

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL ACTION -- LAW**

M&D Real Estate Enterprises LLC

vs

NO. 23-CV-2900

Carbon County Tax Claim Bureau

and

Christopher A. Urbany,  
Intervenor

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2024 MAY 13 PM 2:19  
CARBON COUNTY  
PROTHONOTARY

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**MEMORANDUM OPINION**

Nanovic, P.J. – May 13, 2024

On December 29, 2023, M&D Real Estate Enterprises, LLC (hereinafter “M&D”) filed Objections to the Carbon County Tax Claim Bureau's (hereinafter “Bureau”) Petition to Confirm the November 3, 2023, Upset Tax Sale of its property located at 19 Petrarch Trail, Penn Forest Township, Carbon County, Pennsylvania (hereinafter “the Property”) for delinquent 2021 real estate taxes claiming the Bureau failed to comply with the requirements of Sections 602(e) and 607.1 of the Real Estate Tax Sale Law, 72 P.S. §§5860.602(e) and 5860.607a respectively, for notice by mail. Upon review, we sustain M&D's Objections.

[FN-08-24]

## PROCEDURAL AND FACTUAL BACKGROUND

M&D acquired the Property by deed dated March 29, 2005, and recorded on March 31, 2005, in Deed Book 1314, Page 811 in the Carbon County Recorder of Deeds Office. (Exhibit No. P-1). The precise address for M&D as certified in the deed and as appears in the Pennsylvania Department of State offices is 1632 Washington Lane, West Chester, Pennsylvania 19382. (Exhibit No. P-2). The Property is an investment rental property.

On April 5, 2022, a Notice of Return and Claim for unpaid 2021 real estate taxes was sent to M&D by certified mail addressed to 330 Harwicke Rd., Springfield, Pennsylvania 19064-3104. (Exhibit No. R-9). This change in address requested by M&D is documented in an Address Change Form dated June 22, 2021, contained in the Tax Claim Bureau's Property file. (Exhibit No. R-6). Previously, on March 15, 2021, Joe Debenedictis, one of the principals in M&D, e-mailed this same requested change of mailing address for M&D to the Carbon County Tax Assessment Office. (Exhibit No. R-7).<sup>1</sup> The certified mailing of the Notice of Return and Claim for 2021 real estate taxes was returned to the Tax Claim Bureau on May 6, 2022, as unclaimed. (Exhibit No. R-9). A reminder notice – i.e., not required by law - of the overdue 2021 real estate taxes was mailed to M&D at the same address by first class mail on November 1, 2022, as was a second reminder notice on February 1, 2023, for delinquent 2021 and 2022, real estate

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<sup>1</sup> This address was and continues to be the home address for Mr. Debenedictis.

taxes.<sup>2</sup> (Exhibit No(s). R-11, 12). Neither was returned to the Bureau. Certified mailing of a Notice of Return and Claim for 2022 real estate taxes was mailed to M&D, 330 Harwicke Rd., Springfield, Pennsylvania 19064-3104, on April 10, 2023, and returned to the Bureau on May 8, 2023, as refused. (Exhibit No. R-13).

On June 2, 2023, a Notice of Public Sale for unpaid 2021 and 2022 real estate taxes was sent to M&D by certified mail, restricted delivery, addressed to 330 Harwicke Rd., Springfield, Pennsylvania 19064–3104. (Exhibit No. R-16). This notice advised that a public sale of the Property was scheduled for September 22, 2023, at 10:00 a.m. in the Carbon County Administration Building. Neither the mailing nor the return receipt card was returned to the Bureau. After further efforts to ascertain the last known address of M&D by review of current telephone directories for the County; contacting the Tax Assessment, Recorder of Deeds and Prothonotary offices; examining its own internal records; and inquiry of the Pennsylvania Department of State, the Bureau concluded the address it had been using for M&D was the correct last known address. (Exhibit No. 17).<sup>3</sup> Accordingly, the Bureau mailed a Notice of Public Sale by first class mail to this address on October 2, 2023. (Exhibit No. 18). This Notice of Public Sale advising that the sale was scheduled for November 3, 2023, at 10:00 a.m. in the Carbon County Administration

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<sup>2</sup> A previous reminder notice that the 2021 real estate taxes were delinquent was sent to M&D, 330 Harwicke Rd., Springfield, Pennsylvania 19064-3104, by first class mail on February 2, 2022. (Exhibit No. R-8). This notice was not returned to the Bureau as undeliverable.

<sup>3</sup> Although the Bureau's inquiry of the Assessment Office confirmed the address on file with the Assessment Office was the same it had, the Bureau did not learn at that time of the March 15, 2021, e-mail from Mr. Debenedictis or that this e-mail contained Mr. Debenedictis's e-mail address. No inquiry appears to have been made at this time of the local tax collector. (Exhibit No. R-17).

