

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY
PENNSYLVANIA

IN RE: : No. 21-01,153
LYCOMING COUNTY :
TAX CLAIM BUREAU. : CIVIL ACTION
: *Petition of James Lampley to*
: *Oppose and Challenge Transfer*

FILED
LYCOMING COUNTY
2023 NOV -1 AM 8:05
THOMAS D. HEAL
PROTHONOTARY

OPINION AND ORDER

AND NOW, this 31st day of October, 2023, upon consideration of the Petition of James Lampley to Oppose and Challenge Transfer filed June 16, 2022, it is hereby ORDERED and DIRECTED that the Petition is GRANTED, for the reasons explained below.

I. BACKGROUND.

On September 15, 2021, the Lycoming County Tax Claim Bureau (the "Bureau") conducted an upset sale (the "Upset Sale") for the collection of delinquent real estate taxes pursuant to the Real Estate Tax Sale Law (the "Law").¹ At the Upset Sale, the Bureau sold property owned by James Lampley ("Petitioner") at 629 Second Avenue, Williamsport, Lycoming County, Pennsylvania, Tax Parcel No. 73-007-104 (the "Property") to Shore Construction Co., LLC. The total price paid, including taxes, recording costs and transfer fees was \$13,937.65. By *Decree Nisi* entered on December 7, 2021, the Court confirmed the sale of the Property.

The *Decree Nisi* provided that anyone wishing to challenge the Upset Sale must file objections or exceptions within thirty (30) days. Petitioner did not file objections or exceptions within the time specified, so the Prothonotary entered a Decree of Absolute Confirmation on January 10, 2022. Accordingly, on February 2,

¹ 72 P.S. §§ 5860.101, *et seq.*

2022, the Bureau issued a deed to Shore Construction, LLC, the purchaser of the Property.

On June 16, 2022, well after expiration of the thirty day period for filing objections or exceptions, Petitioner filed his Petition. Petitioner alleges the Upset Sale was made with no notice to him prior to the sale. Furthermore, he contends that the Bureau did not notify him after the Upset Sale of the Property. He contends that he was made aware of the Upset Sale on June 8, 2022, and he filed his Petition, which is dated June 10, 2022, on June 16, 2022.²

The Court held a hearing on the Petition on August 3, 2023. Petitioner and representatives of the Bureau were present. The purchaser of the Property was not present, despite being given notice of the hearing by the Court. The matter is now ripe for decision.

II. LAW AND ANALYSIS.

A. The statutory pre-sale notice requirements.

Before a property can be sold at upset tax sale, the Bureau is required to provide notice to the owner by publication,³ by posting,⁴ and by certified mail, restricted delivery, return receipt requested.⁵ "[T]he Bureau is required to strictly

² Petitioner was incarcerated in the Lycoming County Prison at the time he sent his Petition for filing, so a delay of six days between the date of the Petition and its date of filing is not unusual.

³ 72 P.S. § 5860.602(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.").

⁴ 72 P.S. § 5860.602(e)(3) ("In addition to such publications, similar notice of the sale shall also be given by the bureau as follows: ... Each property scheduled for sale shall be posted at least ten (10) days prior to the sale.").

⁵ 72 P.S. § 5860.602(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

adhere to the notice provisions of the Law, 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."⁶

Notice to owners of an impending sale of their properties is a duty requiring strict compliance in order to guard against the deprivation of property without due process. Thus, 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.⁷

If the notice required to be mailed to a person "whose property interests are likely to be significantly affected by such tax sale" is returned without the required personal signature of the addressee, is returned under other circumstances raising "significant doubt" as to its actual receipt, or is not returned or acknowledged at all, then the Bureau is required to make additional reasonable efforts to locate the addressee.⁸

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.⁹

When the Bureau's reasonable efforts have been exhausted, the Bureau must make a notation in the property file describing the efforts made and the result of them.¹⁰

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.").

⁶ *Rice v. Compro Distributing, Inc.*, 901 A.2d 570, 575 (Pa. Commw. 2006) (citing *Rivera v. Carbon County Tax Claim Bureau*, 857 A.2d 208, 214 (Pa.Cmwlt.2004)). "The strict provisions of [the Law] were never meant to punish taxpayers who omitted through oversight or error ... to pay their taxes." *In re Return of Sale of Tax Claim Bureau (Ross Appeal)*, 76 A.2d 749, 753 (Pa. 1950).

⁷ *Smith v. Tax Claim Bureau of Pike County*, 834 A.2d 1247, 1251 (Pa. Commw. 2003) (emphasis added) (citations omitted).

