

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

EDWIN E. KITZMILLER, III and	: NO. CV 21-00588
DANIELLE K. KITZMILLER	:
Plaintiffs	:
vs.	:
	: CIVIL ACTION
JAMES HALKIAS, a/k/a	: QUIET TITLE
JAMES A. HALIKIAS, and the	:
LYCOMING COUNTY TAX CLAIM BUREAU	:
Defendant	:

IN RE: LYCOMING COUNTY	: CV 20-01112
TAX CLAIM BUREAU	:

OPINION AND ORDER

I. Procedural History:

On September 16, 2020, the Lycoming County Tax Claim Bureau offered for sale at a regularly scheduled Tax Upset Sale (hereinafter the “Tax Sale”) a parcel of real property bearing Lycoming County tax parcel number 23-277-130, situate in Jordan Township, Lycoming County, and bearing street address 5742 Moreland Baptist Road, Unityville, Pennsylvania 17774 (hereinafter the “Premises”). Prior to the Tax Sale, the Premises were owned by Melvin E. Swisher Jr., and Melvin Ammon Swisher (hereafter collectively “Swisher”) by deed dated March 4, 2013, recorded on March 7, 2013, in Lycoming County Record Book 7917 at page 257.

The successful bidder at the Tax Sale was James Halkias (hereinafter “Halkias”). Halkias paid the Tax Claim Bureau the sum of \$29,746.68, including taxes of \$21,049.79, and transfer tax of \$8,614.14, and a recording fee of \$78.75. That sum is currently held in escrow by the Tax Claim Bureau. No deed to Halkias has been filed by the Tax Claim Bureau.

The parties do not dispute that, at the time of the Tax Sale, the Premises was subject to certain liens of record, including a mortgage in favor of Susquehanna Bank dated June 3, 2014, recorded June 6, 2014, to Lycoming County Record Book 8336 at page 52 in the face amount of \$766,000.00, subsequently assigned to Summitbridge National Investments, VI, LLC, by an instrument dated December 11, 2018, recorded on December 20, 2018, to Lycoming County Record Book 9177 at page 1314 (hereinafter the “Summitbridge Mortgage”). The parties do not

dispute that the Tax Sale did not divest the Summitbridge Mortgage, which remained a lien on the Premises after the Tax Sale.

Summitville filed a judgment by confession on the loan which was secured by the Summitbridge Mortgage, executed upon that judgment, and conducted a Sheriff's sale on November 6, 2020 (hereinafter the "Sheriff's Sale"). Edwin K. Kitzmiller III and Danielle K. Kitzmiller (hereinafter collectively "Kitzmiller") were the successful bidders at that sale. It is undisputed that Halkias had notice of the Sheriff's Sale, attended it, but did not bid. Kitzmiller paid the Sheriff's Sale bid price, including the taxes which were the subject of the Tax Sale. The taxes paid by Kitzmiller were accepted by the Tax Claim Bureau and applied, with the result that the taxes which were the subject of the Tax Sale are no longer due.

On December 10, 2020, Kitzmiller filed an Objection to the Tax Sale and a Petition for Intervention in that proceeding. On June 17, 2021, Kitzmiller filed a Complaint to docket 21-00588 against Halkias and the Lycoming County Tax Claim Bureau, seeking a judgment in Quiet Title to the Premises. Neither the Objection to the Tax Sale nor the Complaint seeking judgement in Quiet Title named Swisher. Halkias contends that Kitzmiller lacks standing to object to the Tax Sale, since they had no interest in the Premises at the time of the Tax Sale.

By Order dated July 9, 2020, the Court consolidated the Objection to the Tax Sale with Petition for Intervention with the Quiet Title action. Those consolidated matters came before the Court for a non-jury trial on March 23, 2023. At trial, Halkias and Edwin K. Kitzmiller III and Danielle K. Kitzmiller and a representative of the Lycoming County Tax Claim Bureau testified, and the parties submitted a Statement of Undisputed Fact. Further, the parties submitted 32 Joint Exhibits. None of the material facts were disputed at trial.

