

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

KIMBERLY A. BARILLA
Objectant

vs.

THE CARBON COUNTY TAX CLAIM
BUREAU and DAVID KELLER,
Defendants

No. 22-2052

2023 MAY -2 AM 10:40
CARBON COUNTY
PROTHONOTARY

Jane Sebelin, Esquire
Robert Frycklund, Esquire
David Keller

Counsel for Objectant
Counsel for Carbon County Tax
Claim Bureau
Pro Se

MEMORANDUM OPINION

Matika, J. - May 2, 2023

75 P.S. §5860.101 et seq., otherwise known as the "Pennsylvania Real Estate Tax Sale Law (hereinafter referred to as "RETSL") is the statutory mechanism upon which a tax claim bureau, in this case, the Carbon County Tax Claim Bureau (hereinafter "Bureau"), may expose a parcel of real estate to sale for unpaid taxes. When such a sale occurs, the property owner, aggrieved by that sale, may file exceptions or objections in an attempt to invalidate that sale and recover ownership of the real estate. Such is what is before this Court today: The "Exceptions and/or Objections to Tax Sale" filed by the Objectant, Kiimberly A. Barilla (hereinafter "Barilla"). For the reasons stated herein,

this Court overrules these exceptions/objections and validates the sale of Barilla's property known as TPN:85A-7-AD9.

FACTUAL AND PROCEDURAL BACKGROUND

The Petitioner, Kimberly A. Barilla, formerly known as Kimberly A. Otto as well as formerly being known as Kimberly A. Werner, owned¹ a vacant parcel of real estate located on Morning Star Lane, East Penn Township, Carbon County Pennsylvania with said parcel being further identified as TPN:85A-7-AD9.

At some point in time, Barilla failed to pay the 2019 County and Municipal Real Estate Taxes for this parcel. As a result, the matter was turned over to the Bureau in accordance with RETSL.

On or about May 1, 2020, the Bureau sent to Barilla², certified mail which contained the NOTICE OF RETURN AND CLAIM required by 72 P.S. §5680.308. (Respondent Exhibit 1). On May 20, 2020, this notice was delivered to Barilla, who signed for it as "Kimberly Werner" at her then address of 456 S. Keyser Avenue, Scranton, Pennsylvania 18504-9746. This notice advised Barilla of the fact that the 2019 County and Township taxes were owed and that her real estate could be sold for those unpaid taxes if action is not taken by her.

Additionally, on February 3, 2020, November 2, 2020 and

¹ Barilla owned this real estate with her late husband Phillip M. Otto. In accordance with RETSL, the Bureau also provided notices to the Estate of Phillip M. Otto.

² This notice was sent to Barilla in the name of Kimberly A. Otto.

February 4, 2021³, reminder notices were sent to Barilla. These notices, not required by RETSL, were sent as a reminder of unpaid taxes and sent to Barilla at 1200 Lower Nis Hollow Drive, Lehighton, PA 18235-8735.⁴

On or about April 1, 2021, the Bureau caused a copy of the Notice of Return and Claim for Unpaid 2020 County and Municipal taxes to be sent to Barilla at 1200 Lower Nis Hollow Drive, Lehighton, Pennsylvania by certified mail. This notice was delivered by the USPS on April 5, 2021. According to the "Electronic Certified Mail Tracking Report" it was "delivered left with individual." The Bureau's Exhibit, R-6 has a notation on page 2 of that Exhibit in the area designated for the signature of recipient, which is somewhat illegible, but includes the name of "Otto" as well.

Having not received any monies to cover the unpaid real estate taxes on this property, the Bureau, in furtherance of its obligations under RETSL, sent, by certified mail to Barilla, but in the name of Kimberly A. Otto, the notice of public sale required by §5860.602(e)(1).⁵ According to page 3 of the Exhibit, this notice of mail was also "delivered left with individual" on June

³ The February 3, 2020 and November 2, 2020 notices were reminders of the unpaid 2019 taxes while the February 4, 2021 notice also reminded of the then unpaid 2020 taxes.

⁴ See Respondent's Exhibit 5.

⁵ See Respondent Exhibit 7, page 1.

5, 2021. Page 2 of that said Exhibit notes that the certified mail was delivered to the recipient at 1200 Lower Nis Hollow Drive, Lehighton, Pennsylvania 18235, the address then possessed by the Bureau for Barilla. In the area reserved for "signature of recipient" there is a notation which appears to read "Covid." A similar notice, tracking report and signature notation was provided by the Bureau and sent to Phillip M. Otto Estate. These notices advised the owners of the subject real estate that they still possessed an opportunity to arrange to have this property removed from the sale which was scheduled for September 24, 2021 at 10:00 A.M.

After sending these notices, the Bureau, although not believing it was obligated to do so, sent one last notice to Barilla and her late husband's estate advising of the pending tax sale. These notices, sent by first class mail, were sent to 1200 Lower Nis Hollow Drive, Lehighton, Pennsylvania on or about August 26, 2021, almost a full month prior to the sale date.

In accordance with §5860.602(a), the sale and the exposure of the subject property at this sale were advertised on August 13, 2021 in both the Times News (Respondent's Exhibit 16) and the Carbon County Law Journal (Respondent's Exhibit 15). Lastly, the property was posted on July 6, 2021 in accordance with §5860.602(e)(3).

