IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL

JUNIOR LECONTE, Objector	:	
vs.	:	No. 24-CV-2182
CARBON COUNTY TAX CLAIM BUREAU Respondent	:	
and	:	
JASON GRANTHAM, Intervenor	:	

Anthony Roberti, Esquire	Counsel for Objectors
Robert S. Frycklund, Esq.	Counsel for Carbon County Tax Claim Bureau
Jane L. Zellner, Esquire	Counsel for Intervenor

MEMORANDUM OPINION

Nanovic, P.J. October 31, 2025

In this case seeking to set aside the upset tax sale of property by a county tax claim bureau, the critical and decisive issue is whether the records of a third party who posted notice of the tax sale on the property can qualify as a business record of the tax claim bureau under the hearsay exception. Under certain circumstances they can, but not here.

PROCEDURAL AND FACTUAL BACKGROUND

On October 15, 2024, Junior Leconte ("Owner") filed Objections to the Upset Tax Sale of his property located at 176 South First Street, Lehighton, Carbon County, Pennsylvania ("Property") held by the Carbon County Tax Claim Bureau ("Bureau") on September 18, 2024, for unpaid 2022 real estate taxes. The Property was purchased by Jason Grantham ("Purchaser") for $27,000.00. (Exhibit R-11, Tax Claim Receipt). In his Objections, Owner claims the Bureau failed to comply with multiple notice provisions of the Real Estate Tax Sale Law, 72 P.S. §§ 5860.101 – 5860.803 ("RETSL").

A hearing on the Objections was held on June 23, 2025. The Bureau, having the burden of proving compliance with the notice requirements of the RETSL,[1] presented its evidence first, followed by that of the Owner and Purchaser, the latter permitted to intervene by Order dated April 14, 2025.[2] The Property is a commercial property purchased by Owner on April 13, 2021, for $15,000.00. At the time of the tax sale, the Property was being renovated, but otherwise vacant.

In the deed of conveyance to Owner recorded on April 27, 2021, Owner's precise address is listed at 40 Fawn Drive, Reading, Pennsylvania 19607. (Exhibit P-1, Quit Claim Deed). The Bureau's records indicate Owner requested a change of address to P.O. Box 459, Bernville, Pennsylvania 19506 on August 3, 2022. (Exhibit R-1, Address Change Form). The Realty Transfer Tax Statement of Value which accompanied the recording of the deed notes that the building has been vacant since 2008; was condemned by Lehighton Borough, which has a recorded judgment to demolish the building; would have been sold by the County at judicial tax sale in November 2020, but for Covid-19; and was being sold to the Purchaser for $1.00 plus payment of all unpaid real estate taxes. (Exhibit P-1).

On April 3, 2023, the Bureau sent Owner a tax return and claim notice by certified

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[1] *See* Krawec v. Carbon County Tax Claim Bureau, 842 A.2d 520, 523 (Pa.Cmwlth. 2004).

[2] *See* In Re: 2005 Sale of Real Estate by Clinton County Tax Claim Bureau Delinquent Taxes, 915 A.2d 719, 723 (Pa.Cmwlth. 2007) (concluding that a successful bidder is not a party, as a matter of course, to a proceeding on objections and exceptions, but that it is within the discretionary powers of a trial court to allow successful bidders to defend the validity of tax sale); Rinier v. Tax Claim Bureau of Delaware County, 606 A.2d 635 (Pa.Cmwlth. 1992) (holding that the successful bidder at a tax sale has standing to intervene in a subsequent proceeding to set aside the tax sale).

mail for unpaid 2022 real estate taxes addressed to P.O. Box 459, Bernville, Pennsylvania 19506-0459. (Exhibit R-2, Notice of Return and Claim). This notice was received and signed for by Owner on April 25, 2023. (Exhibit R-2, Electronic Certified Mail Tracking Report). The notice in accordance with Section 308 of the RETSL, 72 P.S. §5860.308, advised Owner that the 2022 real estate taxes were unpaid; that the amount then due was $1,094.08; and that a claim had been entered for the payment of these taxes, which if not paid before December 31, 2023 (absent the filing of exceptions), would become absolute. (Exhibit R-2). Courtesy, reminder notices (*i.e.*, not required by the RETSL) of the unpaid 2022 real estate taxes were sent to Owner at the Bernville address by first class mail on February 1, 2023; November 6, 2023; and February 1, 2024. (Exhibits R-3, 4, 5). None of these notices were returned as undeliverable.

