



Manufacturers and Traders Trust Co. v. Dauphin County Tax Claim Bureau

2005 | Cited 0 times | Supreme Court of Pennsylvania | April 26, 2005

Argued: April 4, 2005

OPINION NOT REPORTED

MEMORANDUM OPINION

M&T Bank appeals the order of the Court of Common Pleas of Dauphin County overruling its objections and exceptions and confirming the tax upset sale of its property located at 1512 East Caracas Avenue, Derry Township, Dauphin County for delinquent taxes for 2001.

In its objections and exceptions to the sale, M&T Bank sought to have the sale set aside, alleging that the Tax Claim Bureau failed to comply with the requirements of the Real Estate Tax Sale Law (Tax Sale Law),¹ 72 P.S. §§5860.101-5860.803, by failing to provide the Bank with a copy of the notice of claim for 2001 unpaid real estate taxes, failure to provide the Bank with notice of the tax upset sale, and failure to post the property; that the tax claim was not absolute; and that the purchaser at the tax sale did not timely certify that he is not a public official and that he is not delinquent in payment of real estate taxes of municipal utility bills.

The parties subsequently stipulated to the following facts. In 2001, the Caracas Avenue property was owned by Reese Realty Associates, which received notice of claim for 2001 unpaid real estate taxes on March 19, 2002. Just one month earlier, M&T Bank obtained a judgment in mortgage foreclosure against Reese Realty and served notice of sheriff's sale on judgment in mortgage foreclosure on the Dauphin County Tax Claim Bureau. Notice of the sheriff's sale was posted on the property in June 2002, and in July 2002 the Bank purchased the property at sheriff's sale. The sheriff's deed was recorded with the Dauphin County Recorder of Deeds in August 2002. The Bank never received a notice of claim for the 2001 delinquent taxes.

In July 2003, the Tax Claim Bureau mailed notice of the September 2003 tax upset sale to the Bank. In August 2003, the Tax Claim Bureau published notice of the tax upset sale in the three local newspapers. On September 4, 2003, employees of the Tax Claim Bureau posted notice of the sale on the main entrance of the vacant building located on the Caracas Avenue property. At the September 25, 2003 tax sale, Phillip Dobson purchased the property in Sale No. 1289. The Tax Claim Bureau sent the Bank notice of the sale, after which it filed its objections and exceptions.

After a hearing, the trial court ruled that the Bank was not entitled to notice of the claim for



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delinquent taxes, that the Tax Claim Bureau posted the notice of sale at the main entrance of the vacant building, and that the notice was sufficient because the main entrance was "visible" from East Caracas Avenue, the public street that provides access to the parking lot that the main entrance faces. The trial court explained that the notice was visible to the passing public, if not legible, and that posting the notice on what is obviously the main entrance of a commercial building was sufficiently conspicuous to meet with the law's posting requirements. The court rejected the Bank's contention that the sale could be set aside on the ground that the purchase did not timely file the required certification.

Although a presumption of regularity attaches to tax sales, a property owner overcomes the presumption whenever it states a prima facie challenge to the sale based on the agency's compliance with statutory tax sale requirements. *Michener v. Montgomery County Tax Claim Bureau*, 671 A.2d 285 (Pa. Cmwlth. 1996). Because of the fundamental importance of the due process considerations that arise when the government subjects a citizen's property to forfeiture for nonpayment of taxes, the agency that has sold the property bears the burden of proving that it complied with statutory notice requirements when the property owner mounts such a prima facie challenge. *Id.*

Section 602 of the Real Estate Tax Sale Law (Tax Sale Law),² 72 P.S. §5860.602, imposes a series of notification requirements--by publication, certified mail, and posting--before a county tax claim bureau can sell real property for delinquent taxes. The Law's notice provisions are to be strictly construed, and the tax sale is void if any of the required types of notice is defective. *Ban v. Tax Claim Bureau of Washington County*, 698 A.2d 1386 (Pa. Cmwlth. 1997). At issue in this appeal is Section 602's posting requirement and the Bank's contention that it should have received the notice of claim for 2001 unpaid real estate taxes pursuant to Section 308 of the Tax Sale Law.

