

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

KEVIN GARLICK,	: No. 23-01065
Petitioner	:
v.	: CIVIL ACTION
	:
LYCOMING COUNTY TAX	:
CLAIM BUREAU,	:
Respondent	:
And	:
EDWARDS LYONS,	:
Intervenor	: Petition to Set Aside Tax Sale

OPINION AND ORDER

This matter came before the Court on November 13, 2023, on the Petition of Kevin Garlick (hereinafter “Garlick”) filed September 26, 2023, to set aside the upset tax sale (hereinafter the “Tax Sale”) conducted by the Lycoming County Tax Claim Bureau (hereinafter the “Bureau”) on September 19, 2023, of real property situate at 115 Nichols Alley, Jersey Shore, Pennsylvania 17740, bearing Lycoming County tax parcel number 22-001-702 (hereinafter the “Premises”). Garlick appeared with counsel, Marc Drier, Esquire. The Director of the Bureau appeared with counsel, Austin White, Esquire. Intervenor Edward Lyons appeared, without counsel.

I. BACKGROUND

The Premises is a commercial automotive garage. Garlick testified personally, and introduced the testimony of both his wife/bookkeeper and an automotive mechanic who works full time at the Premises. All three witnesses testified credibly that they never saw the written notice of tax sale allegedly posted at the Premises on June 12, 2023. Since all three witnesses testified that they are present at the Premises on a daily basis, it is difficult for the Court to reconcile their testimony with the photograph titled “Field Report” attached to Bureau’s Answer filed October 16, 2023.

In addition to the fact that Garlick and his witnesses testified credibly that they never saw the posted notice, it was uncontested that Garlick's bookkeeper received a Notice of Delinquent Taxes dated March 5, 2022, by certified mail on March 7, 2022, and paid the sum of \$1,888.00, toward those delinquent taxes on August 5, 2022. While that sum was far less than the full amount owed, it supports her testimony that she and Garlick have historically paid the real estate taxes on the Premises (albeit not on a timely basis).

Garlick testified that he first learned of the Tax Sale on the day of that sale, as a result of a phone call from a friend in attendance at the sale. That testimony is supported by the fact that the Petition was filed only seven (7) days after the sale. Since the record is completely devoid of any evidence of telephone or in-person contact between the Garlick and the Bureau in the weeks prior to the Tax Sale, the only reasonable conclusion which the Court can draw is that Garlick was surprised to learn of the Tax Sale, and contacted counsel to promptly file the Petition to Set Aside.

Much of the testimony concerned the written Notice of Public Sale dated May 8, 2023, attached to Bureau's Answer and the attached copy of a certified mail receipt. Garlick credibly testified that he never saw the Notice, and that the signature is not his. This Court is familiar with the regular course of business of the United States Postal Service prior to the Covid-19 pandemic, when green certified mail receipt cards were routinely presented to the addressee of the mail, and personally signed by them. In recent years, the United States Postal Service has abandoned that long-standing procedure. As a result, certified mail is little more than first class mail, with an electronic delivery receipt. While the Bureau has established that it dutifully sent the attached Notice, the Court accepts the testimony of Garlick that the signature is not his, and the Notice was never received by him.

II. APPLICABLE LAW

The law applicable to upset sales for unpaid taxes was exhaustively examined in the scholarly opinion by the Honorable Eric R. Linhardt in the matter of *In re Lycoming County Tax Claim Bureau*, Lycoming County docket number 2021-01,153, dated October 31, 2023. Though a full restatement of that analysis is unnecessary, the Court notes that Judge Linhardt cited with approval the analysis of the Court in the matters of *Rivera v. Carbon County Tax Claim Bureau*, 857 A.2d 208 (Pa. Commw. Ct. 2004) and *In re Return of Sale of Tax Claim Bureau (Ross Appeal)*, 76 A.2d 749 (Pa. Commw. Ct. 2003).

The notice provisions of the Law guard against the deprivation of property without due process of law. *Difenderfer v. Carbon County Tax Claim Bureau*, 789 A.2d 366, 368 (Pa.Cmwlth.2001). Strict compliance with the notice provisions is required because the “tax sale laws were enacted with the primary purpose of insuring the collection of taxes, and not to strip away citizens' property rights.” *Tracy v. County of Chester, Tax Claim Bureau*, 507 Pa. 288, 489 A.2d 1334 (1985); *Stanford–Gale v. Tax Claim Bureau of Susquehanna County*, 816 A.2d 1214, 1216 (Pa.Cmwlth.) *petition for allowance of appeal denied*, 573 Pa. 718, 828 A.2d 351 (2003).

Rivera v. Carbon County Tax Claim Bureau, 857 A.2d 208, 214 (Pa. Commw. Ct. 2004).

The strict provisions of the Tax Sales Act were never meant to punish taxpayers who omitted through oversight or error (from which the best of us are never exempt) to pay their taxes. Tax acts were rather meant to protect the local government against willful, persistent, long standing delinquents for whom we hold no brief, and to whom the appellate court decisions have consistently given short shrift.

In re Return of Sale of Tax Claim Bureau (Ross Appeal), 76 A.2d 749, 753 (Pa. Commw. Ct. 2003).

Because the purpose of the Tax Sales Act is to collect taxes, rather than to forfeit real property, the Bureau has the burden of proving that it complied with the notice requirements and the “reasonable efforts” requirements of that Act. The Court finds that the Bureau has failed to establish the required notice to Garlick.

III. FINDINGS

1. The Bureau mailed each of the notices attached to the Bureau's Answer, filed October 16, 2023. Notwithstanding those mailing, the Court finds, as credible, the testimony of Garlick that he never received or saw the Notices of Tax Sale dated May 8, 2023, and June 1, 2023, and September 6, 2023.
2. The Premises is a commercial automotive garage, with full time employees at the Premises during the daytime hours of week days. Had the Bureau made any effort at personal service to Garlick at the Premises, the Bureau would almost certainly have been successful.
3. The Bureau arranged to post a Notice of Tax Sale to the Premises, as reflected in the photograph attached to the Bureau's Answer, filed October 16, 2023.

Notwithstanding that posting, the Court finds as credible the testimony of Garlick and his witnesses that none of them ever saw the posted Notice.
4. The Court finds as credible the testimony of Garlick that his first notice of the Tax Sale was contact from a friend, who attended the Tax Sale.
5. At the conclusion of the hearing, the Court invited Intervenor Edward Lyons to either offer testimony or to make oral argument. He declined to do either.

IV. CONCLUSION

For the reasons explained above, Petitioner's Petition to Set Aside Tax Sale is GRANTED. The Court finds that the Upset Sale of the Premises was a nullity. The parties shall execute the proper documents necessary to effectuate this decision and shall return possession of the Property to the Petitioner forthwith. Any funds paid by the Intervenor on account of the Tax Sale shall be promptly refunded.

IT IS SO ORDERED.

BY THE COURT,

William P. Carlucci, Judge

CC:

Court Administrator

Austin White, Esq.

Marc S. Drier, Esq.
227 Allegheny Street
Jersey Shore, PA 17740

Kevin Garlick
115 Nichols Alley
Jersey Shore, PA 17740