On June 4, 2024, the Bureau by certified mail, restricted delivery, sent notice of public sale of the Property for unpaid real estate taxes to Owner at P.O. Box 459, Bernville, Pennsylvania 19506-0459. (Exhibit R-6, Notice of Public Sale). This notice, in accordance with Sections 602(a) and 602(e)(1) of the RETSL, 72 P.S. §§5860.602(a) and (e)(1), advised Owner that a public sale of the Property was scheduled for September 18, 2024, at 10:00 A.M.; that to remove the Property from sale a payment of $1,467.15 was required for taxes prior to 2023; and that the approximate upset price for which the Property would be sold was $2,649.78. This mailing was returned to the Bureau unclaimed on July 8, 2024. (Exhibit R-6, Electronic Certified Mail Tracking Report).

Upon return of the mailed Notice of Public Sale, in accordance with Sections 602(e)(2) and 607.1(a) of the RESTL, 72 P.S. §§5860.602(e)(2) and 5860.607a(a), the Bureau exercised reasonable efforts to discover Owner's whereabouts and to notify him of the scheduled tax sale. (Exhibit R-7, Address Research: 09/18/2024 Upset Sale). As a result of these efforts, notice of the public sale was sent to Owner on August 28, 2024, by first class mail at P.O. Box 459, Bernville, Pennsylvania 19506 (requested change of address); 40 Fawn Drive, Reading, PA 19607 (record address in deed); and 176. S. 1st Street., Lehighton, Pennsylvania 18235 (Property address). (Exhibit R-8, Proof of Mailing). Other than the notice mailed to the Property address, the other two notices were not returned to the Bureau as unclaimed. (Exhibit R-8).

In addition to the mailed notices of the public sale required by Section 602(e)(1) and (2) of the RETSL, in accordance with Section 602(a), 72 P.S. §5860.602(a), the Bureau published notice of the sale in the Times News, a newspaper of general circulation in the County, and the Carbon County Law Journal. (Exhibits R-15, 16, Proofs of Publication). With respect to the requirement in Section 602(e)(3) of the RETSL, 72 P.S. §5860.602(e)(3), that notice of the scheduled sale be posted at least ten days prior to the sale, by Resolution dated March 21, 2024, the Carbon County Board of Commissioners "appointed [Palmetto Posting, Inc.] under 72 P.S. §5860.601(a)(3) of the Tax Sale Law" and "vested" this entity "with all duties and powers thereunder for posting and service of all Notices required for the Upset Tax Sale for 2024, at a compensation of $32.50 per posting and to perform all duties and make all returns of service as required by the Tax Sale Law in contemplation of said sale." (Exhibit R-17, Resolution).[3]

Renee Roberts, Director of the Bureau, testified at the time of the hearing on the

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[3] Section 601(a)(3) of the RETSL imposes a requirement of personal service on the owner-occupant of owner-occupied property at least ten days prior to the date of actual sale. This requirement is specific to owner-occupied property, which the subject commercial property is not, and imposes the requirement of personal service on the owner-occupant, which is different from the posting requirement in Section 602(e)(3) of the RETSL.

merits of the Objections that the County had contracted with Palmetto to post the required properties according to the RETSL, that the Bureau sent Palmetto an electronic data file of all the pertinent information on each property that needed to be posted, and that Palmetto prepared a Field Report documenting its posting of the Property (Exhibit R-9, Field Report), which Report was provided to the Bureau and retained by the Bureau among its business records. In responding to questions about the content of the Report, Ms. Roberts testified that the Report evidences the posting of the Property on July 29, 2024, at 9:39 A.M., by an individual named Moises Navarro, an employee/agent of Palmetto, whose written affirmation appears as part of the Report and is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, stating that he/she personally posted the Property, which Report includes two photographs – one showing the posted Notice of Public Sale and Notice of Return and Claim, and the other being an aerial photograph of the Property. Ms. Roberts acknowledged that she did not personally know who Moises Navarro was, or whether this person was a male or female.[4] Ms. Roberts further testified that she is the custodian of the Bureau's business records and had reviewed the Report and photographs to confirm that the correct property was posted.

After the September 18, 2024, Sale, notice that the sale had occurred was sent to Owner by certified mail, restricted delivery, on September 25, 2024, to the same three addresses at which the Notice of Public Sale was mailed on August 28, 2024, by first class mail. (Exhibits R-12, 13, 14, Notice of Actual Sale). As discussed below, the Notice

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[4] Additionally, the printed name in the affirmation, "Moises Navarro," does not agree with the signature, "Moises Navarro Cristales."

of Actual Sale was similar, but not identical, to the Notice of Public Sale. The notice sent to the Property address was returned unclaimed. The other two notices were accepted and signed for by Owner: on October 4, 2024, for the notice sent to P.O. Box 459, and on October 11, 2024, for the notice sent to the Reading address. Owner's Objections, previously referred to, were timely filed on October 15, 2024.