II. Findings of Fact:

1. Plaintiffs are Edwin E. Kitzmiller, III., and Danielle K. Kitzmiller ("Kitzmiller"). Defendants are James Halkias ("Halkias") and the Lycoming County Tax Claim Bureau (Tax Claim Bureau). The Tax Claim Bureau was created and existing under and by virtue of the Resolution adopted by the Commissioners of Lycoming County on January 20, 1961, to collect delinquent taxes.

2. The real property which is the subject of this litigation bears the street address of 5742 Moreland Baptist Road, Jordan Township, Lycoming County, Pennsylvania, and is known as Lycoming County Tax Parcel Number 23-277-130, 115.41 acres, as specifically described in Lycoming County Record Book 9232 at page 2912 (the “Premises”).
3. Title to the Premises was previously held by Melvin E. Swisher, Jr., and Melvin Ammon Swisher (collectively “Swisher”), pursuant to a deed from Melvin E. Swisher, Jr., Marylee H. Swisher, a/k/a Marylee H. Landis and Melvin Ammon Swisher dated March 4, 2013, and recorded on March 7, 2013, in Lycoming County Record Book 7917 at page 257 (2013 Deed).
4. The 2013 Deed, reserved the oil, gas and minerals of the property (the “Subsurface Rights”). By corrective deed dated May 6, 2011, recorded in Lycoming County Record Book 7285 at page 81, the reservation of sub-surface rights was modified to clarify that Melvin E. Swisher, Jr. was the sole owner of the Subsurface Rights (subject to the right of Marylee H. Swisher to participate in future royalties). The reservation of Subsurface Rights, as modified, will hereinafter be referred to as the “Subsurface Rights Reservation”.
5. Swisher executed a mortgage on the Premises to Susquehanna Bank dated June 3, 2014, and recorded on June 6, 2014, in Lycoming County Record Book 8336 at page 52 in the amount of \$766,000.00 (the “Summitbridge Mortgage”). That mortgage was subsequently assigned to Summitbridge National Investments, VI, LLC., by an instrument dated December 11, 2018, and recorded on December 20, 2018, in Lycoming County Record Book 9177 at page 1314. The Premises is described in the mortgage. The language of the Subsurface Rights Reservation was carried through to the Summitbridge Mortgage, and was subsequently carried through to the deed from the Lycoming County Sheriff to Kitzmiller.
6. A Complaint in Confession of Judgment was filed by Summitbridge National Investments, VI, LLC., against Melvin E. Swisher, Jr., and Melvin Ammon Swisher on August 16, 2019 in the Court of Common Pleas of Lycoming County, indexed to Docket Number 19-1330 (the “Judgment by Confession”). The loan which was the subject of the Judgment by Confession was the same loan secured by the Summitbridge Mortgage.

7. The Prothonotary of Lycoming County entered a Writ of Execution to the Judgment by Confession, describing the Premises, on January 17, 2020, at the request of Summitbridge National Investments VI., LLC. The description of the Premises set forth in the Writ of Execution was the description set forth in the Summitbridge Mortgage, which contained the Subsurface Rights Reservation.
8. The Premises was originally scheduled for Sheriff's sale on May 1, 2020, but was continued twice due to the Covid Pandemic, first to August 7, 2020 and then to November 6, 2020. Orders of Court continuing the Sheriff's Sale stated that the Plaintiff would neither be required to file any new Writs nor provide new notices of the sale.
9. The Tax Claim Bureau offered the Premises for sale at the Upset Tax Sale on September 16, 2020. Halkias was the high bidder. Halkias paid to the Tax Claim Bureau the amount totaling \$29,742.68. The Tax Claim Bureau continues to hold those funds in escrow, pending the outcome of this litigation. None of those funds were ever applied to any taxes regarding the Premises, and no deed was ever prepared or filed by the Tax Claim Bureau.
10. At trial, all parties stipulated that the Tax Sale was conducted pursuant to applicable Pennsylvania law.
11. A Sheriff's Sale of the Premises on the Judgment by Confession was conducted on November 6, 2020, some fifty-one (51) days after the Tax Upset Sale. Kitzmiller was the high bidder at that Sheriff's Sale. Halkias was present at the Sheriff's Sale, but did not enter any bid. Kitzmiller later paid the Sheriff of Lycoming County the total amount of \$545,430.00 in two installments, which included as all past due taxes. The Tax Claim Bureau accepted the tax funds from the Sheriff, and applied those funds to all past due taxes.
12. The Sheriff's Deed to Kitzmiller contained the same metes and bounds description of the Premises as set forth in the Writ of Execution and the Summitbridge Mortgage, which contained the Subsurface Rights Reservation.
13. Kitzmiller has been in possession of the Premises since November 30, 2020, and has made numerous improvements.
14. On November 16, 2020, the Tax Claim Bureau filed a Consolidated Return with this Court