⁸ 72 P.S. § 5860.607a(a).

⁹ *Id.* These efforts are the "mandatory minimum" additional efforts required to comply with the requirements of 72 P.S. § 5860.607a. *Rice, supra*, 901 A.2d at 573.

¹⁰ 72 P.S. § 5860.607a(a).

The Bureau has the burden of proving that it complied with the notice requirements and the "reasonable efforts" requirements.¹¹ The focus of inquiry is on whether the Bureau strictly complied with the notice requirements, rather than on whether such notice was received.¹² The fact that notice was not actually received is not sufficient to defeat a tax sale when the Bureau has strictly complied with the notice requirements of the Law.¹³

Here, the Bureau provided evidence that, prior to the Upset Sale, (1) it advertised the Upset Sale of the Property in the *Williamsport Sun Gazette* on August 13, 2021¹⁴ and in the *Lycoming Reporter* on August 16, 2021,¹⁵ (2) it posted the Property on June 2, 2021,¹⁶ and (3) it sent notice to Petitioner by certified mail, restricted delivery, return receipt requested, on April 27, 2021, which notice was signed for on May 20, 2021.¹⁷ A principal question at the Hearing concerned the certified mail receipt. The person who signed for the certified mail is difficult to ascertain from the receipt; however, it is clear to the Court that the signee does not

¹¹ *Rice, supra*, 901 A.2d at 575. See also, e.g., 72 P.S. § 5860.602(e)(2) ("It shall be the duty of the bureau to determine the last post office address known to said collector and county assessment office.").

¹² *Steinbacher vs. Northumberland County Tax Claim Bureau*, 996 A.2d 1095, 1099 (Pa. Commw. 2010).

¹³ *Kleinberger v. Tax Claim Bureau of Lehigh County*, 438 A.2d 1045, 1048 (Pa. Commw. 1982). See also, e.g., 72 P.S. § 5860.602(h) ("No sale shall be defeated and no title to property sold shall be invalidated because of proof that mail notice as herein required was not received by the owner, provided such notice was given as prescribed by this section.").

¹⁴ The *Williamsport Sun Gazette* is the only newspaper of general circulation in Lycoming County. The advertisement appeared at least thirty (30) days prior to the Upset Sale, in compliance with 72 P.S. § 5860.602(a). See Bureau Exh. 1, pp. 12, 18-19.

¹⁵ The *Lycoming Reporter* is the designated legal newspaper in Lycoming County. See Lyc. Cnty. Local Rule of Jud. Admin. L4 ("The *Lycoming Reporter* is designated the legal newspaper in Lycoming County for the publication of court or other legal notices, and all matters which require publication in the legal newspaper, by statute, rule, or order of court, shall be published therein....") (emphasis added). The advertisement appeared at least thirty (30) days prior to the Upset Sale, in compliance with 72 P.S. § 5860.602(a). See Bureau Exh. 1, pp. 12-17.

¹⁶ The Property was posted at least ten (10) days prior to the Upset Sale, in compliance with 72 P.S. § 5860.602(e)(3). See Bureau Exh. 1, pp. 6-7.

¹⁷ The notice was provided at least thirty (30) days prior to the Upset Sale, as per 72 P.S. § 5860.602(e)(1), although there is some question as to the certified mail receipt. See Bureau Exh. 1, pp. 8-9.

appear to be a name even remotely similar to "James Lampley." Rather, the signee appears to be "A S Rio."¹⁸ Under the circumstances, it should have been obvious to the Bureau that the purported recipient of the notice provided by certified mail was an individual claiming to be someone other than "James Lampley," Petitioner here, who was the listed owner of the Property at the time.

The Court finds that no reasonable person could conclude that the signature appearing on the certified mail receipt was the signature of "James Lampley." The fact that Petitioner does not appear to have signed the certified mail receipt triggered additional notification requirements for the Bureau. The Bureau was required to send similar notice to Petitioner by first class mail at least ten (10) days prior to the sale.¹⁹ The Bureau did not establish that it did so. Moreover, because the notice required to be mailed to a person "whose property interests are likely to be significantly affected by such tax sale" was returned without the required personal signature of the addressee, or at least under other circumstances raising "significant doubt" as to its actual receipt, the Bureau is required to make additional reasonable efforts to locate the addressee.²⁰ The Bureau did not establish that it made *any* such additional reasonable efforts to locate the Petitioner.²¹ Indeed, compliance with the "additional reasonable efforts" specified in the Law likely would have located the Petitioner, as he was in the Lycoming County Prison at the time of the sale.

