

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IN RE: TAX JUDGMENT)
)
THE CITY OF WILMINGTON, a)
municipal corporation of the State of) C.A. No. N10J-01-771
Delaware,)
) MONITION
Plaintiff,)
) VEM 10-018359
v.)
) DEBT: \$1,020.47
TONI JACKSON,)
) PARCEL NO. 26-008.40-085
Defendant.)

Submitted: May 19, 2011
Decided: August 4, 2011
Corrected: August 15, 2011

On One-Pie Investments, LLC's
Motion for Reconsideration of Commissioner's Order.

DENIED

On Motion to Strike the Responses of the City of Wilmington
and the Sheriff of New Castle County
to the High Bidder's Motion for Reconsideration of Commissioner's Order

DENIED

CORRECTED OPINION

Rosamaria Tassone-DiNardo, Esquire, First Assistant City Solicitor, Wilmington,
Delaware, Attorney for Plaintiff City of Wilmington

Brian T. Murray, Esquire, Newark, Delaware, Attorney for One-Pie Investments,
LLC

Donald L. Gouge, Jr., Esquire, Wilmington, Delaware, Attorney for New Castle
County Sheriff's Office

JOHNSTON, J.

PROCEDURAL CONTEXT

Defendant owed delinquent property taxes to the City of Wilmington. The City initiated monition proceedings. On November 9, 2010, the real property of defendant Jackson was sold at sheriff's sale for \$25,000. One-Pie Investments, LLC was the successful bidder.

The sale was approved by this Court on December 27, 2010. The Sheriff of New Castle County informed Jackson that Jackson would need to pay \$9,830.79 by February 25, 2011 to redeem the property. Jackson paid that amount to the Sheriff on February 25th.

The successful bidder filed a Petition for Tax Deed, claiming that the attempted redemption was not valid pursuant to the City of Wilmington Code. A hearing was held on the petition before a Superior Court Commissioner on March 25, 2011. On April 4, 2011, the Commissioner ordered:

AND NOW, TO WIT, this 4th day of April, 2011, this Honorable Court having read the Petition and Response from the Sheriff of New Castle County and the defendant and having heard argument on March 25, 2011 from One-Pie Investments, LLC, the Sheriff of New Castle County and the defendant, IT IS HEREBY ORDERED as follows:

1. The Petition for Tax Deed is denied.
2. The property know as 700 West 32nd Street, Wilmington, Delaware, has been redeemed.

3. The Sheriff of New Castle County is directed to pay to One-Pie Investments, LLC \$25,000 representing its purchase price plus an additional \$5,000 paid by the defendant.

One-Pie Investments, LLC has moved for reconsideration of the Commissioner's Order. Responses in opposition have been filed by the New Castle County Sheriff, defendant Jackson and the City of Wilmington. One-Pie has moved to strike the responses of the City and the Sheriff.

MONITION PROCEEDINGS

The purpose of monition is to establish a procedure for the sale of real property when taxes are delinquent. In *City of Wilmington v. Rochester*,¹ this Court outlined the process:

Generally, the process for selling real estate for back taxes begins when an authorized representative of the taxing authority asks this court's clerk, the Prothonotary, to issue a written order, a "writ," to the Sheriff of New Castle County. In a tax sale, the initial writ is called the "Writ of Monition." The term "monition" is an old one. How it found its place in our law is a question for the historians. Generally, monitions can serve several purposes. As used in a tax sale, the monition is an attachment. The Writ of Monition orders the sheriff to post the monition on the real estate. The posted monition shows that the property has been seized and warns that it will be sold at a public sale unless the taxes are paid. As soon as the sheriff posts the writ, the sheriff returns a copy of it to the Prothonotary, confirming that the Writ of Monition was posted as ordered.

¹2002 WL 1587854 (Del. Super.).

Once the sheriff has made the return and if the taxes still are not paid or there is no protest to the monition, the taxing authority asks for a second writ, formally called a “Writ of *Venditioni Exponas Monitions*,” or informally, a “*Vend. Ex.*” The *Vend. Ex.* is a writ of execution. It orders the sheriff to expose the real estate to public sale by auction and to deposit the proceeds with the Court on the first Monday of the succeeding month of the date of the sale. Superior Court Civil Rule 69(d).

Sheriff’s monition sales are not final. First, the sale must be confirmed by the Court. Under Rule 69(d), application to set aside a sheriff’s sale of real estate:

shall be made on or before the first Thursday succeeding said return date, and all such sales not objected to on or before the first Thursday, shall on the First Friday, be confirmed as a matter of course.

