

with the same, North 53 degrees East, 63 feet, more or less, to lands now or formerly of Robert C. Fisher; thence with the same, South 43 degrees East, 90 feet, more or less, to lands now or formerly of Hubert M. Fisher and wife, the place of beginning.

BEING the same premises which Kelth William Weller and Jennifer Lynn Weller, his wife, by Deed dated November 10, 1994 and recorded in the Recorder of Deeds of Franklin County on November 14, 1994, in Deed Book 1238, page 340, granted and conveyed unto Terry L. Scott and Susan L. Scott, his wife.

SALE # 7

Writ # A.D. 1997-129

Unitas Bank, successor in interest to
Unitas
National Bank

vs

Richard I. Rotz, Nancy V. Rotz and
United States of America
Atty: Donald L. Kornfield, Esq.

ALL the following described real estate, lying and being situate in the Borough of Chambersburg, Franklin County, Pennsylvania, with a property address of 610 North Fifth Avenue, Chambersburg, Pennsylvania, bounded and described as follows:

BEGINNING at an existing iron pin at the edge of lands now or formerly of Consolidated Rail corp. at a corner common to the within described real estate and lands now or formerly of Chambersburg Area Development Corp. as more particularly shown on a survey hereinafter referred to; thence along said lands now or formerly of the Chambersburg Area Development Corp., South 35 degrees 12 minutes 41 seconds East 1,208.24 feet to an existing iron pin at a corner common to the within described real estate and lands now or formerly of Harold C. Gabler; thence by the same, South 56 degrees 1 minute 28 seconds West 539.76 feet to an existing iron pin at a corner common the within described real estate and lands now or formerly of Continental Grain Company; thence by the same, North 34 degrees 3 minutes 1 second West 641.02 feet to a corner post at a corner common the within described real estate and parcel "B" as shown on the aforesaid survey; thence by the same, North 52 degrees 00 minutes 22 seconds East 32.86 feet to an iron pin; thence by the aforesaid parcel "B", North 37 degrees 59 minutes 38 seconds West 202.36 feet to an iron pin; thence by the same, North 34 degrees 21 minutes 49 seconds West 224.90 feet to an iron pin; thence continuing by the same, North 41 degrees 35 minutes 14 seconds West 103.23 feet to an iron pin along the edge of lands now or formerly of Consolidated Rail Corp.; thence along a curve to the right having a radius of 804.02 feet, a chord

bearing of North 48 degrees 57 minutes 27 seconds East, a chord distance of 110.28 feet and an arc length of 110.37 feet to an iron pin; thence continuing along the edge of lands now or formerly of Consolidated Rail Corp., North 52 degrees 53 minutes 24 seconds East 402.29 feet to an existing iron pin, the place of beginning.

BEING parcel "A" on a land subdivision for Richard I. Rotz and Marlin J. Rotz, dated May 1, 1985, prepared by Arrowood, Inc. and recorded among the records of the Recorder of Deeds for Franklin County, Pennsylvania, in Plan Book Volume 288-C, Page 952.

BEING the same real estate which Marlin J. Rotz and Richard I. Rotz conveyed to Richard I. Rotz by deed dated April 15, 1988, and recorded in Franklin County Deed Book Volume 1014, Page 584.

TERMS

As soon as the property is knocked down to purchaser, 10% of the purchase price or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN October 20, 1997 at 4:00 PM, prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on October 24, 1997, 1:00 PM, prevailing time, in the Franklin County Court House, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be the higher, shall be paid in full.

Robert B. Wollyung
Sheriff
Franklin County
Chambersburg, Pa.

09/19, 09/26, 10/03/97

CAROLE SABBETH, EXCEPTOR vs. TAX CLAIM BUREAU OF FULTON COUNTY AND GENWOVE U.S., LTD., RESPONDENTS, Fulton County Branch, Civil Action-Law No. 6 of 1996

Carol Sabbeth v. Tax Claim Bureau of Fulton County and Genwove U.S., Ltd.

Tax Sale - The Pennsylvania Real Estate Tax Sale Law, 72 P.S. §§5860.101 *et seq.*

Synopsis: Owner sought to set aside the tax sale of her property arguing that she did not receive proper notice of the impending sale.

Held: Tax Claim Bureau did not comply strictly with the notice provision of the tax sale law, and therefore, the sale is void.

