

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

JAMES R. CHEUNES,	:	No. 2023-01266
Petitioner,	:	
v.	:	CIVIL ACTION
	:	
LYCOMING COUNTY TAX	:	
CLAIM BUREAU,	:	
Respondent.	:	
	:	Petition to Set Aside Tax Sale

**OPINION AND ORDER**

This matter came before the Court on February 20, 2024, on the Petition of James R. Cheunes (hereinafter “Cheunes”) filed November 9, 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 vacant real property situate at 1615 Route 42 Highway, Franklin Township, Lycoming County, Pennsylvania, bearing Lycoming County tax parcel number 13-3370-0168-000 (hereinafter the “Premises”). Cheunes appeared with counsel, William E. Vinsko, Jr., Esquire. The Director of the Bureau appeared with counsel, Austin White, Esquire.

***I. BACKGROUND***

The Premises is approximately four (4) acres of vacant land. Cheunes, who resides at 658 Sylvan Drive, Stowe, Pennsylvania 19464, testified credibly that he never saw the written notice of tax sale posted at the Premises and never received any written notice of the sale. The Court finds that the certified mail Notice of Sale dated May 8, 2023 was returned to the Bureau marked “Unclaimed-Return to Sender” and that the signature on the certified mail receipt card attached on the reverse side of the Notice of Return and Claim is a completely unreadable scribble. Cheunes testified that he did not receive any such notice, and he does not recognize the unreadable scribble.

The Court notes that, in addition to the fact that Cheunes testified that he had no notice of the Tax Sale, the Premises is vacant land and Cheunes lives hours away from that location. Since the record is completely devoid of any evidence of telephone or in-person contact between the Cheunes and the Bureau in the weeks prior to the Tax Sale, the only reasonable conclusion which the Court can draw is that Cheunes was surprised to learn of the Tax Sale, and contacted counsel to file the Petition to Set Aside.

Much of the testimony concerned the written notices of sale, sent by both certified and ordinary mail. Cheunes credibly testified that he never saw any of the notices, and that the scribble “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 written notices, the Court accepts the testimony of Cheunes that the signature is not his, and the notices were 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 Cheunes.

### **III. FINDINGS**

1. The Bureau mailed each of the notices included in Bureau Exhibit 1—Exhibit 1 consists of forty-eight (48) pages. Notwithstanding those mailing, the Court finds as credible, the testimony of Cheunes that he never received or saw any of the written notices contained within that document.
2. The Premises is vacant land. Had the Bureau made any effort at personal service to Cheunes at his home address of 658 Sylvan Drive, Stowe, Pennsylvania 19464, the Bureau would almost certainly have been successful.
3. The Bureau arranged to post a Notice of Tax Sale to the Premises on June 6, 2022, as reflected in the photograph on Page 1 of Bureau Exhibit 1. Notwithstanding that posting, the Court finds as credible the testimony of Cheunes, who lives hours away, that he never saw the posted Notice.
4. The Court finds as credible the testimony of Cheunes that his first notice of the Tax Sale was after the sale.

### **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 any purchaser on account of the Tax Sale shall be promptly refunded.

BY THE COURT,

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William P. Carlucci, Judge

CC:

Court Administrator  
Austin White, Esq.  
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