At the hearing, Owner raised the following alleged defects in notice under the RETSL which he claimed invalidated the tax sale of the Property: (1) that the Field Report prepared by Palmetto Posting and offered by the Bureau to establish proper posting of the Notice of Public Sale on the Property did not meet the business record exception for hearsay and, therefore, the Bureau failed to establish compliance with the posting requirement of Section 602(c)(3) of the RETSL; (2) that the Notice of Public Sale used by the Bureau, while advising of the option to enter into an agreement with the Bureau to stay the sale by making payment of the delinquent taxes in the manner provided by law, failed to specifically notify Owner as required by Section 602(f) of the RETSL that such payment could be "in installments"; (3) that the Notice of Actual Sale sent to the Owner by the Bureau, while advising the Owner of the right to file objections or exceptions to the sale, did not contain the additional language appearing in Section 607(a.1)(1) of the RETSL, 72 P.S. §5860.607(a.1)(1), providing that such objections or exceptions must be filed "with the court relating to the regularity and procedures followed during the sale no later than thirty (30) days after the court has made a confirmation nisi of the consolidated return"; (4) that the Bureau failed to comply with Section 602(a) of the RETSL by advertising the notice of the public sale in only the Times News, rather than in two newspapers of general circulation in the County; and (5) that the bidder certification requirements of Section 619.1(a) of the RETSL, 72 P.S. §5860.619a, were not met by the Purchaser who, while providing all of the information required by this Section, submitted his certificate prior to the sale, rather than after the sale. As to these claimed defects, we believe only that related to posting requires extended discussion; the others will be addressed briefly after the issue of posting is first considered.

DISCUSSION

Posting

As a preliminary matter, we agree with Owner that the Field Report is hearsay as to the truth of the matters asserted therein, since the person who prepared the Report and purportedly posted notice on the Property did not testify. See Pa.R.E. 801(c) defining hearsay as a statement, other than one made by the declarant while testifying on the witness stand, offered into evidence to prove the truth of the matter asserted.

The Report was offered by the Bureau to prove notice of the tax sale was posted on the Property and the date, time and manner of that posting. As the proponent of this hearsay statement, the Bureau had the burden of proving its admissibility as an exception to the hearsay rule. Molchan v. Mercer County Tax Claim Bureau, 319 A.3d 633, 639 (Pa.Cmwlth. 2024).

The Bureau claims the Field Report is admissible as a business record pursuant to Pa.R.E. 803(6), Records of a Regularly Conducted Activity, and under the Uniform Business Records as Evidence Act of 1976. The real question then, is whether Ms. Roberts, as the custodian of the Bureau's business records, could testify under the business records exception to the rule against hearsay to the records of a third party (*i.e.*, Palmetto) appointed by the County to post notices of the public sale of properties scheduled to be sold for unpaid real estate taxes by the Bureau under the RETSL, copies of which records are provided to and retained by the Bureau among its business records.

The business records exception to the admissibility of hearsay appears in Pa.R.E. 803(6) and the Uniform Business Records of Evidence Act (the "Act"), 42 Pa.C.S.A. §6108. Pa.R.E. 803(6) provides:

> Rule 803. Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness
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> The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:
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> * * * *
>
> (6) Records of a Regularly Conducted Activity. A record (which includes a memorandum, report, or data compilation in any form) of an act, event or condition if:
>
> (A) *the record was made at or near the time by – or from information transmitted by – someone with knowledge;*
>
> (B) *the record was kept in the course of a regularly conducted activity of a "business"*, which term includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit;
>
> (C) *making the record was a regular practice of that activity*;
>
> (D) *all these conditions are shown by the testimony of the custodian or another qualified witness*, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and
>
> (E) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

Pa.R.E. 803(6) (emphasis added). Additionally, the Uniform Business Records as Evidence Act provides in full as follows:

> § 6108. Business records
>
> (a) Short title of section. – This section shall be known and may be cited as the "Uniform Business Records as Evidence Act."
>
> (b) General rule. – A record of an act, condition or event shall, insofar as relevant, be competent evidence if *the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business at or near the time of the act, condition or event*, and if, in the opinion of the tribunal, the sources of information, method and time of preparation were such as to justify its admission.

> (c) Definition. – As used in this section "business" includes every kind of business, profession, occupation, calling, or operation of institutions whether carried on for profit or not.