requesting the Court to enter a Decree Nisi concerning the sales made and that a decree of absolute confirmation and distribution of proceeds of the sale be entered unless objection be filed within thirty (30) days. The Court entered a Decree Nisi on November 24, 2020.

15. Kitzmiller filed a Petition for Intervention and Objection to the Upset Tax Sale on December 10, 2020, after which the Court stayed all proceedings concerning the Premises “pending the disposition and resolution of the issues raised in the Petition.”

III. Questions Presented:

- 1) Whether Kitzmiller has standing to object to the Tax Sale.
- 2) Assuming standing, whether Kitzmiller established by a preponderance of the evidence that the Tax Sale should be overturned.
- 3) Whether the Tax Sale had the effect of divesting the Summitbridge Mortgage.
- 4) If that the Summitbridge Mortgage was not divested by the Tax Sale, whether Kitzmiller took title to the Premises as a result of the Sheriff Sale.
- 5) If Kitzmiller took title to the Premises through the Sheriff Sale, whether the entire interest in the Premises passed under the Sheriff’s Sale deed.
- 6) If Kitzmiller failed to establish that the Tax Sale should be overturned, whether any interest in the Premises remains in the Tax Claim Bureau.
- 7) If the Tax Claim Bureau retains any interest in the Premises, whether Halkias is entitled to a Tax Claim Bureau deed for that interest.
- 8) Whether the Court has personal jurisdiction over all parties interest, for the purpose of determining whether a deed from the Tax Claim Bureau will transfer any remaining interest in the Premises.

IV. Suggested Answers:

- 1) Kitzmiller lacks standing to object to the Tax Sale, because they had no interest in the Premises until long after the Tax Sale.
- 2) Even if Kitzmiller has standing to object to the Tax Sale, Kitzmiller failed to establish by a preponderance of the evidence that the Tax Sale should be overturned.
- 3) The Tax Sale did not divest the Summitbridge Mortgage.
- 4) Since the Summitbridge Mortgage was not divested by the Tax Sale, Kitzmiller obtained

title to the surface rights in the Premises, as a result of the Sheriff Sale.

- 5) Since the Sheriff Sale deed includes the Subsurface Rights Reservation, Kitzmiller has no claim to the Subsurface Rights.
- 6) Since Kitzmiller failed to establish that the Tax Sale should be overturned, and since Kitzmiller has no claim to the Subsurface Rights, any interest which the Tax Claim Bureau obtained in the Premises beyond the surface rights remains in the Tax Claim Bureau.
- 7) If the Tax Claim Bureau retains any interest in the Premises, Halkias is entitled to a Tax Claim Bureau deed for that interest.
- 8) This Court lacks personal jurisdiction over Melvin E. Swisher, Jr., and Melvin Ammon Swisher, who are necessary parties to a judicial determination of whether the Tax Claim Bureau retains any interest in the Premises, which are available for transfer to Halkias.

V. **Discussion:**

1. Kitzmiller lacks standing to object to the Tax Sale, because he had no interest in the Premises until after the Tax Sale.