1. The notice provisions of the Pennsylvania Real Estate Tax Sale Law are intended to assure that no one is deprived of property without due process of law.
2. The notice provisions of the tax sale statute must be strictly complied with in order to guard against the deprivation of property without due process of law.
3. In order for a tax sale to be valid, notice is required to be given by publication, posting and certified mail; a defect in any of these types of notice renders the sale void.
4. In tax sale cases, the county tax claim bureau has the burden of proving compliance with the notice requirements of the Real Estate Tax Sale Law.
5. Notice of an impending tax sale is insufficient where the return receipt corresponding to a certified mailing is not signed by the addressee herself or by a person authorized to accept mail for the addressee.
6. In tax sale cases, where there is actual notice, all requirements of the notice provisions of the Real Estate Tax Sale Law need not be met.
7. The Pennsylvania Real Estate Tax Sale Law was not meant to punish taxpayer who omit, through oversight or error, to pay their taxes, but to protect local government against willful, persistent, long-standing delinquencies.

Charles E. Bobinis, Esquire, Bernstein Bernstein and Strickland, P.C., Pittsburgh, Attorneys for Exceptor
Stanley J. Kerlin, Esquire, Kerlin & Kerlin, McConnellsburg, Solicitor for Fulton County Tax Claim Bureau
Daniel M. Campbell, Esquire, Mette, Evans & Woodside, Harrisburg, Attorney for Genwove U.S., Ltd.

OPINION AND ORDER

Kaye, J., September 11, 1997:

OPINION

This case involves the upset sale of Parcel No. 04-12-035 in Brush Creek Township, Fulton County, Pennsylvania.¹ Exceptor, Carole Sabbeth (hereafter "Sabbeth") was the owner of the 3.195 acre property prior to the sale of the parcel to Respondent Genwove U.S., Ltd. ("Genwove"). Respondent Tax Claim Bureau of Fulton County ("Bureau") sold the property to Genwove for approximately \$550.00 on September 30, 1996 to satisfy Sabbeth's delinquent local tax bill. Sabbeth filed exceptions on the sale on October 17, 1996 alleging, *inter alia*, that mail notice of the sale was defective and demanding that the sale be set aside. The merits of these exceptions were the subject of a hearing before this Court on August 21, 1997.

The evidence shows that Sabbeth owed approximately \$526.05 in local taxes for the years 1994 and 1995. A number of notices were sent advising Sabbeth of the taxes due on her property, but the taxes remained unpaid. All notices were sent to Carole Sabbeth, 55 North Industry Court, Deer Park, New York 11729, the address of record for the property. This address corresponded to Sabbeth Industries, a company in which Sabbeth served as treasurer and the entity which had handled payment of the taxes in the past. Sabbeth maintained an office at the premises of Sabbeth Industries and would come by the office a few times a week.

The Bureau sent the Notice of Tax Sale via certified mail on August 5, 1996 advising Sabbeth that her property would be sold. The Bureau received a return receipt card dated August 9, 1996 and signed by "B. Epstein", an employee of Sabbeth Industries who received and distributed mail at the company. Ms. Epstein placed the notice on Sabbeth's desk where it remained unopened for more than 50 days until after the sale of the property. Bonnie Keefer, the tax claim director for Fulton County, sent an "urgent notice" by regular mail to Sabbeth on August 23, 1996. It is not clear whether Sabbeth received this second notice. When Sabbeth called the Bureau on the afternoon of September 30, 1996 to offer to pay the delinquent taxes, she was told that it was too late; the property had been sold to Genwove. Sabbeth then filed the exceptions which are the subject of this action.

¹ This property is also identified as valuation 1367, Deed Book 192, Page 293, Brush Creek Township, Fulton County, PA.

This Court is charged with deciding whether the September 30, 1996 sale of the property in question should be upheld or set aside. For the reasons set forth below, it is the judgment of this Court that the sale must be set aside.

This case is governed by the Real Estate Tax Sale Law, Act of July 7, 1947, P.L. 1368, *as amended*, 72 P.S. §5860.101 et seq. Section 5860.602, relating to notice of sale, is of particular importance to this litigation. This section reads in relevant part:

(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 notice. Such notice shall set forth (1) the purpose 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...

(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 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.

