

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

EMILE IRAJPANAH dba Rendezvous Buffet,)
)
Plaintiff,)
) No. 000793F
v.)
)
MULTNOMAH COUNTY ASSESSOR,)
)
Defendant.)
) **DECISION**

This matter came before the court on defendant's Motion to Dismiss, received with its Answer on July 5, 2000, requesting that the Complaint be dismissed. The matter was discussed with the parties at a case management conference held on August 16, 2000. Emile Irajpanah appeared for himself. Ben Hilton appeared for defendant.

At issue is a lien imposed by defendant. The lien relates to a personal property account identified in Multnomah County tax records as Account Number P03-09164-00. The Complaint was submitted as a small claims case. However, such topics as whether a lien was properly imposed are for the standard designation. The court will process the appeal as a standard designation and waive the additional filing fee.

STATEMENT OF FACTS

Plaintiff owns and operates a restaurant known as Rendezvous Buffet. The business includes taxable personal property. For tax year 1996-97, defendant sent plaintiff a Notice of Assessment in April 1997. The assessment was made in April because the property was assessed as omitted property. See ORS 311.216 *et. seq.* Typically, the taxes would have been due on November 15, 1996. The assessment was due and

payable on May 15, 1997. Plaintiff mailed a check for the amount due on May 20, 1997. The check was lost in the mail. Because defendant had not received payment on the account, on June 15, 1997, defendant mailed plaintiff a delinquency notice. That notice stated that the tax owing had not been paid and a personal property tax warrant would be issued and a lien imposed. Upon receipt of that notice, plaintiff called defendant. Plaintiff told defendant of the check mailed on May 20, 1997, and that he would take care of the matter. After confirming with his bank that the check had not been cashed, plaintiff mailed defendant a replacement check on June 27 or 28, 1997.

In the meantime, on June 23, 1997, defendant issued the personal property tax warrant and imposed the lien.¹ Defendant received plaintiff's check on July 1, 1997. This was a partial payment. The balance owing was received by defendant on July 21, 1997. The release of the lien was recorded on September 8, 1997.

Plaintiff was unaware that the lien had been imposed and later released until he tried to buy an apartment two months ago. The lien showed up on his credit report. His concern is that his credit has been damaged because of a check that was lost in the mail.

COURT'S ANALYSIS

As noted earlier, the taxes were due on May 15, 1997. ORS 311.510 governs the date of delinquency for property taxes. It states that "[t]axes on personal property shall become delinquent whenever any third thereof, or other specified installment, is not paid on or before its due date[.]" Since the personal property taxes at issue were not paid by May 15, 1997, they became delinquent on May 16, 1997. ORS 311.547 requires that:

“After any installment of personal property taxes

¹ The personal property warrant and lien were recorded on June 30, 1997.

becomes delinquent, and from time to time thereafter at the discretion of the tax collector, the tax collector shall as soon as practicable send to each person, firm or corporation in whose name personal property is shown on the tax roll and on which the taxes due and charged have not been paid, a written notice stating:

“(1) The total amount of taxes due and delinquent;

“(2) The date of delinquency;

“(3) The rate of interest applicable thereto;

“(4) The date interest begins to run; and

“(5) The date on or after which property will be distrained or a warrant served as provided by law.”

Defendant complied with the requirements of ORS 311.547 with its notice of June 15, 1997. In addition to the requirements of ORS 311.547, ORS 311.610(1) requires that “[p]romptly after a period of 30 days has elapsed from the date any tax on personal property has become delinquent * * * the tax collector **shall** issue a warrant to enforce payment thereof.” (Emphasis added.) Defendant issued the warrant on June 23, 1997, 38 days after the personal property taxes became delinquent. Defendant was required by the terms of ORS 311.610 to act “promptly” in issuing the warrant and recording the lien. The statute makes no exceptions for circumstances such as plaintiff’s.

///

///

CONCLUSION

Defendant complied with the law in issuing the delinquency notice, issuing the warrant and recording the lien. It is unfortunate that an incident as simple as a check being lost in the mail could have such a domino effect. The court finds that it must dismiss

plaintiff's Complaint.

IT IS THE DECISION OF THE COURT that the above-entitled matter be dismissed.

Dated this ____ day of August, 2000.

SALLY L. KIMSEY
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON AUGUST 24, 2000. THE COURT FILED THIS DOCUMENT ON AUGUST 24, 2000.