“Objections or exceptions to a tax upset sale may be filed by any owner or lien creditor within thirty (30) days after the court has made a confirmation nisi of the consolidated return.” 72 P.S. § 5860.607. Only an owner or lien creditor may challenge a tax sale. See, *Appeal of Yardley*, 166 Pa.Cmwlt. 596, 646 A.2d 751 (1994). Kitzmiller never claimed standing as a lien creditor. Under the Pennsylvania Real Estate Tax Sale Law (RETSL) an owner is defined as

[T]he person in whose name the property is *last* registered, if registered according to law, or, if not registered according to law, the person whose name last appears as an owner of record on any deed or instrument of conveyance recorded in the county office designated for recording and in all other cases means any person in open, peaceable and notorious possession of the property, as apparent owner or owners thereof, or the reputed owner or owners thereof, in the neighborhood of such property; as to property having been turned over to the bureau under Article VII by any county, “owner shall mean the county.

72 P.S. § 5860.102 (emphasis added). “[O]ne who is neither an ‘owner’ nor a lienholder *on the date of the tax sale* cannot complain of noncompliance with the notice provisions. *CR 2018 LLC v. Columbia Cnty. Tax Claim Bureau*, 229 A.3d 398, 403 (Pa. Commw. Ct. 2020)(*emphasis added*)(*citations omitted*). “At any time during the pendency of an action, a person not a party

thereto shall be permitted to intervene if the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.” Pa.R.C.P. 2327(4).

The Court made a confirmation nisi of the consolidated return of the Tax Sale of the Premises on November 24, 2020. Since Kitzmiller did not have any interest in the Premises until the Sherriff’s sale on November 30, 2020, they were not owners of the property at the time of the Tax Sale. Kitzmiller did not have standing to object to the Tax Sale at the time of that sale, and have no such standing, now. Kitzmiller argues that they have standing as intervenors through the Pennsylvania Rules of Civil Procedure (PaRCP), because the PaRCP permits any person whose legally enforceable interest is affected by an action to intervene in an action. Since this Court has concluded that the interest in the Premises secured by Kitzmiller through the Sheriff Sale is unaffected by the Tax Sale, they have no legal basis for intervention.

2. Even if Kitzmiller had standing to object to the Tax Sale, Kitzmiller failed to establish by a preponderance of the evidence that the Tax Sale should be overturned.

“[O]bjections to a tax upset sale can be made to question the regularity or legality of the proceedings of upset sale.” 72 P.S. § 5860.607; *see Appeal of Yardley*, 646 A.2d 751 (Pa. Cmwlth. 1994). After the court confirms the sale and the purchaser pays the amount of their bid, the Tax Bureau grants a deed in fee simple to the purchase. 72 P.S. § 5860.608.

The Kitzmillers argue that the Court should not confirm the sale, and that a deed should not issue, because Halkias “had constructive notice” that the “practice of the Sheriff is to collect all delinquent taxes in the bid price” at a Sheriff sale. They claim that the Tax Sale should not have taken place. The question of whether the Tax Sale should have been conducted is moot. It is undisputed that the Tax Sale was conducted, undisputed that Halkias was the successful bidder, and undisputed that the lien of the Summitbridge Mortgage was unaffected by the Tax Sale. Since all parties have stipulated that the Tax Sale was conducted pursuant to applicable Pennsylvania law, there is no basis upon which to overturn that sale. *Appeal of Yardley*, 166 A.2d 751.

3. The Tax Sale did not divest the Summitbridge Mortgage.

Tax upset sales convey title to property “under and subject to the lien of every recorded obligation, claim, lien, estate, mortgage, ground rent and Commonwealth tax lien not included in the upset price.” 72 P.S. § 5860.609. The real property that is subject to Sheriff’s sale is property that is “subject to the lien of the judgment” and “property, title to which at the time of the entry of the writ of execution in the judgment index is recorded in the name of the person against whom the judgment is entered.” Pa.R.C.P. 3101.1. It is the “folly” of a party to purchase property at a tax sale despite constructive notice of the commencement of a mortgage foreclosure action. *Fin. Freedom, SFC v. Cooper*, 2011 PA Super 101, 21 A.3d 1229, 1232 (Pa. Super. 2011).