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

(f) The published notice, the mail notice and the posted notice shall each state that the sale of any property may, at the option of the bureau, be stayed if the owner thereof or any lien creditor of the owner on or before the actual sale enters into an agreement with the bureau to pay the taxes in installments, in the manner provided by this act.

(g) All notices required by this section other than the newspaper notice and notice in the legal journal shall contain the following provision which shall be conspicuously placed upon said notices and set in at least 10-point type in a box as follows:

WARNING

“YOUR PROPERTY IS ABOUT TO BE SOLD WITHOUT YOUR CONSENT FOR DELINQUENT TAXES. YOUR PROPERTY MAY BE SOLD FOR A SMALL FRACTION OF ITS FAIR MARKET VALUE. IF YOU HAVE ANY QUESTIONS AS TO WHAT YOU MUST DO IN ORDER TO SAVE YOUR PROPERTY, PLEASE CALL YOUR ATTORNEY, THE TAX CLAIM BUREAU AT THE FOLLOWING TELEPHONE NUMBER _____, OR THE COUNTY LAWYER REFERRAL SERVICE.”

72 P.S. §5860.602.

The notice provisions of the Real Estate Tax Sale Law were intended to assure that no one is deprived of property without due process of law. *In re Tax Claim Bureau*, 53 Pa.Cmwlth. 423, 419 A.2d 206 (1980). “The notice provisions of the tax sale statute must be strictly complied with in order to guard against the deprivation of property without due process of law.” *Chester County Tax Claim Bureau Appeal*, 208 Pa.Super. 384, 387, 222 A.2d 602, 604 (1966). It is clear from the language in the statute, and the case law interpreting it, that in order for a tax sale to be valid, notice is required to be given by publication, posting, and certified mail; if any of the three types of notice is defective, the sale is void. 72 P.S. §5860.602; *Krumbine v. Lebanon County Tax Claim Bureau*, 153 Pa.Cmwlth. 457, 621 A.2d 1139 (1993), *affirmed* 663 A.2d 158. In tax sale cases, the county tax claim bureau has the burden of proving compliance with the notice requirements of the Real Estate Tax Sale Law. *Financial Management Professional Corp. v. Tax Claim Bureau of Monroe County*, 121 Pa.Cmwlth. 205, 550 A.2d 601 (1988).

In this case, it is undisputed that the Bureau complied with the publication and posting requirements of the statute. Exceptor Sabbeth argues that the certified mail notice was defective because the Bureau did not comply strictly with the mailed notice provisions of the tax sale statute. In support of her position, Sabbeth presented evidence showing that the Bureau did not receive an acknowledgment of the tax sale notice because the return receipt card corresponding to the certified mail notice was not signed by her. Indeed, the “green card” was signed by Ms. Epstein. Notice of an impending tax sale is insufficient where the return receipt is not signed by the addressee herself or by a person authorized to accept mail for the addressee. *Ali v. Montgomery County Tax Claim Bureau*, 124 Pa.Cmwlth. 557, 557 A.2d 35 (1989). Even where, as in this case, it is acknowledged that notice letters were received at Sabbeth’s address, there is no strict compliance with the notice provision of the tax sale statute if the return receipt card was not signed by the addressee. *Perma Coal-Sales v. Cambria County Tax Claim Bureau*, 162 Pa.Cmwlth 7, 638 A.2d 329 (1994). No evidence has been presented that clearly establishes that Ms. Epstein was authorized to accept mail for Sabbeth, and much less that Ms. Epstein had written authorization to do so. Because the return receipt card which the Bureau received was

not signed by Sabbeth, the Bureau did not obtain an acknowledgment of the first notice.

The statute requires that a similar notice be mailed by first class mail, proof of mailing, if the Bureau does not receive an acknowledgment from the property owner in response to the certified mail notice. 72 P.S. §5860.602(e)(2). All notices required by the notice of sale section of the statute must contain the statement outlined in subsection 5860.602(g). This language must be included in the regular mail notice which is to be mailed following the failure by the property owner to acknowledge receipt of the first notice. Although Bonnie Keefer, the tax claim director for Fulton County, sent an "urgent notice" by regular mail on August 23, 1996, the mandates of the statute were not strictly complied with because this second notice did not conform to subsection (g) of the notice of sale provisions of the statute. The second notice advised Sabbeth that, "failure to take immediate action will result in your property being advertised very soon".² The language in this notice falls short of the statutory requirements of the tax sale statute, and is, therefore, deficient. This second notice is also inadequate because it is a form notice which was not addressed to Sabbeth, and the proof of mailing required by subsection (e)(2) was not presented as evidence at the August 21, 1997 hearing. In short, the Bureau has failed to meet its burden of proving strict compliance with the notice requirements of the Real Estate Tax Sale Law.

