Opinion issued February 4, 2010

In The
Court of Appeals
For The
First District of Texas

NO. 01-09-00361 -CV

PHIL SEIFLEIN & PHIL SEIFLEIN AND FLORIDA LAND DEVELOPMENT TRUST, Appellants

V.

THE CITY OF HOUSTON, HARRIS COUNTY, HARRIS COUNTY EDUCATION DEPARTMENT, PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, HARRIS COUNTY FLOOD CONTROL DISTRICT, AND THE HARRIS COUNTY HOSPITAL DISTRICT, Appellees

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On Appeal from the 164th District Court
Harris County, Texas
Trial Court Cause No. 2003-10657

MEMORANDUM OPINION

In this ad valorem property tax case, appellants, Phil Seiflein and Florida Land Development Trust (collectively, "Seiflein"), appeal from the trial court's judgment awarding to appellees, the City of Houston, Harris County, Harris County Education Department, Port of Houston Authority of Harris County, Harris County Flood Control District, and the Harris County Hospital District (the "taxing authorities"), delinquent ad valorem taxes, interest, and penalties on property owned by Seiflein.

On appeal, Seiflein contends (1) that, because "the tax rolls list the property in Intercoastal Refining Co., which [was] not a party to the suit," the presumptions under Tax Code section 33.47 do not apply, and the taxing authorities were not entitled to rely "solely on the tax records as evidence"; (2) as follows: "Invalidity of original suit: naming incorrect party (Seiflein) when the land was titled to another party as well as held in trust and taken by *force majore* by the U.S. Government (EPA) for the time period stated for the past due taxes."; and (3) as follows: "The City of Houston had no jurisdiction to sue for taxes on the property that had been held by the U.S. Government for the time period named for past due taxes."

We affirm.

Summary of Facts and Procedural History

On February 28, 2003, the taxing authorities sued Seiflein to collect delinquent ad valorem taxes that had accrued from 1983 to 2002 on the subject property—1.3739

acres described as Tracts 4 through 9 in 144 South Houston Gardens, Section 6, 9334 Canniff Street, Harris County, 77017. According to the judgment, the subject property has a market value of $44,885.

After the Tax Master recommended judgment in favor of Seiflin, the taxing authorities appealed the recommendation to the referring court, the 164th District Court of Harris County.

At a hearing before the referring court, the taxing authorities presented as their evidence: (1) a certified copy of a quitclaim deed, dated June 19,1993, in which "Christian Fuhrmann" and "Lawrence Fuhrmann" conveyed the subject property to Seiflein; (2) certified delinquent tax statements for the years 1983 through 2007; and (3) a letter, dated March 8, 2005, from Seiflein's attorney to the Harris County Appraisal Board, asking the Appraisal Review Board to correct the appraisal roll for tax years 2000 through 2004, to reflect Seiflein as the owner of the subject property. The taxing authorities explained that they sought judgment in rem for tax years 1983 to 1993, because Seiflein did not own the property prior to 1993. The taxing authorities sought a personal judgment against Seiflein for tax years 1994 through 2007.

Seiflein did not object to the quitclaim deed or to the letter. Seiflein objected to the tax statements on the basis that they still reflected the previous owner,

Intercoastal Refining Company, as the owner of the subject property. The trial court overruled the objection.

The trial court found in favor of the taxing authorities, awarding, for tax years 1983 to 2007, including penalties and interest, $35,243.00 to the City of Houston and $30,228.87 to Harris County. Of those amounts, the trial court ordered that Seiflein be personally liable $20,576.80 to the City of Houston and $20,163.62 to Harris County, which reflected the portion attributable to tax years 1994 through 2007.

The court filed findings of fact and conclusions of law, in which it found Seiflein to be the owner of the subject property, pursuant to a deed dated June 19, 1993. The court determined the tax account number and description of the subject property, and found that taxes, penalties, and interest were due and owing in the amounts of the certified delinquent tax statements. The trial court concluded that the taxing authorities were entitled to judgment, attached a lien, and provided for foreclosure.

Evidentiary Burden

In his first issue, Seiflein contends that, because "the tax rolls list the property in Intercoastal Refining Co., which [was] not a party to the suit," the presumptions under Tax Code section 33.47 do not apply, and the taxing authorities were not entitled to rely "solely on the tax records as evidence."

A. Standard of Review and Applicable Legal Principles

Tax Code subsection 33.47(a), which addresses evidentiary concerns in delinquent tax cases, provides as follows:

> (a) In a suit to collect a delinquent tax, the taxing unit's current tax roll and delinquent tax roll or certified copies of the entries showing the property and the amount of the tax and penalties imposed and interest accrued constitute prima facie evidence that each person charged with a duty relating to the imposition of the tax has complied with all requirements of law and that the amount of tax alleged to be delinquent against the property and the amount of penalties and interest due on that tax as listed are the correct amounts.

TEX. TAX CODE ANN. § 33.47(a) (Vernon 2008).