The Writ of Execution describing the Premises was filed on January 17, 2020 – nine months prior to the tax upset sale. Halkias testified at trial that it regularly purchases properties at tax upset sales and that he did research into the Premises prior to the Tax Sale in September of 2020. Since Tax Sale does not divest junior liens, the Premises remained subject to the Summitbridge Mortgage, the lien of the Judgment by Confession, and the lien of the Writ of Execution. Whatever title to the Premises might have passed as a result of the Tax Sale, that title was subject to those liens. Halkias draws the Court’s attention to the matter of *CSS Corp. v. Sheriff of Chester County*, 352 Pa.Super. 256, 507 A.2d 870 (Pa.Super. 1986) in which multiple parcels of real property were listed for multiple Sheriff’s sales, on a single date. That matter did not involve a tax sale, such that the facts were materially different than the matter at bar.

4. Since the Summitbridge Mortgage was not divested by the Tax Sale, Kitzmiller obtained title to the surface rights in the Premises, as a result of the Sheriff Sale.

Halkias filed a hand written Motion seeking to postpone the Sheriff’s Sale of the Premises, scheduled for November 6, 2020. That Motion was denied, and the Sheriff Sale was conducted. No timely petition to set aside that sale was filed, and the Sheriff issued a deed pursuant to Pa.R.C.P. 3135. Upon filing of that deed, the Court is divested of authority to set aside the sale (absent fraud or lack of authority). *LSF8 Master Participation Trust v. Petrosky*, 271 A.3d 1288 (Pa.Super. 2022). Since Halkias made no effort to set aside the Sheriff Sale, the Sheriff filed his deed, and Halkias has established neither fraud nor lack of authority, Kitzmiller is conclusively

the owner of the surface rights to the Premises, free and clear of any claim by any third party, with notice, including Halkias.

Halkias argues that the title passed by the Sheriff's Sale was somehow "hollow" as a result of the Tax Sale. The Court finds that argument to be without merit. In a scholarly opinion authored by Judge Terrence R. Nealon in the matter of *Community Bank & Trust v. Marjer, Inc.*, 09 CV 8822, No. 09 CV 6676, 2011 Pa. D.&C., Dec. LEXIS 610, June 1, 2011, the Court relied upon 72 P.S. § 5860.609, and held that a deed issued by the Lackawanna County Tax Claim Bureau as a result of a private tax sale was under and subject to an existing mortgage, and that a Sheriff's Sale on that mortgage would divest the private tax sale purchaser. While the *Marger* decision is not controlling, this Court finds Judge Nealon's rationale to be compelling. The only material difference between *Marger* and the matter at bar is that Halkias did not receive a deed. Otherwise, the clear reasoning employed by Judge Nealon is equally applicable here.

5. Since the Sheriff Sale deed includes the Subsurface Rights Reservation, Kitzmiller has no claim to the Subsurface Rights.

The Sheriff's Deed to Kitzmiller contained the same metes and bounds description of the Premises set forth in the Writ of Execution and the Summitbridge Mortgage, which contained the Subsurface Rights Reservation. At trial, Kitzmiller conceded that they have no claim to the Sub-Surface rights associated with the Premises. To the extent that the Tax Sale may have included Sub-Surface Rights, those rights were never claimed by Kitzmiller.

6. Since Kitzmiller failed to establish that the Tax Sale should be overturned, and since Kitzmiller has no claim to the Subsurface Rights, any interest which the Tax Claim Bureau obtained in the Premises beyond the surface rights remains in the Tax Claim Bureau.

Our Supreme Court has determined that oil and gas rights are not subject to ad valorem taxation. *Independent Oil and Gas Association v. Board of Assessment*, 814 A.2d 180 (Pa. 2002).

The pleadings in this matter did not raise the question of whether the levy on the Premises by the Tax Claim Bureau had any effect upon the Subsurface Rights. That question was first raised by counsel for Halkias, during oral argument at trial. Further, the undisputed testimony at trial

was that the Lycoming County Tax Claim Bureau only assessed the Premises by tax parcel number, and street address. Thus, the evidence at trial suggests that the interests assessed by the Lycoming County Tax Claim Bureau were the surface rights to the Premises only, which were transferred to Kitzmiller by the Sheriff deed. Nevertheless, the precise question posed by counsel for Halkias during oral argument, whether the Tax Claim Bureau retains some interest in the Subsurface Rights to the Premises, was never squarely presented by the pleadings, nor the evidence at trial.