Respondents ask this court to find that there was actual notice in this case because Sabbeth has admitted that she received the notice of tax sale. They rely on *Comm. v. Crockford*, 443 Pa.Super. 143, 660 A.2d 1326 (1995), and *City of McKeesport v. Delmar Leasing Corporation*, 656 A.2d 180 (Pa.Cmwlth. Ct. 1995), allocatur denied 665 A.2d 470, for the proposition that the trier of fact can infer actual notice where it would be practically impossible to prove actual notice by direct evidence. However, Respondents' reliance on these cases is misplaced because neither case deals with the Pennsylvania Real Estate Tax Sale Statute. Cases that do not concern this statute directly are of little use when the Court is attempting to decide whether the Tax Claim Bureau complied strictly with specific technical aspects of the tax sale law. *Crockford* deals with the

² Exhibit 9.

suspension of a driver's license in the context of a criminal case, and *McKeesport* concerns a Sheriff's sale under Pa.R.A.P. No. 3129.2, relating to sales to enforce money judgments. These cases tend to confuse the issue while providing only marginal guidance.

In tax sale cases, where there is actual notice, all requirements of the notice provisions of the law need not be met. *Matter of Tax Sales*, 651 A.2d 1157 (Pa.Cmwlth.Ct. 1994), allocatur denied 664 A.2d 978. However, in this case, there was no actual notice shown, and this Court will not infer it. No evidence was presented to contradict Sabbeth's testimony that she became aware of the tax sale only hours after the sale had been consummated. It is clear that Sabbeth *should have* known that her property was about to be sold at tax sale, but it is less clear that she *actually* knew of the sale and chose to ignore the fact. Although due process does not require actual notice, *see, Shoemaker v. Tax Claim Bureau of Montgomery County*, 27 Pa.Cmwlth. 211, 365 A.2d 1320 (1976), the purpose of the detailed mailing procedures under the tax law is to give reasonable notice of impending sale to landowners, *see, Casanta v. Clearfield County Tax Claim Bureau*, 62 Pa.Cmwlth. 216, 435 A.2d 681 (1981), and for that reason, the law must be strictly followed. If the provisions of the statute are not strictly complied with, we run a greater risk of depriving citizens of important property rights without due process, and the case law cited herein is unwavering in its insistence with strict compliance with the statute regarding notice to the real estate owner. Unfortunately for Genwove, there was not strict compliance with the statute in this case and the relief sought by Sabbeth must be granted.

Respondents are correct in pointing out that Sabbeth was negligent and irresponsible in failing to act on several tax bills and a tax sale notice that languished on her desk, at her office, for more than 50 days and, of course, it is noted that these tax bills represented unpaid taxes that were over one year delinquent when mailed. However, this does not mean that there was actual notice or that the Bureau complied strictly with the provisions of the tax sale law. The Pennsylvania Real Estate Tax Sale Law was "not meant to punish taxpayers who omit, through oversight or error, to pay their taxes, but to protect local government against willful, persistent, long-standing delinquencies." *Teslovich v. Johnson*, 37 Pa.Cmwlth. 449, 455 391 A.2d 11, 14 (1978), quoting *Huhn v. Chester County*, 16 Pa.Cmwlth.

18, 21, 328 A.2d 906, 908 (1974). We conclude that as the statute was not strictly adhered to, the relief sought must be granted.

ORDER OF COURT

NOW, September 11, 1997, upon consideration of the exceptions to the petition and order of October 7, 1996 confirming nisi the sale of the real estate which is the subject of the instant proceeding, of the evidence presented, and briefs submitted, it is hereby ORDERED and DECREED that the exceptions are GRANTED, and the sale of the aforesaid real estate is declared null and void. Exceptor, Carole Sabeth, shall be required to pay all delinquent real estate taxes on the subject real estate which provided the basis for the sale herein, said payments to be made via the Tax Claim Bureau of Fulton County, which shall reimburse the purchaser of the real estate upon receipt of payment.

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