Notice of Claim

Section 308(a) of the Tax Sale Law, 72 P.S. §5860.308(a), entitled Notice of filing of returns and entry of claim, states in pertinent part,

Not later than the thirty-first day of July of each year, the bureau shall give only one notice of the return of said taxes and the entry of such claim in one envelope for each delinquent taxable property . . . addressed to the owners at the same address listed on the form returned by the tax collector for taxes that are delinquent. In the case of property owned by joint tenants, tenants in common, or husband and wife as tenants by the entirety, the bureau may give the notice required by this section by forwarding only one notice addressed to such [owners] . . . at the same post office address.

Section 101 of the Tax Sale Law, 72 P.S. §5860.101, defines "owner" as the person in whose name the property is last registered or whose name last appears as owner of record on the deed or instrument of conveyance recorded in the county office, any person in open and notorious possession as apparent owner, or the reputed owner in the neighborhood. Section 308(a) requires that notice of



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unpaid taxes be given only to a property owner, and it is undisputed that M&T Bank was not the owner of record of the Caracas Avenue property until its deed was filed in August 2002. The trial judge did not err in concluding that the Bank was not entitled to notice of the claim for unpaid real estate taxes pursuant to Section 308 of the Tax Sale Law.

We note, however, that this Court has consistently stated that tax collecting agencies should not ignore commonsense business practices in attempting to find persons responsible to pay delinquent taxes before resorting to delinquent tax sale procedures. *Gladstone v. Tax Claim Bureau of Monroe County*, 819 A.2d 171 (Pa. Cmwlth. 2003), petition for allowance of appeal denied, 574 Pa. 762, 831 A.2d 601 (2003); *In re Upset Sale, Tax Claim Bureau*, 410 A.2d 376 (Pa. Cmwlth. 1980). It is no undue burden on a tax claim bureau to make efforts to obtain information as to whether a commercial mortgagee has assumed responsibility for taxes on the property. *Id.* Such failure to employ commonsense business practices to ascertain the identity of a mortgagee may justify the setting aside of a tax sale.

Posting Requirement

The Tax Claim Bureau bears the burden of proving that the property was properly posted with notice of the tax sale in compliance with the Tax Sale Law. *Ban.* In deciding whether a property is properly posted for tax sale purposes, the Court must consider not only whether the posting is sufficient to notify the owner of the pending sale, but whether it provides sufficient notice to the public at large so that all interested parties will have an opportunity to participate in the auction process, to ensure the greatest number of bidders and the likelihood that the sale will bring the highest amount possible. *Id.*

Applying this standard to the case at hand, and considering the undisputed evidence that the notice of sale was posted at the property's main entrance, which does not face a public street or public sidewalk, we cannot conclude that the posting requirement was satisfied. In order to comply with the requirements of the Tax Sale Law, notice must be posted where it can be seen from the public street or public sidewalk where it can be readily seen by passersby. As in *Ban.*, while the choice to place the posting on a door believed to be frequented by the building's occupant may be well intentioned and may be the most likely location to notify the occupant of the impending sale, the posting is not adequate where it is not conspicuous, does not attract attention, and is not placed for all to see. The evidence in this case reveals that the posting was not conspicuous, did not attract the attention of the public at large, and was not placed for all to see. Although the notice was most visible from the parking lot, the entrance to the lot was posted with a No Trespassing sign, and although the notice could arguably be "seen" from the street or sidewalk, there is no evidence that it could be identified as a tax sale notice by passersby on the public street and sidewalk.

Accordingly, for the reasons stated above, the order of the trial court is reversed.



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AND NOW, this 26th day of April 2005, the order of the Court of Common Pleas of Dauphin County in the above-captioned matter is reversed.

JAMES GARDNER COLINS, President Judge

1. Act of July 7, 1947, P.L. 1368, as amended.
2. Act of July 7, 1947, P.L. 1368, as amended.