42 Pa.C.S. § 6108 (emphasis added).

In examining these two sources of the business records exception, the Pennsylvania Supreme Court noted:

> The Act and [ ] Rule [803(6)] substantially overlap in that both generally require that a custodian or other qualified witness testify that the record was made 'at or near the time' of the event recorded and that the record was kept in the regular course of business. Moreover, both provide for the trial court to make a determination in regard to whether the circumstances surrounding the record 'justify its admission' or 'indicate a lack of trustworthiness.'

Bayview Loan Servicing LLC v. Wicker, 206 A.3d 474, 483 (Pa. 2019) (citation omitted). To qualify as a business record, the Act and the Rule "require that a custodian or other qualified witness" testify that the record was made "at or near the time" of the event recorded and that the record was kept in the regular course of business. As to the differences between the Rule and the Act, see Bernstein with Lincoln, 2025 Pa. Rules of Evidence, comment 4 to Pa.R.E. 803(6).

The exceptions to hearsay are premised on two underlying criteria: "(1) the necessity for such evidence, and (2) the circumstantial probability of its trustworthiness." Fauceglia v. Harry, 185 A.2d 598, 601 (Pa. 1962) (citing 5 Wigmore, Evidence §1420(3d ed. 1940)). With respect to the business records exception, "the circumstantial trustworthiness arises from the regularity with which business records are kept and the reliance that businesses place on the accuracy of those records." Bayview Loan Servicing LLC, 206 A.3d at 483. Implicit in ensuring the trustworthiness of the record is that "someone in the [business] organization has personally observed the event recorded" and that all persons contributing information to the business record must be acting in the course and scope of their duties (*i.e.*, is accountable to the business). Bayview, 206 A.3d at 561; Papach v. Mercy Suburban Hosp., 887 A.2d 233, 246-47 (Pa.Super. 2005), vacated on other grounds, 914 A.2d 868 (Pa. 2007). If any person in the process is not acting in the regular course of business, then an essential link in the trustworthiness chain is missing. Papach, 887 A.2d at 247 (citation and quotation marks omitted).

Under these standards, evidence observed or recorded by someone outside the organization (here, Moises Navarro, in relation to the Bureau) is generally inadmissible under the business records exception. Centennial Station Condominium Ass'n v. Schaefer Co. Builders, Inc., 800 A.2d 379 (Pa.Cmwlth. 2002) (holding records of contractors' estimates and quotes to complete work were not the business records of condominium association and were inadmissible as a business record under Pa.R.E. 803(6) in suit against developer). Nor has Pennsylvania adopted a rule of incorporation providing that a record prepared by an agent is the record of the principal or that when a business takes custody of a record, the record is deemed to be made by the acquiring business. *Cf.* Commonwealth Financial Systems, Inc. v. Smith, 15 A.3d 492, 497 (Pa.Super. 2011).

A similar question was addressed by the Pennsylvania Supreme Court in Bayview Loan Servicing, LLC v. Wicker, 206 A.3d 474 (Pa. 2019), where the Court considered whether the litigation manager of one business, Bayview, the assignee of a mortgage from another business, Bank of America, could lay the foundation under the business records exception for the admission into evidence of business records prepared and maintained by Bank of America related to the mortgage, which records were incorporated into and made part of Bayview's files and whose accuracy was verified under a "loan boarding process," to prove the payment history of the mortgage, the default in payment by the mortgagor, and the amount of indebtedness then owed to Bayview at a non-jury trial held on a mortgage foreclosure action commenced by Bank of America, for which Bayview had been substituted as plaintiff. The question presented in Bayview was whether the records containing information originally recorded by the previous holder of the loan (Bank of America) could be authenticated by an employee of the current holder of the loan (Bayview Loan Servicing LLC), or whether Bayview was required to provide an employee of the prior holder or a certification of the records under Pa.R.E. 902(11) or (12). 206 A.3d at 484.

In Bayview, the litigation manager testified that he was personally familiar with the loan boarding process in effect when a loan was purchased by Bayview from another servicer; that fourteen points of reference were reviewed to safeguard and check all figures transferred from the seller to Bayview; that both Bank of America and Bayview used the same mortgage platform (*i.e.*, record-keeping system) in servicing mortgages, which was an industry-standard; that such platform is used for making records "at or near the time of each occurrence of each event" in order to create "an accurate depiction of every transaction and every occurrence for each loan"; and that the process of loan boarding and cross checking is part of the "regularly conducted activity at Bayview."