When Renee Roberts, Director of the Carbon County Tax Claim

Bureau testified, she referenced the fact that a number of notices that were sent to Barillas as required by RETSL were sent by certified mail and that the mailing of these notices was done during the Covid-19 pandemic and after the United States Postal Service altered the manner in which it delivered certified mail. Roberts relied upon a practice adopted by the USPS whereby mail carriers, in order to maintain social distancing recommended by the CDC were no longer obtaining signatures from intended recipients of certified mail. This practice was understood to mean that "carriers are not signing for customers, but instead indicating that they have identified the customer to whom the item is being delivered."⁶ The notations contained on Respondent Exhibits 6, 7, 8 and 14⁷ appear as notations from a carrier noting delivery to the intended customers.

On September 24, 2021, Barilla's property was sold at the Upset Sale for the bid price of \$3,668.00 to David Keller. Notice of this sale was sent on September 28, 2021 to Barilla.

On October 27, 2021, Barilla filed the instant exceptions/objections. A hearing was held on January 9, 2023 and briefs were lodged. Those Exceptions/Objections are the subject of this Opinion.

⁶ See Objector Exhibit 1.

⁷ Exhibit 14 is the Post Sale Notice to Barilla required by RETSL to advise her that her property was sold at the Upset Sale.

LEGAL DISCUSSION

§5860.602 of RETSL establishes the various requirements necessary to conduct an upset sale for unpaid real estate taxes by the Carbon County Tax Claim Bureau. Prior thereto however, notices must be sent to a property owner that the Bureau has itself received notice of a return from a tax collector of unpaid taxes and that a claim was being filed with the Bureau as a result [See 72 P.S. §5860.308(a)]. This, the Bureau accomplished and did so timely for both the 2019 and 2020 unpaid taxes.

Pursuant to §5860.602(a), the Bureau shall:

"At least thirty (30) days prior to any scheduled sale the bureau shall file notice thereof, not less than once in two (2) newspapers of general circulation in the county, if so many are published therein, and once in the legal journal, if any, designated by the court for the publication of legal notices"

In addition to these publications, the Bureau shall also provide notice at least thirty (30) days before the date of the sale, by United States certified mail, restricted delivery, return receipt requested, postage prepaid, to each owner as defined by this act [§5830.602(e)(1)] and each property scheduled for sale shall be posted at least ten (10) days prior to the sale [§5860.602(e)(3)].

"If return receipt is not received from each owner pursuant to the provisions of clause (1), then, at least ten (10) days before the date of the sale, similar notice of the sale shall be given to each owner who failed to acknowledge the first notice by United States first class mail, proof of mailing, at his last known post

office address by virtue of the knowledge and information possessed by the bureau, by the tax collector for the taxing district making the return and by the county office responsible for assessments and revisions of taxes. It shall be the duty of the bureau to determine the last post office address known to said collector and county assessment office." §5860.602(e)(2).

Barilla contends that the Bureau failed to strictly adhere to the notice requirements of subsection (e)(1) when the USPS carrier noted "Covid" in the "signature of recipient" portion of the return receipt and since compliance with (e)(1) was not had, the Bureau, cannot remedy that deficiency by sending further notices pursuant to (e)(2) to remedy the defective (e)(1) notices.

"It is well settled that the notice provisions of the RETSL are to be strictly construed and that strict compliance with the notice provisions is essential to prevent the deprivation of property without due process." *Estate of Marra v. Tax Claim Bureau of Lackawanna County*, 95 A.3d 951, 956 (Pa. Cmwlth. Ct. 2014). "When exceptions are filed to a tax sale, the burden of proof is on the tax claim bureau to prove compliance with the notice requirements of the [RETSL]." *FS Partners v. York County Tax Claim Bureau*, 132 A.3d 577, 581 (Pa. Cmwlth. Ct. 2016). "This does not, however, require proof that the property owner actually signed the certified mail receipt or actually received the notice. Rather, the Tax Claim Bureau must only show that it sent all required notices to the property owner or owners, not that the owner or

owners actually received the notice of tax sale." *FS Partners*,
Supra at 586. Citation omitted. Emphasis in original; 72 P.S.
§5860.602(h).⁸

In the case *sub judice*, any notice that was required to be sent by certified mail was in fact sent. While Barilla claimed she never received the certified mailings required under §5860.602, subsection (b) states that receipt is not required. Notwithstanding, page 2 of each of those Exhibits (6, 7 & 8) evidences that they were all left with an individual at Barilla's last known address of 1200 Lower Nis Hollow Drive, Lehighton and done so in accordance with the U.S.P.S. covid emergency protocols.

Further, not necessarily because it felt the notices under (e)(1) were defective, but rather as a courtesy to Barilla, the Bureau sent an additional reminder not because as an attempt to remedy a defect but to provide additional notification to Barilla. This mailing was never returned.

CONCLUSION

Inasmuch as we find that the Carbon County Tax Claim Bureau has strictly complied with the notice provisions of the Real Estate Tax Sale Law, this Court issues the following:

⁸ No sale shall be defeated and no title to property sold shall be invalidated because of proof that mail notice as herein required was not received by the owner, provided such notice was given as prescribed by this section.

FILED

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ORDER OF COURT

AND NOW, this *2nd* day of May, 2023, having considered the exceptions and objections of Kimberly A. Barilla, the Answer of the Carbon County Tax Claim Bureau and after hearing and argument thereon, it is hereby **ORDERED and DECREED** that the Exceptions and Objections filed by Kimberly A. Barilla are **OVERRULED**. The sale of TPN:85A-7-AD9 from September 27, 2021 in the amount of \$3,668.00 to David Keller is **AFFIRMED**.

BY THE COURT:


Joseph J. Matika, J.