Once a taxing authority introduces a delinquent tax roll or certified copies of the entries *showing the property and amount of tax*, *interest, and penalties*, it establishes a prima facie case as to every material fact necessary to establish its cause of action and creates a rebuttable presumption that the taxing entity has taken all actions necessary to obtain legal authority to levy the tax. *Davis v. City of Austin*, 632 S.W.2d 331, 333 (Tex. 1982); *Aldine Indep. Sch. Dist. v. Ogg*, 122 S.W.3d 257, 263–64 (Tex. App.—Houston [1st Dist.] 2003, no pet.); *see also Excel Auto & Truck Leasing LLP v. Alief Indep. Sch. Dist.*, 249 S.W.3d 46, 50 (Tex. App.—Houston [1st Dist.] 2007, pet. denied). The presumption created by section 33.47 is overcome if and when the taxpayer meets his burden of producing competent evidence to justify

a finding against the presumed fact. *Ogg*, 122 S.W.3d at 264. The evidence offered to rebut the presumption may be reviewed for legal and factual sufficiency. *Id.* at 265 n.18.

B. Analysis

The record shows that the taxing authorities introduced certified copies of tax statements from the Harris County tax collector's office showing the delinquent taxes, penalties, and interest owing for the subject property. *See* TEX. TAX CODE ANN. § 33.47(a). Once the trial court admitted the documents specified in the statute, the taxing authorities established a prima facie case as to every material fact necessary to establish their cause of action and a rebuttable presumption was created that the taxing entities had taken all actions necessary to obtain legal authority to levy the tax. *See Ogg*, 122 S.W.3d at 264.

On appeal, Seiflein contends, as he objected in the referring court, that because the tax statements improperly reflect the owner of the subject property as Intercoastal Refining Company, which was the previous owner, no statutory presumption arose, citing *Pete Dominguez Enterprises, Inc. v. County of Dallas*, 188 S.W.3d 385 (Tex. App.—Dallas 2006, no pet.), and *Maximum Medical Improvement, Inc. v. County of Dallas*, 272 S.W.3d 832 (Tex. App.—Dallas 2008, no pet.). These cases are distinguishable from the instant case.

In *Pete Dominguez Enterprises*, the defendant argued that "there was no evidence" that it owned the subject property. 188 S.W.3d at 387. The court held that "[i]n the absence of evidence showing the defendant . . . owned the property taxed in [that] case, no presumption of liability was triggered, and no prima facie case for liability was established." *Id.* at 388. In *Maximum Medical Improvement*, the defendant argued that he did not own the subject property, and the taxing authorities put on no evidence that the defendant owned the subject property. 272 S.W.3d at 837. It is an affirmative defense to tax liability that the defendant did not own the subject property on January 1 of the year for which tax was imposed. TEX. TAX CODE ANN. § 42.09 (Vernon 2008).

Here, Seiflein does not dispute on appeal that he owns the subject property. Seiflein contends only that the tax statements in evidence fail to properly name him as the owner. Pursuant to Tax Code Section 25.02(b), "[a] mistake in the name or address of an owner does not affect the validity of the appraisal records, of any appraisal *or tax roll based on them*, or of the tax imposed." TEX. TAX CODE ANN. § 25.02(b) (Vernon 2008) (stating that mistake may be corrected) (emphasis added).

Further, the record shows that the taxing authorities put on evidence showing that Seiflein owned the property taxed. The trial court admitted a certified copy of a quitclaim deed, dated June 19, 1993, showing that the subject property was

conveyed to Seiflein, and a letter, dated March 8, 2005, from Seiflein's attorney to the Harris County Appraisal Board, asking the Appraisal Review Board to correct the appraisal roll for tax years 2000 through 2004, to reflect Seiflein as the owner of the subject property. Seiflein did not object to this evidence. Further, the trial court's judgment specifies that, for tax years 1983 to 1993, Seiflein is to be considered an in rem defendant only. *Cf.* TEX. TAX CODE ANN. § 32.07(a) (Vernon 2008) (providing that "property taxes are the personal obligation of the person who owns or acquires the property on January 1 of the year for which the tax is imposed").

Once the taxing authorities met their burden to show that taxes were due and delinquent, the burden shifted to Seiflein to introduce competent evidence to invalidate the assessments. *See Ogg*, 122 S.W.3d at 264. The record does not reflect that Seiflein presented any evidence.

Accordingly, we overrule Seiflein's first issue.

Second Issue

Seiflein's second issue is presented, in its entirety, as follows: "Invalidity of original suit: naming incorrect party (Seiflein) when the land was titled to another party as well as held in trust and taken by *force majore* by the U.S. Government (EPA) for the time period stated for the past due taxes." Seiflein does not offer any argument and does not direct us to anything in the record to support his contention.

Hence, nothing is presented for our review. *See* TEX. R. APP. P. 38.1(i).

Accordingly, we overrule Seiflein's second issue.

Third Issue

Seiflein's third issue is presented, in its entirety, as follows: "The City of Houston had no jurisdiction to sue for taxes on property that had been held by the U.S. Government for the time period named for past due taxes." Seiflein does not offer any argument and does not direct us to anything in the record to support his contention. Hence, nothing is presented for our review. *See id.*

Accordingly, we overrule Seiflein's third issue.

Conclusion

We affirm the judgment of the trial court.

Laura Carter Higley
Justice

Panel consists of Chief Justice Radack, and Justices Alcala and Higley.