Evident in Bayview was that the litigation manager while not having personal firsthand knowledge of the underlying facts, was personally familiar with the recording process used by Bank of America, therefore enabling the manager to opine that the information in Bank of America's records likely met the requirements of Rule 803(6)(A-C), including that the record was made at or near the time of the event and that it was kept in the regular course of business. The litigation manager in Bayview further testified to the steps taken by Bayview to confirm the accuracy of Bank of America's records and that Bayview relied upon such records in conducting its own business.

In Bayview, the Pennsylvania Supreme Court upheld the trial court's exercise of discretion in admitting Bank of America's records under the business records exception to hearsay, holding that each case must be decided on a case-by-case basis to determine if the elements of the business records exception were met, and that it "neither adopt[ed] a bright line rule forbidding the authentication of records recorded by a third-party, nor [ ] endorse[d] an automatic incorporation doctrine." Bayview, 206 A.3d at 565. In sum, the Supreme Court left the admissibility of a third-party's business records within the broad discretion of the trial court in evidentiary matters to determine if the authenticating witness "can provide sufficient information relating to the preparation and maintenance of the records to justify a presumption of trustworthiness, subject to the opponent rebutting the evidence with any other circumstances indicating a lack of trustworthiness." Bayview, 206 A.3d at 565 (citation and quotation marks omitted).

Here, neither the Bureau's records custodian, nor anyone else on behalf of the Bureau, presented any evidence as to how Palmetto created or maintained its business records (*i.e.*, the regularity and continuity of the record keeping process), or the reliability and trustworthiness of Moises Navarro.[5] Nor did anyone from the Bureau testify of their own personal knowledge that the Property was in fact posted, or that the information in the Field Report was recorded at or near the time of the events. On this latter point, while the text of the Field Report evidences the Property was posted on July 29, 2024, at 9:39 A.M., nowhere on the face of the Report does it indicate when the Report was prepared or the timing of when the affirmation taken by Moises Navarro was made relative to when the Property was posted. See In Re: Estate of Indyk, 413 A.2d 371, 373 n.2 (Pa. 1979) ("The appropriate test in determining whether the time span between the event and its entry is such as to preclude the admission of the evidence should be determined by whether the period is so great that it suggests a danger of inaccuracy resulting from memory lapse.").

This appears to be particularly relevant in this case since no evidence exists as to how many other properties Ms. Navarro may have posted on July 29, 2024, or within several days before or after this date. *Cf.* Commonwealth v. Dessus, 396 A.2d 1254, 1258 (Pa.Super. 1978) (*en banc)* (letter written by physician in connection with workmen's compensation claim filed in the normal course of business in prison employment files inadmissible, *inter alia*, where "the custodian [of the prison records] was unable to testify 'that the writing was actually made ... at or near the time of [the physician's] examination of the individual in question'"); *see also* In Re: A.J.R.-H, 188 A.3d 1157, 1167-68 (Pa. 2018) (holding in an involuntary termination of parental rights proceeding that the *en*

[5] In In Re: 2023 Erie County Tax Sales, 338 A.3d 268 (Pa.Cmwlth. 2025), an employee of Palmetto whose personal service on an owner of owner-occupied property was in question admitted on cross-examination to having been convicted in South Carolina of swindling – a misdemeanor crime of dishonesty – and that his testimony had been found not credible by the trial court in an earlier tax sale case in Erie County. *Id.* at 270.

masse admission of 167 exhibits contained in CYS's file covering a wide range of subjects from an array of sources and authors offered to prove the truth of the matters asserted therein, without any testimony of record that someone with knowledge created any of the 167 exhibits at or near the time of the event or that they were created in the regular practice of the various agencies from which the documents came, held inadmissible, decision terminating parental rights vacated, and matter remanded to orphans' court for a new hearing and decision); In Re: Sanders Children, 312 A.2d 414, 417 (Pa. 1973) (holding that absent compliance with the prerequisites of the business records exception as to the sources of information and the time and manner of preparation, a testifying caseworker could not rely on reports contained in the CYS file to support her testimony).

Ms. Roberts' testimony that she confirmed that the correct property was posted appears to have been based on her review of the Field Report and not on an independent, personal view of the Property; no evidence was presented as to any systematic checking by the Bureau so as to evidence its reliability. Significantly, the Field Report is not a business record of the Bureau, but of Palmetto; Moises Navarro is not an employee of the Bureau's accountable to the Bureau for accurately reporting and documenting posting of the Property, but, as gleaned from the evidence, an employee of Palmetto, an outsider to the Bureau; and Palmetto appears to be an independent contractor vis-à-vis the County, contracted to provide services to the Bureau, an office in the Office of the County Commissioners, 72 P.S. §5860.201, but not directly responsible to the Bureau for performing such services.