7. If the Tax Claim Bureau retains any interest in the Premises, Halkias is entitled to a Tax Claim Bureau deed for that interest.

At the moment that a property is offered for sale at a tax sale, title passes to the tax claim bureau, as trustee. From that moment forward, the bureau, and not the record owner, is the owner of the property. *Commonwealth v. Sprock*, 795 A.2d 1100 (Pa.Cmwlth. 2002). The Pennsylvania Real Estate Tax Sale Law (RETSL) provides that “After the court has confirmed the sale and the purchaser has paid the amount of his bid, it shall be the duty of the bureau to make to the said purchaser, his or their heirs or assigns a deed in fee simple for the property sold.” 72 Pa. Stat. Ann. § 5860.608.

During oral argument after trial, counsel for Halkias suggested that the Lycoming County Tax Sale retains some interest in the Subsurface rights to the Premises. Because that argument was never pled, and because the Lycoming County Tax Claim Bureau did not assess Subsurface Rights, the Court finds that argument to be dubious. Nevertheless, this Court feel compelled to consider the question, as a matter of law.

At the time that the Premises was offered for sale at the Tax Sale, the Lycoming County Tax Claim Bureau became its owner, as trustee, subject to being divested of its interest. For the reasons more fully set forth above, the Sheriff’s Sale deed divested the Bureau of its ownership of the Premises, as described in the Sheriff’s Sale deed. Since the Lycoming County Tax Claim Bureau assessed the Premises only by street address and tax parcel number, this Court has no evidentiary basis upon which to conclude that any interest in the Premises remains in that Bureau. If it is later determined by a Court with jurisdiction over all parties in interest that the Tax Upset Sale included any interest in the Subsurface Rights to the Premises (an issue not resolved herein),

72 P.S. § 5860.608 requires that interest to be transferred to Halkias. In such a circumstance, the Court will fashion an Order requiring the Lycoming County Tax Claim Bureau to transfer to Halkias any interest which it may have in the Premises resulting from the Tax Sale, beyond the interest transferred to Kitzmiller through the Tax Sale deed. Nothing set forth herein is intended to suggest that any such interest actually exists.

8. This Court lacks personal jurisdiction over Melvin E. Swisher, Jr., and Melvin Ammon Swisher, who are necessary parties to a judicial determination of whether the Tax Claim Bureau retains any interest in the Premises, which are available for transfer to Halkias.

A court must have personal jurisdiction over a party to enter a judgment against it. “[A]ction taken by a court without jurisdiction is a nullity.” Jurisdiction over a person is dependent upon proper service. *Dubrey v. Izaguirre*, 685 A.2d 1391, 1393 (1996) (citing *Mischenko v. Gowton*, 453 A.2d 658, 660 (Pa. Super. 1982)). Where there has been a failure to join an indispensable party, the court shall order that the indispensable party be joined, but if that is not possible, then it shall dismiss the action. Pa.R.C.P 1032(b).

While this Court has reached no findings or conclusion on the question of whether the Tax Sale included Subsurface Rights in the Premises, it is undisputed that the Sheriff’s Sale did not, and thus that Kitzmiller owns no such interest. If the Tax Sale did not implicate Subsurface Rights, the entire interest in the Premises which was the subject of the Tax Sale passed to Kitzmiller under the Sheriff’s Sale deed, and no interest remains to transfer to Halkias. If the Tax Sale included Subsurface Rights in the Premises, those interests were lost by the record owner, Melvin E. Swisher, Jr. For that reason, at least Melvin E. Swisher, Jr., and perhaps both Melvin E. Swisher, Jr. and Melvin Ammon Swisher, are necessary parties to any judicial determination of whether the Tax Claim Bureau retains any interest in those rights.

None of the parties to this litigation made any effort to name Swisher as a party, nor to serve Swisher with any pleading. Since this Court has no personal jurisdiction over Swisher, the question of whether the Tax Upset Sale implicated any Subsurface Rights in the must await subsequent litigation. It is sufficient for present purposes for this Court to conclude that, to the extent that the Tax Upset Sale included any such interest in the Premises (an issue not resolved herein), 72 P.S. § 5860.608 requires that interest to be transferred to Halkias.

