

The plaintiff's allegations as set forth at 1-2 of this opinion, while setting forth a claim based upon negligence, fail by a wide margin to set forth actions which constitute acts done with "reckless indifference as well as with bad motive." *Focht v. Rabada, supra*. For this reason, we will deny plaintiff's petition to amend.

#### ORDER OF COURT

NOW, April 10, 1990, plaintiff's petition to amend the Complaint denied.

As we have proceeded in the interest of judicial economy as if defendant has entered a demurrer to the Complaint, plaintiff is granted twenty (20) days from the date hereof to file an amended complaint setting forth facts beyond those in the proposed amendment on the issue of punitive damages.

IN RE: 1989 RETURN OF SALE OF TAX CLAIM BUREAU OF FRANKLIN COUNTY, PA,\*

C.P. Franklin County Branch, Misc. Doc. Vol. Z. Page 360

#### *Presumption of Regularity - Notice - Method of Posting*

1. The presumption of regularity of the acts of public office exists until the contrary appear and this applies to tax sale.
2. By filing exceptions to a tax sale, averring that the Tax Claim Bureau did not comply with statutory notice requirements, the presumption is overcome.
3. Notice in the form of publication, certified mail, and posting are required for a valid tax sale.
4. Where a notice is handed to tenant of the property the statutory posting requirement was not met.
5. A valid tax sale requires strict compliance with all notice provisions.

\*Editor's note: For further identification, it is suggested by the editor that this case deals with the "Sandra S. Chider Tract" See, also, other identifying indicia in first paragraph of the Opinion of the Court.

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### OPINION AND ORDER

KELLER, P.J., March 21, 1990:

On September 11, 1989, the Franklin County Tax Claim Bureau sold property located in Montgomery Township, numbered and known as 8317 Buchanan Trail West, and having Franklin County Tax Code number of 17-J-8-46. The owner of the property was Sandra S. Chider. The property was sold at an upset price of \$1,759.24 to Kenneth V. Seitz, Sr., and Ruth A. Seitz. On September 29, 1989 a decree nisi was entered in the above-captioned matter. On October 20, 1989 Sandra S. Chider filed exceptions and objections to the decree nisi. A hearing was held on December 12, 1989. Briefs were submitted on December 29, 1989. This case is now ripe for disposition.

The presumption of the regularity of the acts of public officers exists until the contrary appears and such a presumption is applicable in tax sales. *Ali vs. Montgomery County Tax Claim Bureau*, Pa. Commw. , 557 A.2d 35 (1989). By filing of exceptions to a tax sale, averring that the Tax Claim Bureau did not comply with statutory notice provisions, a property owner overcomes the presumption. The Bureau then has the burden of proving compliance with the statutory notice provisions. *Dauphin Service Corp. vs. Montgomery County Tax Claim Bureau*, Pa. Commw. , 557 A.2d 38 (1989).

All three types of notice, namely publication, certified mail, and posting, are required for a valid tax sale; if any is defective the sale is void. *Financial Management Professional Corporation vs. Tax Claim Bureau of Monroe County*, 121 Pa. Commw. 205, 550 A.2d 601 (1988).

Thirty days prior to the tax sale there was the required publica-

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cation in two newspapers and a notice was sent by certified mail, restricted delivery. Sandra S. Chider admitted to receiving the certified mail and that it was her signature on the return receipt card. We therefore find the Tax Claim Bureau has sustained its burden as to 72 P.S. 5860. 602 (A) and (e)(1). The third and last type of notice required is posting.

72 P.S. §5860. 602 (e) (3) provides:

Each property scheduled for sale shall be posted at least ten (10) days prior to the sale.

Nothing in the act describes an exact method of posting, but the method used must be reasonable and such as would likely inform the taxpayer of the intended sale of the premises. *Thomas vs. Montgomery County Tax Claim Bureau*, Pa. Commw. , 553 A.2d 1044 (1989). A presumption of regularity exists with respect to the posting requirement. Evidence of an affidavit gives rise to a presumption of posting. To rebut this presumption the defendant has the burden to go forward with contradictory evidence. See *Thomas, supra*. The affidavit establishes the presumption that the property was properly posted, this presumption must yield if the defendant puts forth facts which indicate the contrary. *Thomas, supra*.

In the case at bar, the Tax Claim Bureau offered in evidence the affidavit of Thomas Donahue that the notice was timely posted. Kenneth V. Seitz, Sr., one of the tenants of the property, testified that Thomas Donahue handed the notice to his wife. The posting requirement was not met by handing the notice to an occupant of the property who was not the owner of the same. *Och vs. Hicks*, 96 Dauph. 328 (1974).

We requested the court reporter to read back her notes of testimony in the posting issue because there appeared to be a conflict in the recollections of the attorneys as to the testimony of Kenneth V. Seitz, Sr. Timothy W. Misner, Esq., Attorney for Sandra S. Chider, asked Kenneth V. Seitz, Sr., "Was there any notice put on the property?" He answered, "On the house, I seen none." The next question was, "You did not see any notice?" Answer "No, I didn't." Mr. Donahue was not called by the Bureau to testify on this critical issue.

We conclude from the only testimony offered at the hearing that the Tax Claim Bureau filed an affidavit of posting thus giving rise to the presumption of posting. However, we must also conclude that Kenneth V. Seitz's testimony rebutted that presumption, when he testified that he did not see any notice on the house or property. The posted notice must be

conspicuous and placed on the premises if any exist. *In Re Return by Fayette County Tax Claim Bureau*, 32 D&C 3d 522 (1984). We therefore find that there was no notice posted as required under 72 P.S. 5860.602(e)(3).

Strict compliance with notice requirements of the Real Estate Tax Sale Law is required because the law is not meant to punish taxpayers whose failure stems from oversight or error, but is intended to protect local revenues against willful, persistent and longstanding delinquents. The purpose of tax sales is to ensure the collection of taxes, not to strip the taxpayer of his property. *Halpern vs. Monroe City Tax Claim Bureau*, Pa. Commw. , 558 A.2d 197 (1989). A valid tax sale requires strict compliance with all notice provisions of the Real Estate Tax Sale Law. There must be strict compliance with such provisions to guard against deprivation of property without due process of law. *Ali, supra*.

We find sufficient evidence was presented to rebut the presumption of posting. Kenneth V. Seitz, Sr. who was living on the premises at the time the property was to be posted, testified he did not see any posted notice. The notice is required to be posted in a conspicuous place and on the premises if one exists. We conclude that if the person who is currently living on the premises, and would have the best possible chance of seeing a notice, if one was posted, testifies he never saw any notice posted, then the only reasonable inference must be that the premises was not posted as required by law. Therefore, we find the Tax Claim Bureau did not strictly comply with the notice requirements of the Real Estate Tax Sale Law and the sale must be invalidated.

#### ORDER OF COURT

NOW, this 21st day of March, 1990, the September 11, 1989, sale of Parcel 17 J-8-46, 8317 Buchanan Trail West in Montgomery Township, Franklin County, Pennsylvania, and owned by Sandra S. Chider is set aside.

Exceptions are granted the Franklin County Tax Claim Bureau and to Kenneth V. Seitz, Sr.