In addressing whether the testimony of Ms. Roberts is sufficient to establish the trustworthiness of the Field Report and overcome its status as inadmissible hearsay, the dissenting opinion of Judge Brobson, now Justice Brobson, in In Re: Dauphin County Tax Sale of 2013 in a similar context is instructive:

> A qualified witness need not be the preparer of the record, nor does the qualified witness need to have personal knowledge of the information contained in the record. R.A. Freudig Assocs. v. Ins. Dep't, 110 Pa.Cmwlth. 311, 532 A.2d 509, 512 (Pa.Cmwlth. 1987). *"As long as the authenticating witness can provide sufficient information relating to the preparation and maintenance of the records to justify a presumption of trustworthiness for the business records of a company, a sufficient basis is provided to offset the hearsay character of the evidence."* In re Indyk's Estate, 488 Pa. 567, 413 A.2d 371, 373 (Pa. 1979). Specifically, "[a]n individual may be a qualifying witness and his testimony may lay a proper foundation for the admission of a report if his responsibilities include the review of the report in question and he testifies that the report was prepared by a subordinate of his and maintained for him by a member of his staff." First Ward Republican Club of Phila. v. Pa. Liquor Control Bd., 11 A.3d 38, 46 (Pa.Cmwlth. 2010), appeal denied, 611 Pa. 647, 24 A.3d 864 (Pa. 2011).

2016 WL 112327 *11 (Pa.Cmwlth. 2016) (Non-Precedential Decision) (emphasis added), appeal denied, 145 A.3d 168 (Pa. 2016). Continuing in the language of Judge Brobson tailored to this case:

> Here, Ms. [Robert's] testimony was insufficient to overcome the hearsay objection. The field report was not generated by the Bureau in the course of a regularly conducted activity of its business. Rather, the field report was created in the course of a regularly conducted activity of a third party – namely, Palmetto Posting, over which Ms. [Roberts] had no supervisory relationship. In fact, Ms. [Roberts] possessed very little, if any, specialized knowledge or training with respect to the regularly conducted activities of Palmetto Posting. Ms. [Roberts] was, therefore, unqualified to testify as to the activities of Palmetto Posting's employees.

In Re: Dauphin County Tax Sale of 2013, *Id.*; *see also* U.S. Bank v. Pautenis, 118 A.3d 386 (Pa.Super. 2015) (excluding the records of a third party where the authenticating witness was not familiar with the record or the record-keeping process); Boyle v. Steiman, 631 A.2d 1025, 1032-33 (Pa.Super. 1993) (setting forth the test for determining whether a witness attempting to authenticate business records pursuant to Rule 803(6) and the

Act can provide sufficient information to justify a presumption of trustworthiness), appeal denied, 649 A.2d 666 (Pa. 1994).

Further, as in In Re: Dauphin County Tax Sale of 2013, there is no indication that the record was created at or near the time of posting. Ms. Roberts' testimony provided virtually no information to show that Palmetto prepared the Report in the ordinary course of its business at or near the time it posted the Property. Ms. Roberts testified only that the Palmetto Report in its file was collected and kept in the regular course of the Bureau's business. She was not presented as the custodian of Palmetto's business records. The mere fact that the Bureau possesses the Report and calls it a business record is not sufficient to make it so.

At this time, in accordance with the foregoing, Owner's hearsay objection to the Field Report, which we deferred ruling on at the time of hearing and took under advisement until the issue was briefed by the parties, is hereby sustained. Absent the information contained in the Field Report, the Bureau failed to present any admissible evidence that the Property was in fact posted as required by Section 602(e)(3) of the RETSL.

Sufficiency of Bureau's Notice of Public Sale and Notice of Actual Sale

As to Owner's remaining four issues, two involve the contents of the notices given by the Bureau. The first claims that Owner was not advised that any agreement he entered with the Bureau to pay delinquent taxes to stay the tax sale would allow the amount owed to be paid in installments. Contrary to Owner's claim, the published, certified mail, and posted Notice of Public Sale given by the Bureau all advised Owner that an agreement to stay the sale would permit payment of the delinquent taxes "in installments in the manner provided by said Act." See Exhibit Nos. R-6, 9, 15, 16.

When the notice by certified mail is not received, as here, Section 602(e)(2) requires that at least ten days before the date of sale, *similar notice* of the sale be given to the Owner by first class mail. The ten-day notice sent by the Bureau in this case advised Owner, *inter alia*, of the ability to enter an agreement with the Bureau "to pay taxes and costs owing on said property in the manner provided by said law" in order to stay the upset tax sale. (Exhibit R-8). We find this language to comply with the statutory requirement of "similar notice" and find any variance from the earlier language used in the published, certified mail, and posted notices of sale to be *de minimis* under the circumstances.