ORDER

And now, this _____ day of April, 2023, for the reasons more fully set forth above, it is hereby Ordered and directed as follows:

1. Judgment in Quiet Title is entered in favor of Edwin K. Kitzmiller III and Danielle K. Kitzmiller and against James Halkias and the Lycoming County Tax Claim Bureau for that interest in Lycoming County Tax Parcel 23-277-130, situate in Jordan Township, Lycoming County, and bearing street address 5742 Moreland Baptist Road, Unityville, Pennsylvania 17774, described in the deed from the Sheriff of Lycoming County to Edwin K. Kitzmiller III and Danielle K. Kitzmiller dated November 30, 2020, and recorded on November 30, 2020, in Lycoming County Record Book 9232 at page 2912.
2. Judgment in Quiet Title is entered in favor of Edwin K. Kitzmiller III and Danielle K. Kitzmiller and against James Halkias on the Counterclaim filed by James Halkias.
3. All objections of any nature filed by Edwin K. Kitzmiller III and Danielle K. Kitzmiller to the Tax Upset Sale conducted by the Lycoming County Tax Claim Bureau on tax parcel 23-277-130 are dismissed, on the basis that neither Edwin K. Kitzmiller III nor Danielle K. Kitzmiller had any interest in that parcel on the date of the Tax Upset Sale.
4. The Lycoming County Tax Claim Bureau is directed to deliver a non-warranty deed to James Halkias, limited to whatever Subsurface interest may remain with that Bureau in Lycoming County tax parcel number 23-277-130. The form and content of that deed will be determined by the Lycoming County Tax Claim Bureau, consistent with applicable law. As an accommodation only, the Court suggests that the Lycoming County Tax Claim Bureau consider the following language:

“Such interest in the subsurface rights to Lycoming County tax parcel number 23-277-130, as may be held by the Lycoming County Tax Claim Bureau as a result of the Tax Upset Sale conducted on September 16, 2020, which rights are expressly disclaimed by the Lycoming County Tax Claim Bureau. Nothing set forth herein will be regarded as providing any warranty of title, which warranty is expressly disclaimed. Further, nothing set forth herein will be regarded as transferring any of the interest in Lycoming County tax parcel number 23-277-130, which is described in the deed from the Sheriff of Lycoming County to Edwin K. Kitzmiller III and Danielle K. Kitzmiller dated

November 30, 2020, and recorded on November 30, 2020, in Lycoming County Record Book 9232 at page 2912. On the contrary, any and all rights in Lycoming County tax parcel number 23-277-130, which are described in the deed from the Sheriff of Lycoming County to Edwin K. Kitzmiller III and Danielle K. Kitzmiller dated November 30, 2020, and recorded on November 30, 2020, in Lycoming County Record Book 9232 at page 2912 are solely owned by Edwin K. Kitzmiller III and Danielle K. Kitzmiller, and their successors in interest.”

5. Since the funds paid by Edwin K. Kitzmiller III and Danielle K. Kitzmiller to the Sheriff of Lycoming County included all past due taxes on Lycoming County Tax Parcel 23-277-130, the Tax Sale funds held in escrow by the Lycoming County Tax Claim Bureau should be refunded to James Halkias. If no timely Post-Trial Motions are filed, or if such Motions are timely filed but dismissed, those funds should be refunded within ten (10) days thereafter.
6. To the extent that any party seeks a judicial determination as to whether the Tax Upset Sale conducted by the Lycoming County Tax Claim Bureau on tax parcel 23-277-130, conferred any interest in that tax parcel beyond the interest which was the subject of the Sheriff deed to Edwin K. Kitzmiller III and Danielle K. Kitzmiller dated November 30, 2020, and recorded on November 30, 2020, in Lycoming County Record Book 9232 at page 2912, all such claims are dismissed pursuant to Pa.R.C.P 1032(b), for failure to join a necessary party.

BY THE COURT,

William P. Carlucci, Judge

cc: J. Howard Langdon, Esq.
Jennifer Ayers, Esq.
Austin White, Esq.
April McDonald, Deputy Court Administrator