

LEGAL NOTICES

Business Corporation Law of the Commonwealth of Pennsylvania.

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7/2/99

FICTITIOUS NAME NOTICES

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on June 3, 1999, an application for a certificate for the conducting of a business under the assumed or fictitious name of QUILT ODYSSEY, with its principal place of business at 15004 Burnt Mill Road, Shippensburg, Pennsylvania 17257. The name and address of the person owning or interested in said business is Melissa W. Molino, 15004 Burnt Mill Road, Shippensburg, Pennsylvania 17257.

William C. Cramer, Esq.
414 Chambersburg Trust Building
Chambersburg, PA 17201

7/2/99

AMENDED FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Names Act, 54 Pa. C.S.A. 311, of the filing with the Department of State of the Commonwealth of Pennsylvania, on June 7, 1999, of an application for amendment of fictitious name for the conducting of a business under the assumed or fictitious name of WETZEL'S FLOOR COVERING, with its principal place of business at 33 Walnut Street, Waynesboro, Pennsylvania 17268. Said business will no longer be known as Wetzels Floors, Doors & Windows. The name and address of the individual interested in said business is Jeffrey I. Duffy, Sr., 33 Walnut Street, Waynesboro, Pennsylvania 17268.

Toms & Evans
Attorneys at Law
Michael J. Toms, Esquire
3081 East Main Street
Waynesboro, PA 17268

7/2/99

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7/2,7/9,7/16,7/23/99

IN RE: 1998 RETURN OF SALE OF TAX CLAIM BUREAU OF FRANKLIN COUNTY, PENNSYLVANIA, C.P. Franklin County Branch, Miscellaneous Docket Vol. VOLUME CC, PAGE 303

In re 1998 Return of Sale of Tax Claim Bureau

overturn of tax sale - owners did not get notice of tax sale due to improperly assessed deed

Facts: When property in question was sold from Railroad to Eberlys, Tax Assessor's office improperly assessed language of the deed; only part of the property conveyed was assessed to Eberlys, the rest remained listed as belonging to Railroad. Thus, part of property was taxed to Eberlys, part remained taxed to Railroad which did not pay those taxes. That part of the property was sold at the tax sale.

1. Tax Sale Law requires that notice of sale be given by Tax Claim Bureau to the owner of the property.
2. When uncertainty exists in the use of vague or ambiguous language, the court may take into consideration the subsequent acts of the parties.
3. If the conduct subsequent to the deed indicates that the parties placed a particular interpretation upon it, that meaning is adopted.
4. Fact that Railroad stopped paying the property taxes in the year after the conveyance to the Eberlys showed that Railroad believed it had conveyed that part of its property. Eberlys also acted as if they owned it by clearing trees and giving the township permission to use it during the repair of an adjacent bridge.
5. Through no fault of the Eberlys, they were not notified of the tax sale; the real owner did not get notice and thus the tax sale must be overturned.

Timothy D. Wilmot, Esquire, counsel for Petitioners Eberly
John McD. Sharpe, Jr., Esquire, counsel for Tax Claim Bureau
Timothy W. Misner, Esquire, counsel for William Lowe

OPINION AND ORDER

WALKER, P.J., April 30, 1999:

Factual and Procedural Background

The parties in this case stipulated to the following facts. On September 21, 1998, the Franklin County Tax Claim Bureau sold several properties at an upset sale for delinquent taxes. One of those

properties was known as parcel 09-C-18-44B (hereafter "parcel 44B") located on Hafer Road in Greene Township, Franklin County, Pennsylvania. It was sold because the 1996 taxes had not been paid. William Lowe purchased parcel 44B for \$1,763.14. The Tax Claim Bureau had sent all required notices to what it perceived to be the owner of parcel 44B, Penn Central Corporation (formerly the Pennsylvania Railroad Company). However, previously on March 8, 1995, Gerald and Elaine Eberly (hereafter "the Eberlys") had purchased a piece of property from Penn Central which they claim included tax parcel 44B. The quitclaim deed describes the property conveyed to the Eberlys as follows:

ALL THAT PARCEL of land situate in the Township of Greene, County of Franklin, Commonwealth of Pennsylvania, being all of the right, title and interest of the Grantor herein and to all those certain pieces or parcels of land and premises, easements, rights-of-way and any other rights of any kind whatsoever appurtenant thereto or used in conjunction therewith on and along that property of the former Pennsylvania Railroad Company (predecessor of said Grantor), described as follows:

BEGINNING at the centerline of T-519 (a.k.a. Ragged Edge Road) as extended across the right-of-way of said railroad through a point in the centerline thereof at Railroad Valuation Station 180+61; thence extending in a southeasterly direction along the centerline of said railroad a distance of 2,369 feet, more or less, to the centerline of T-606 as extended across the right-of-way of said railroad through a point in the centerline thereof at Railroad Valuation Station 204+30, more or less, being the Place of Ending.