Owner's second claim of a defect in the contents of the notices given by the Bureau is that the Notice of Actual Sale pertaining to the right of a property owner to file objections or exceptions to the sale was deficient in not including the language appearing in Section 607(a.1)(1) that such objections or exceptions be filed "with the court relating to the regularity and procedures followed during the sale no later than thirty (30) days after the court has made a confirmation nisi of the consolidated return." The merits of this objection, however, is belied by the actual verbatim language set forth in Section 607(a.1)(2) specifying the precise language of the notice required which, as it relates to Owner's complaint, states:

WARNING

"YOUR PROPERTY HAS BEEN SOLD AT A TAX SALE ON ________ FOR THE COLLECTION FOR DELINQUENT TAXES INCURRED IN ________.

YOU MAY FILE OBJECTIONS OR EXCEPTIONS TO THE SALE IMMEDIATELY BUT NO LATER THAN THIRTY (30) DAYS FOLLOWING THE CONFIRMATION NISI OF THE RETURN BY THE COURT.

IF YOU HAVE ANY QUESTIONS PLEASE CALL YOUR ATTORNEY, THIS TAX CLAIM BUREAU AT THE FOLLOWING TELEPHONE NUMBER _________, OR THE COUNTY LAWYER REFERRAL SERVICE."

72 P.S. §5860.607(a.1)(2). This exact language as required by Section 607(a.1)(2) was included in the Notice of Actual Sale sent by the Bureau to Owner. See Exhibits R-12, 13, 14. In any event, Owner's objections were timely filed and Owner sustained no prejudice from the error claimed, of which we find none.

Publication

Owner's next claimed error is that the Bureau failed to publish notice of the public sale in at least two newspapers of general circulation in the County. Section 602(a) of the RETSL requires, *inter alia*, that notice of the public sale be given at least thirty (30) days prior to the scheduled sale "not less than once in two (2) newspapers of general circulation in the county, *if so many are published therein*." (emphasis added). Owner does not dispute that the Bureau timely published notice of the sale in the Times News, a newspaper of general circulation in Carbon County, published in this County.

Owner's contention that notice was also required to be advertised in the Morning Call is, however, without merit. While the Morning Call may well be a newspaper of general circulation in Carbon County, see Pacella v. Washington County Tax Claim Bureau, 10 A.3d 422, 426 (Pa.Cmwlth. 2010) (defining what constitutes a "newspaper of general circulation"), Owner has failed to establish that it is published in Carbon County. Instead, accepting that the Morning Call is printed in Allentown (*i.e.*, Lehigh County) as represented by Owner in his objections – notwithstanding its status as a newspaper of general circulation in Carbon County - this is not the equivalent of being published in Carbon County. See Pacella, 10 A.3d at 427, n.6 (adopting Webster's Third New

International Dictionary 1837 (2002) definition of "publish" to include "to produce for publication or allow to be issued for distribution or sale").

Bidder Certification

Owner's fourth and final objection is that the information required by Section 619.1(a) of the RETSL, 72 P.S. §5860.619a(a), was provided by the successful bidder prior to the sale, rather than post sale. This Section of the RETSL provides in pertinent part as follows:

> **§ 5860.619a. Additional restrictions**
>
> (a) Within twenty (20) days following any sale under this act, a successful bidder shall be required to provide certification to the bureau that the person is not delinquent in paying real estate taxes to any of the taxing districts where the property is located and that the person has no municipal utility bills that are more than one year outstanding.
>
> (b) As used in this section, the following terms shall have the following meanings:
>
> **"Cerfication,"** shall mean proof via receipts of paid real estate taxes and municipal utility bills within the jurisdiction *or a notarized affidavit by the bidder evidencing payment of such real estate taxes and municipal utility bills.*
>
> * * *

