

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Upset Price Tax :
Sale of September 12, :
2007 7th Avenue (Ground) :
Ridley Township :
Folio No. 38-03-02202-00 :
: No. 597 C.D. 2010
Appeal of: Michael Alexander : Argued: October 12, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: December 22, 2010

Michael Alexander (Petitioner) appeals the Order of the Court of Common Pleas of Delaware County (trial court) which confirmed the sale of a fifty foot wide unimproved lot (Subject Property) immediately contiguous to 311 7th Avenue, Folsom (Ridley Township), Delaware County, Pennsylvania (Residence).¹

On September 12, 2007, the Subject Property was sold by the Delaware County Tax Claim Bureau (Bureau) at an Upset Tax Sale to Glen Rosenwald (Intervenor). Notice of the sale was forwarded to Wilbert and Hilda

¹ Edward Alexander, Petitioner's brother, resides at 311 7th Avenue, Ridley Township, identified as Residence, adjacent to the Subject Property. In the present case, docketed 08-4943, Petitioner challenges the Upset Tax Sale that took place on September 12, 2007, that involved the Subject Property.

On April 28, 2008, the Petitioner simultaneously filed Exceptions and Objections to two separate upset tax sales of parcels owned by him and his brother, Edward Alexander, as tenants in common. At docket number 08-4943, he challenged the September 26, 2006, sale of the Residence which the trial court set aside based upon a violation of Section 603 of the Real Estate Tax Sale Law (Law), Act of July 7, 1947, P.L. 1368, *as amended*, 72 P.S. §§5860.101-5860.803.

Crawley on October 5, 2007, by the Bureau to the Residence. On April 28, 2008, Petitioner, a co-owner of the Subject Property, filed a Petition Raising Objections and Exceptions to the Upset Tax Sale.²

² Petitioner raised the following:

6. Petitioner never received any notice of filing of return and entry of claim for the 2005 tax delinquency, as required by 72 P.S. §5860.308.
7. The Tax Claim Bureau did not give proper and timely notice of the Upset Tax Sale by certified mail, restricted delivery, return receipt requested, to the registered owner, as required by 72 P.S. §5860.607.
8. Based upon a review of the Tax Claim Bureau's file, Petitioner believes and avers that the no notices [sic] of sale by First Class mailing were not forwarded to the premises.
9. The Tax Claim Bureau also did not meet its obligation to make "additional notification efforts" in compliance with Section 607(a) of the Act, 72 P.S. §5860.607(a) when it failed to make a proper search of its own records and that of the Register of Wills to determine the identity of the Petitioner for purposes of notifying him of the impending Upset Sale.
10. Because Petitioner recently learned of the Upset Tax Sale of its [sic] Property, Petitioner has been unable to determine all of the potential deficiencies underlying this sale. The Petitioner avers that the Tax Claim Bureau may have failed to follow other procedural requirements set forth in the act, 72 P.S. §5860.101 *et seq.*, and reserves the right to supplement the present Petition upon further discovery of the procedures underlying the sale.
11. A Tax Claim Bureau's failure to provide notice under the Act to the property owner is sufficient grounds to invalidate the sale. See, e.g., Ali v. Montgomery Tax Claim Bureau, 124 Pa.Cmwlth. 557, 557 A.2d 35 (1989); Perma-Coal Sales, Inc. v. Cambira County Tax Claim Bureau, 162 Pa. Cmwlth. 7, 638 A.2d 329 (1994); LaBracio v. Northumberland County, 467 A.2d 1221 (Pa. Cmwlth. 1983).
12. The notice provisions of the Act must be strictly complied with in order to guard against deprivation of property without due process. Id.

(Footnote continued on next page...)

On November 14, 2008, an initial hearing was held and the parties submitted a Stipulation of Facts (Stipulation).³ Testimony was heard from Karen Duffy, Delaware County Tax Claim Bureau Upset Tax Sale Coordinator; Intervenor, the successful bidder, and Albert Martin, an associate of the successful bidder. The hearing was continued to accommodate the receipt of testimony from the Petitioner.

The Stipulation provided that at all times relevant, the owners of the Subject Property were the Petitioner and his brother, Edward Alexander. The Stipulation further provided that at all times relevant Petitioner resided in Plattsburg, New York, while Edward Alexander's registered address was the Residence where he has lived since 1986.

The Stipulation provided that notice of the Upset Tax Sale of the Subject Property was published on August 10, 2007, in the Delaware County Bar

(continued...)

13. Petitioner has been deprived of its [sic] rights to due process under the Fourteenth Amendment to the United States Constitution, the provisions of the Pennsylvania State Constitution, the provisions of the Pennsylvania State Constitution [sic] and the laws of the Commonwealth of Pennsylvania.

Petition Raising Objections and Exceptions to Upset Tax Sale, Nos. 6-13, April 28, 2008 at 2-3; Reproduced Record (R.R.) at 5a-6a.