In other words, if no one objects on the first Thursday of the month following a monition sale, the sale is confirmed automatically the following day. There is no hearing or other court proceeding associated with the uncontested confirmation of a monition sale. Like Rule 69(d) says, confirmation is “as a matter of course.”

The confirmation kicks off a sixty day period, during which the owner of record has the right to redeem the property by paying the purchase price. And under City Code Section 4-148 the redeeming owner also must pay “20% in addition to the purchase price ..., together with all costs incurred in the proceedings....” To redeem a property sold at a monition sale, in effect, the owner must buy back the property from the purchaser at the sale price, plus a percentage. The redeemer also must pay the costs of the sale and the city’s costs.

If the redemption period runs and the property is not redeemed then the purchaser may file a “Petition of No Redemption.” Once the Court has reviewed the Petition, the court finally will authorize the sheriff to issue a deed to the purchaser. Typically, the court reviews

the petition in chambers and authorizes the deed without further notice or hearing. ²

Section 4-148 of the City of Wilmington Code provides:

The owner of any property sold upon an execution issued upon a tax judgment, or his legal representatives, or, if the owner or his legal representatives do not, any person having any interest in said property or lien upon such property, may redeem the property at any time within sixty days from the day the sale is approved by the court by paying to the purchaser or his legal representative the amount of the purchase price, the cost of any repairs that the purchaser may be required to make by the City of Wilmington, and twenty percent in addition to the purchase price and the cost of repairs, together with all costs incurred in the proceedings, or if the purchaser or his legal representatives, successors, or assigns shall refuse to receive the same, or do not reside or cannot be found within the City of Wilmington, by paying the amount into the court for the use of the purchaser or his legal representatives, successors, or assigns. The court upon the filing of a petition by the owner of said property or real estate or his legal representative, within sixty days after the sale is approved by the court, may for good cause extend the time within which the property may be redeemed.

ANALYSIS

The clear purpose of redemption in the context of monition is to make the successful bidder whole. Thus, the successful bidder is entitled to the purchase price paid, plus (in the case of the City of Wilmington) an additional 20% to compensate the bidder for the time and inconvenience should the sale ultimately be nullified.

²*Id.* at *1-2.

In this case, the successful bidder argues that it is not enough that Jackson relied on the direction of the Sheriff concerning how to redeem the property. The Court generally agrees with this principle. As this Court stated in *Rochester*: "Moreover, it does not matter what the sheriff told the lien holder. While the sheriff means to be helpful, the sheriff has no authority to interpret the law and establish deadlines."³

The City ordinance states that the owner of real estate sold pursuant to monition may redeem the property "by paying to the purchaser...twenty percent in addition to the purchase price and cost of repairs, together with all costs incurred in this proceeding." In this case, the following amounts are undisputed:

- (1) purchase price - \$25,000;
 - (2) 20% of the purchase price - \$5,000;
 - (3) delinquent taxes plus City of Wilmington legal costs - \$3,378.79;
 - (4) Sheriff of New Castle County's costs - \$1,000;
- TOTAL - \$34,830.79.**

Following the sheriff's sale, the Sheriff received \$25,000 from the bidder. Upon receipt of Jackson's February 25th payment of \$9,830.79, the Sheriff had a fund totaling \$34,830.79.

³*Rochester*, 2002 WL at *2.

The successful bidder argues that Jackson was required by statute to pay \$30,000, not \$9,830.79, and that payment should have been made directly to One-Pie.

It is clear that the redemption statutory scheme was designed to compensate the successful bidder in the amount of the purchase price, repair costs (if any), plus a 20% premium. So long as the successful bidder is made whole upon timely redemption, the Court finds that the bidder does not have standing to dispute the source of the funds.

The Court also finds that the only reasonable interpretation of Wilmington City Code § 4-148 is that the purchase price received from the successful bidder must be given back to the bidder upon redemption. If the property were not redeemed, the former property owner would be entitled to the purchase price, minus all legitimate costs. There is no substantive or meaningful difference between payment directly from the property owner to the bidder, and payment to the bidder through the Sheriff - as a conduit - of funds to which the property owner otherwise would be entitled. In further support of the Court's interpretation, this procedure consistently been followed for decades, during which period the Wilmington Code has been repeatedly reviewed and revised.

THEREFORE, the Court hereby **CONFIRMS** the Commissioner's April 4, 2011 Order. One-Pie Investments, LLC's Motion for Reconsideration of Commissioner's Order; and Motion to Strike the Responses of the City of Wilmington and the Sheriff of New Castle County to the high Bidder's Motion for Reconsideration of Commissioner's Order, are hereby **DENIED**.

IT IS SO ORDERED.

The Honorable Mary M. Johnston