ten (10) days prior to the date of actual sale by personal service by the sheriff or his deputy or person deputized by the sheriff for this purpose unless the county commissioners, by resolution, appoint a person or persons to make all personal services required by this clause. The sheriff or his deputy shall make a return of service to the bureau, or the persons appointed by the county commissioners in lieu of the sheriff or his deputy shall file with the bureau written proof of service, setting forth the name of the person served, the date and time and place of service, and attach a copy of the notice which was served. If such personal notice cannot be served within twenty-five (25) days of the request by the bureau to make such personal service, the bureau may petition the court of common pleas to waive the requirement of personal notice for good cause shown. Personal service of notice on one of the owners shall be deemed personal service on all owners.

72 P.S. Section 5860.601(a)(3). The Bureau does not dispute that personal service was not made here, but argues that “there was nothing to indicate the property was owner-occupied.” In response, the court must point out that the statute does not provide for personal service where it appears to the Bureau that the property is owner-occupied, or where circumstances indicate the property might be owner-occupied, merely where it *is* owner-occupied. That the provision is to be applied in such a strict manner is clear from McKelvey v. Westmoreland Tax Claim Bureau, 983 A.2d 1271, 1274 (Pa. Commw. 2009), where the Commonwealth Court held that “[t]he plain language of section 601(a)(3) unequivocally commands that “no owner occupied property may be sold” unless the owner occupant has received personal service of notice.” There, the owner-occupant had received *actual* notice of the sale through the mailed notices, but the sale was nevertheless set aside for lack of *personal* service. In the instant case, where actual notice was disputed and not shown, application of the provision is even more appropriate.⁴

Accordingly, the court enters the following:

⁴ The court understands that the Bureau may have believed, from the fact that the mailing address on file with the Assessment Office was not the property address, that the property was not owner-occupied. It is logical to conclude, however, from the further facts that two individuals were listed as owners and one of the receipts was signed for but the other was not, that the individual who did not sign for the notice might be living at the property.

ORDER

AND NOW, this day of March 2015, for the foregoing reasons, the Petition to Set Aside Upset Tax Sale of September 10, 2014 is hereby granted. As to Parcel 47-2260-0129, otherwise known as 14080 Route 287 Highway, Pine Township, Lycoming County, Pennsylvania, the tax sale of September 10, 2014, is hereby set aside.

BY THE COURT

Dudley N. Anderson, Judge

cc: Peter Burchanowski, Esq.
Bret Southard, Esq.
Saratoga Partners, 196 Potters Lane, Port Matilda, PA 16870
Lycoming County Sheriff
Gary Weber, Esq.
Hon. Dudley Anderson