Upon the recording of the quitclaim deed (Deed Book Volume 1250, page 90), the Franklin County Assessor's Office did not identify the property conveyed to the Eberlys to include tax parcel 44B. Mr. Martin, the chief appraiser of the Assessor's Office, testified at the hearing that he was the person who assessed the quitclaim deed of the Eberlys. He further testified that he was familiar with railroad quitclaim deeds and that generally, a railroad company conveys only its right-of-way in the railroad bed. In such conveyances, the property is described only by length and not by

width. Because Mr. Martin viewed the underlying quitclaim deed to describe only the length and not the width of the property conveyed, he assumed that only the property on which the railroad bed was located had been conveyed. Because the right-of-way on the railroad tracks had not been taxable to the railroad, he had to assign the parcel a new number for tax purposes, which was 09-C-18-55 (hereafter "parcel 55"). Believing that the remainder of the land was retained by Penn Central, it remained designated as parcel 44B and as such was taxed to Penn Central.

The parties have stipulated that the Eberlys paid all taxes on parcel 55. Penn Central paid the taxes on parcel 44B in 1995, even on the bills that were received after the conveyance to the Eberlys. However, in 1996, Penn Central stopped paying taxes on parcel 44B.

Because the register of the Tax Assessor's Office showed that Penn Central was the owner of parcel 44B, the Tax Claim Bureau sent all notices of the overdue taxes to Penn Central. When Penn Central did not respond, the parcel was sold at the upset sale. The Eberlys did not find out about the sale of parcel 44B until after it had occurred. They filed timely objections to the sale. A hearing was held on January 25, 1999. An additional hearing was held on April 15, 1999, following a petition filed by the Eberlys to receive additional testimony.

Discussion

Section 602(e)(1) of the Tax Sale Law requires that notice of sale shall be given by the Tax Claim Bureau as follows:

- (1) At least thirty (30) days before the date of the sale, by United States certified mail, personal addressee only, return receipt requested, postage prepaid, to each owner as defined by this act.

72 Pa.C.S.A. § 5860.602.

The owner of a property is defined in the act as:

the person in whose name the property is last 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 any person in open, peaceable and notorious possession of the property.

72 Pa.C.S.A. §5860-102.

There is no dispute that the Tax Claim Bureau sent all required notices of the upset sale for parcel 44B to the entity registered by the Assessor's Office as its owner, Penn Central. The real issue in this case is whether the Assessor's Office improperly assessed the land conveyed in the quitclaim deed. This court believes it has.

The deed appears to have been somewhat inartfully drafted, because it is unclear from the description set forth in the second paragraph on page two of the deed where the precise boundaries of the property are. However, if Penn Central had intended to convey only its right-of-way in the railroad bed, it could have easily and clearly stated so in the deed. Rather, the first paragraph of the description in the quitclaim deed cannot be ignored: it conveys not only the land specifically described in the second paragraph but also "all those certain pieces or parcels of land and premises . . . used in conjunction therewith on and along that property of the former Pennsylvania Railroad Company." It appears from the language in the deed that Penn Central intended to convey more than its right-of-way in the railroad bed.

Where an uncertainty exists due to the use of vague or ambiguous language in the deed, the court may take into consideration the subsequent acts of the parties. If the conduct subsequent to the deed indicates that the parties placed a particular interpretation upon it, that meaning is adopted. *Taylor v. Gross*, 195 Pa. Super. 225, 234, 171 A.2d 613 (1961); *Doman v. Brogan*, 405 Pa. Super. 254, 264-265, 592 A.2d 104 (1991). In the underlying case, Penn Central and the Eberlys did not prorate any taxes for 1995 at the time of conveyance. Whether by agreement or by oversight, Penn Central paid the taxes for parcel 44B in 1995. However, Penn Central stopped paying the taxes the following year even though the tax bills were sent to Penn Central. This court finds the fact that Penn Central stopped paying all taxes on parcel 44B in the year following the quitclaim deed to be a significant factor indicative of Penn Central's belief that it had conveyed the property to the Eberlys. In addition, Mr. Eberly's actions also show that he believed he had purchased parcel 44B. He testified at the hearing that he had cleared some trees

from parcel 44B and that he had granted Greene Township's request for permission to use the land during the repair of an adjacent bridge.

Thus, this court finds that the property conveyed by Penn Central to the Eberlys included both tax parcels 55 and 44B. The Tax Assessor's Office failed to properly designate the Eberlys as the rightful owners of parcel 44B. Even though the Eberlys intended to pay all taxes for the property they purchased, they did not pay the taxes on parcel 44B because the tax bills they received for parcel 55 did not include parcel 44B. Through no fault of the Eberlys, they were not notified of the overdue taxes nor of the upset sale. Relying on the improper designation of ownership made at the Tax Assessor's office, the Tax Claim Bureau did not send the notices to the proper owner. Thus, the tax sale must be set aside. The new owner, William Lowe, will not be prejudiced by this since the money he paid for the property will be returned to him.

ORDER OF COURT

April 30, 1999, upon consideration of the objections made by the Eberlys to the tax sale of the property known as 09-C-18-44B, it is ordered that the sale of the property is set aside. The Eberlys are ordered to pay all overdue taxes with interest within thirty (30) days of receipt of notice by the Tax Claim Bureau of the amount owed. The Eberlys are further ordered to pay the costs of the upset sale in the amount of \$147.29.

The Tax Claim Bureau is ordered to refund the total amount paid by the buyer of the property, William Lowe.