¹⁸ See Bureau Exh. 1, p.9.

¹⁹ See 72 P.S. § 5860.602(e)(2).

²⁰ See 72 P.S. § 5860.607a(a).

²¹ See, e.g., *Steinbacher, supra*, 996 A.2d at 1099 (holding that notice required by statute was not provided where the tax claim bureau did not undertake even one of the mandatory minimum reasonable efforts specified in 72 P.S. § 5860.607a(a) to locate an owner, when all it did was look in one local telephone directory and when it claimed that its additional effort was sufficient because the taxpayer did not notify the tax collector of his new address).

B. The post-sale redemption period.

No later than sixty (60) days after an upset sale, the tax claim bureau must file a consolidated return to the court describing the sale.²² Within thirty (30) days thereafter, the court will confirm the sale *nisi*, provided that it appears to the court that the sale was conducted in accordance with the act and that notice of actual sale was given to each owner within thirty (30) days after the sale by certified mail, restricted delivery, return receipt requested.²³ Thereafter, the property owner may contest the sale by filing objections or exceptions within thirty (30) days after the court has confirmed the sale *nisi*.²⁴ If no objections or exceptions are filed, the prothonotary is required to enter a decree of absolute confirmation of the sale,²⁵ or, if objections or exceptions were filed and finally overruled, the Court is required to enter a decree of absolute confirmation.²⁶

Once an upset tax sale has been confirmed absolutely, the sale cannot be challenged judicially, except with respect to the giving of notice, the time of holding the sale, or the time of petitioning for an order of sale.²⁷ Where the tax claim bureau has not followed the pre-sale notice procedures contained in the Law, a court may permit a property owner to file objections or exceptions *nunc pro tunc*.²⁸ Strict compliance with the notice provisions of the tax sale statutes is necessary to protect

²² 72 P.S. § 5860.607(a) ("It shall be the duty of the bureau, not later than sixty (60) days after a sale was held, to make a consolidated return to the court of common pleas of the county, wherein it shall set forth, (1) a brief description of each property exposed to sale, (2) the name of the owner in whose name it was assessed, (3) the name of the owner at the time of sale, and to whom notice by mail was given as provided by this act, (4) a reference to the record of the tax claim on which the sale was held, (5) the time when and the newspapers in which the advertisement for sale was made, with a copy of said advertisement, (6) the time of sale, (7) the name of the purchaser, if any, and (8) the price for which each property was sold, or that no bid was made equal to the upset price and the property was not sold....").

²³ 72 P.S. §§ 5860.607(a), 5860.607(a.1)(1).

²⁴ 72 P.S. § 5860.607(c).

²⁵ *Id.*

²⁶ 72 P.S. § 5860.607(d).

²⁷ 72 P.S. § 5860.607(g).

²⁸ See, e.g., *In re Continental Motels, Inc.*, 379 A.2d 897, 899 (Pa. Commw. 1977).

against deprivation of property without due process of law, and when the taxing authorities do not comply with them, the purported sale of a property is a nullity.²⁹

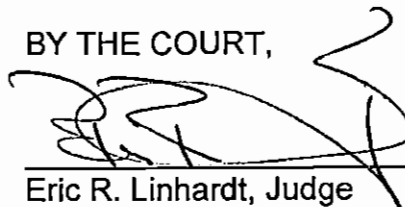
Here, the Bureau sold the Property at the Upset Sale. The Bureau timely petitioned the Court to confirm the sale *nisi*, which was duly done. No objections were filed within thirty days thereafter, and the Prothonotary entered a decree of absolute confirmation of the sale. Petitioner filed his objections months after confirmation absolute of the Upset Sale. Nevertheless, the Bureau failed to follow the pre-sale notice provisions of the Law, rendering the Upset Sale a nullity. Petitioner filed his objections or exceptions promptly after discovering that his property had been sold. Therefore, Petitioner cannot be prevented from proceeding on the basis of failure to file objections timely, and the Court must grant his objections or exceptions due to the Bureau's failure to comply strictly with the notice provisions of the Law. To decide otherwise would be to deprive Petitioner of property without due process of law.

III. CONCLUSION.

For the reasons explained above, Petitioner's objections or exceptions to the Upset Sale are GRANTED. The Court finds that the Upset Sale of the Property 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.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/bel

²⁹ *Price-Jeffries Co., Inc. v. Tillman*, 312 A.2d 494, 495-96 (Pa. Commw. 1973).