³ On May 26, 2009, a second hearing was held because Petitioner was not present for the initial hearing held on November 14, 2008. Petitioner testified and the parties submitted a second Stipulation that involved the matter of Edward Alexander vs. Delaware County Tax Claim Bureau at docket number 07-535.

Journal and the notice listed Wilbert and Hilda Crawley (Crawleys) as the registered owners of the Subject Property. The record reflects that the Crawleys were the grandparents of Petitioner and Edward Alexander.⁴

The notices of public sale relating to the September 12, 2007, Upset Tax Sale of the Subject Property and the Residence were addressed and sent to the Crawleys at the Residence. Petitioner's brother, Edward Alexander, signed both notices. Additionally, the Subject Property was posted with a notice of the tax sale by the Sheriff of Delaware County. Further, public notice of the sale was also published in the Delaware County Daily Times, and the News of Delaware County. The legal notices of sale listed the Crawleys as the owners of the Subject Property.

The parties stipulated that Petitioner became a registered owner of the Subject Property as of May 22, 2006, when a deed dated March 7, 2006, which transferred the Subject Property to Petitioner and his brother, Edward Alexander, was recorded in the Office of the Recorder of Deeds of Delaware County. The parties further stipulated that no notices of sale were issued by the Bureau to Petitioner.

The trial court denied Petitioner's Objections and Exceptions to the Upset Tax Sale of the Subject Property.

⁴ The notices were addressed to the Crawleys because the deed to Petitioner and Edward Alexander from the Crawleys included only the Subject Property's tax folio number and address. The only reference to the Residence in this deed was a reference in the legal description of 100' instead of 50' of street frontage. R.R. at 17a-20a.

On September 30, 2009, Petitioner filed a Motion for Reconsideration of the trial court's September 23, 2009, Order, and the trial court, by Order dated October 7, 2009, granted reconsideration, directed that a transcript of the May 26, 2009, hearing be prepared and set a briefing schedule for counsel to submit briefs on the issues raised in the Motion for Reconsideration. Following receipt and review of the briefs the trial court, by Order dated March 9, 2010, denied Petitioner's Motion for Reconsideration on its merits and reinstated and reaffirmed its Order of September 23, 2009, in all respects.

Petitioner advances⁵ the following issues upon appeal: whether the record supports a grant of actual authority from Petitioner to Edward Alexander; whether a finding of actual notice of sale to the agent of the owner relieves the Bureau from its statutory obligation to make additional reasonable efforts to notify the owners of an impending upset tax sale; whether a record which demonstrates that the tenant in common in possession acted on his own account supports a finding that he was the authorized agent of the Appellant and whether he had authority to affect the legal title of the principal.⁶

The pivotal finding that Petitioner authorized his brother to act on his behalf is found in Petitioner's own testimony,⁷ as well as in the history of the

⁵ This Court has foregone the sequence of Petitioner's arguments.

⁶ This Court's review is limited to determining whether the trial court abused its discretion, clearly erred as a matter of law, or rendered a decision unsupported by the evidence. *In Re: 1999 Upset Tax Sale of Real Estate, Montgomery County Tax Claim Bureau*, 811 A.2d 85 (Pa. Cmwlth. 2002).

⁷ **[Mr. McHugh]:** Are you familiar with the fact that there are actually two properties there at 7th Avenue?
(Footnote continued on next page...)

(continued...)

[Petitioner]: Yes, sir.

[Mr. McHugh]: Okay. And one property has a house on it and one property is a lot?

[Petitioner]: Yes, sir.

[Mr. McHugh]: Okay. You're - - you have a brother?

[Petitioner]: Yes, sir.

[Mr. McHugh]: Is that Edward Alexander?

[Petitioner]: Yeah, that's him.

[Mr. McHugh]: And does he live at the house at 311 7th Avenue?

[Petitioner]: Yes, sir.

[Mr. McHugh]: And how long has he lived at that house?

[Petitioner]: When my grandmother died, so since 1986 I'd say.

[Mr. McHugh]: And did you ever live there?

[Petitioner]: No, sir.

[Mr. McHugh]: Was the address at 311 7th Avenue the address where tax bills and notices were supposed to go?

[Petitioner]: Normally, sir, yes.

[Mr. McHugh]: And did you allow your brother Edward to handle the management of those two properties?

[Petitioner]: He was handling it, sir.

Notes of Testimony (N.T.), May 26, 2009, at 6-8; R.R at 193A-195A.

present and past tax problems with the Subject Property and the Residence. This Court has reviewed the trial court's Opinion and the cases cited therein and concludes that it adequately addressed these issues and applied sound legal reasoning. Accordingly, the Court adopts in full the Opinion of the trial court and affirms on this basis of the Opinion at *Upset Price Tax Sale September 12, 2007 7th Avenue (Ground) Ridley Township Folio No. 38-03-02202-00*, Court of Common Pleas of Delaware County, No. 08-4942 (filed April 28, 2010).

BERNARD L. McGINLEY, Judge

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ORDER

AND NOW, this 22nd day of December, 2010, the order of the Court of Common Pleas of Delaware County is affirmed.

BERNARD L. MCGINLEY, Judge