72 P.S. §5860.619a. (emphasis added).

Owner is correct that Purchaser's certificate of non-delinquency dated August 28, 2024, was provided twenty-one days before the Bureau's September 18 2024, upset tax sale. (Exhibit R-10, 2024 Upset Tax Sale – Bidder Registration Form, inclusive of Affidavit of Bidder). This notwithstanding, Owner has failed to prove any harm by this earlier submission. Owner has not shown that there was in fact any delinquency that should have been reported within the twenty-day period following the sale or what the consequences are for a premature submission, or that somehow this failure is a basis to invalidate the sale and provide Owner with a remedy. *Cf.* In Re: Rowan, 763 A.2d 958, 961 (Pa.Cmwlth. 2000) (holding that the certification requirement of Section 619.1 is mandatory and a prerequisite to the purchaser having a legally enforceable interest in the property prior to the tax claim bureau's issuance of a deed, but declining to address whether submission of the certification *after* the statutory twenty-day period, if accepted by the taxing authority, cures the failure to comply with Section 619.1); In Re: The Upset Sale of Properties, 777 A.2d 532 (Pa.Cmwlth. 2001) (A & X Investment Company) (holding that the failure of a purchaser who owed delinquent taxes on other properties at the time of the tax sale – which delinquency was satisfied as soon as it was made known to the purchaser – to provide a Section 619.1 Certification within twenty days of the upset tax sale did not affect the validity of the sale of the property to him; that Section 619.1 does not specify the consequence for failing to provide the Certification), appeal denied, 793 A.2d 912 (Pa. 2002).

Finally, as a practical matter, as noted by the Bureau, it would have been impossible for the Purchaser to have become delinquent in the payment of his real estate taxes to any of the three taxing districts in which the Property is located (*i.e.*, the County of Carbon, the Borough of Lehighton and the Lehighton Area School District) in the time between the submission of his certification on August 28, 2024, and the date of the sale three weeks later, on September 18, 2024, since none of those taxes would have become delinquent before December 31, 2024. See 72 P.S. §5860.102 defining the terms "delinquent" and "delinquent property owner," and providing that "taxes shall be considered delinquent on December 31st of each calendar year for all taxing districts."

Consequently, our denial of this objection reinforces rather than undermines the perceived likely objective of Section 619.1(a) to provide a tax claim bureau with the option of disqualifying a party who owes delinquent taxes from purchasing a property being sold for delinquent taxes. In Re: 2018 Upset Tax Sale, 2020 WL 3053364 *2, 5-7 (Pa.Cmwlth. 2020) (Memorandum Opinion) (affirming trial court's decision to set aside upset tax sale based on purchaser's status as a delinquent property owner as defined under Section 102 of the RETSL at the time of purchase; interpreting Section 619.1(a) of RETSL as prohibiting a party who owes delinquent taxes in the county from purchasing a property being sold for delinquent taxes).

CONCLUSION

The Field Report relied upon by the Bureau to prove proper posting of the Property is at best a business record of Palmetto, created and prepared by Palmetto under contract with the County, with either the original or a copy of the Report provided to the Bureau and kept in the Bureau's file for the Property. Because Ms. Roberts was not presented as the custodian of Palmetto's business records, for the Field Report to be admitted under the business record exception to hearsay, the Bureau needed to establish her familiarity with the preparation and maintenance of the records of Palmetto Posting in accordance with Pa.R.E. 803(6)(A) – (C) to offset the Field Report's hearsay character and justify a presumption of trustworthiness and the admissibility of such records. *See also* 42 Pa.C.S.A. §6108(b); In Re: Estate of Indyk, 413 A.2d at 373 ("As long as the authenticating witness can provide sufficient information relating to the preparation and maintenance of the records to justify a presumption of trustworthiness for the business records of a company, a sufficient basis is provided to offset the hearsay character of the evidence."). This is because "[i]t is the business purpose of the record, rather than the [ ] status of the source, which renders such hearsay evidence specially reliable." Toth v.

Workers' Comp. Appeal Bd. (USX Corp.), 737 A.2d 838, 841 (Pa.Cmwlth. 1999). This the Bureau failed to do. *Cf.* Molchan, 319 A.3d at 642-643.

The Bureau could also have offered the testimony of Moises Nevarro directly and avoided any issue of hearsay, or presented the testimony of the custodian of Palmetto's business records or other qualified witness to satisfy the business records exception to hearsay, or obtained the written certification of the Field Report by the custodian of Palmetto's business records or another qualified witness pursuant to Pa.R.E. 902(11). Again, this was not done.

Section 602 of the RETSL requires three different forms of notice to a property owner prior to an upset tax sale, with the burden of proving compliance with the notice requirements of the RETSL on the Bureau: publication, posting, and mail. If any of these is defective, the tax sale is void. Gladstone v. Fed. Nat'l Mortg. Ass'n, 819 A.2d 171, 173 (Pa.Cmwlth. 2003), appeal denied, 831 A.2d 601 (Pa. 2003). Here, because the Bureau failed to present competent evidence of the Property's posting, notice by posting has not been proven. Accordingly, the upset tax sale of the Property conducted by the Bureau on September 18, 2024, was void and will be set aside.

BY THE COURT:

______________________ **P.J.**