Building was not returned to the Bureau. (Exhibit No. R-18).<sup>4</sup>

On November 3, 2023, the Property was sold to Christopher A. Urbany for \$70,000.00. (Exhibit No. R-20).<sup>5</sup> Notice of the sale was sent to M&D by certified mail, restricted delivery, on November 8, 2023, and returned as unclaimed. (Exhibit No(s). R-21, 22). On December 5, 2023, the Bureau filed its Consolidated Return and Rule which was confirmed nisi on December 7, 2023. M&D's Objections to the Decree Nisi as concerned the November 3, 2023, sale of the Property was filed on December 29, 2023, in which M&D contended it did not have notice of the tax sale as required by the Real Estate Tax Sale Law, 72 P.S. §§5860.101 to 5860.803. The Bureau's Answer to M&D's Objections was filed on January 17, 2024. Urbany filed a Motion to Intervene on February 26, 2024, which was granted at the time of the hearing held on March 22, 2024.

### **DISCUSSION**

Section 602 of the Real Estate Tax Sale Law, 72 P.S. §5860.602, provides that notice of an upset tax sale must be made by (1) publication, at least thirty days prior to the scheduled sale, in two newspapers of general circulation in the county and in the legal journal designated for publishing legal notices, (2) certified mail, restricted delivery, return receipt requested, postage prepaid, to each property owner at least thirty days before the sale, and (3) posting notice on the property at least ten days prior to the sale. "The

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<sup>4</sup> The tax sale originally scheduled for September 22, 2023, was rescheduled to November 3, 2023, following a cyber attack which compromised software used by the Bureau on the system's server.

<sup>5</sup> M&D purchased the Property in 2005 for \$155,000.00. (Exhibit No. P-1).

statutory requirements protect the property rights of citizens and provide a minimum as to what must be accomplished to protect those rights.” Fernandez v. Tax Claim Bureau of Northampton County, 925 A.2d 207, 215 (Pa.Cmwlt. 2007). The notice provisions of the Real Estate Tax Sale Law “must be strictly construed lest a person be deprived of property without due process.” Maya v. Cnty. of Erie Tax Claim Bureau, 59 A.3d 50, 55 (Pa.Cmwlt. 2013). Even then, “a taxing authority’s strict compliance with the [notice requirements of the Real Estate Tax Sale Law] does not necessarily satisfy the demands of due process.” Geier v. Tax Claim Bureau of Schuylkill County, 588 A.2d 480, 483 (Pa. 1991).

“[D]ue process... requires at a minimum that an owner of land be actually notified by government, if reasonably possible, before his land is forfeited by the state.” Tracy v. County of Chester Tax Claim Bureau, 489 A.2d 1334, 1339 (Pa. 1985). “[I]t is the reasonableness of the effort that is important, not whether it would have led to discovery of the address.” Rice v. Compro Distributing, Inc., 901 A.2d 570, 577 (Pa.Cmwlt. 2006) (citing Smith v. Tax Claim Bureau of Pike County, 834 A.2d 1247, 1251-52 (Pa.Cmwlt. 2003); Jones v. Flowers, 547 U.S. 220, 126 S.Ct. 1708, 1717, 164 L.Ed.2d 415 (2006) (reasoning that “the constitutionality of a particular procedure for notice is assessed *ex ante*, rather than *post hoc*”). Consequently, where notice is at issue, the court’s focus is “not on the alleged neglect of the owner, which is often present in some degree, but on whether the activities of the [b]ureau comply with the requirements of the [Real Estate Tax Sale Law].” Famagelto v. Erie Cnty. Tax Claim Bureau, 133 A.3d 337, 339

(Pa.Cmwth. 2016) (*en banc*); Steinbacher v. Northumberland Cnty. Tax Claim Bureau, 996 A.2d 1095, 1099 (Pa.Cmwth. 2010) (*en banc*). “If any of the notices are defective, the sale is void.” Fernandez, 925 A.2d at 212.

“A presumption of regularity attaches to tax sale cases. However, once exceptions are filed, the burden shifts to the tax claim bureau to show that proper notice was given.” Gutierrez v. Washington Cnty. Tax Claim Bureau, 260 A.3d 291, 295 (Pa.Cmwth. 2021) (citation omitted). Whether a “statutory task is pointless does not excuse its attempted performance.” Steinbacher, 996 A.2d at 1099 (internal citations omitted).<sup>6</sup>

With respect to notice by mail, Section 602(e)(2) of the Real Estate Tax Sale Law requires the following of the Bureau if the return receipt for notice of the tax sale provided “[a]t least 30 days before the date of the sale, by United States certified mail, restricted delivery, return receipt requested, postage prepaid,” is not received, that

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*.

72 P.S. §5860.602(e)(2) (emphasis added).

Section 607.1(a) of the Real Estate Tax Sale Law entitled “Additional notification

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<sup>6</sup> Because M&D does not dispute the Bureau’s compliance with the posting and publication requirements of the Real Estate Tax Sale Law, we have not reviewed in any detail the Bureau’s conduct or the law in this regard.

efforts," which "shall be in addition to any other notice requirements imposed by [the Real Estate Tax Sale Law]," provides:

*When any notification of a pending tax sale or a tax sale subject to court confirmation is required to be mailed to any owner ... and such mailed notification is either returned without the required receipted personal signature of the addressee or under other circumstances raising a significant doubt as to the actual receipt of such notification by the named addressee or is not returned or acknowledged at all, then, before the tax sale can be conducted or confirmed, the bureau must exercise reasonable efforts to discover the whereabouts of such person or entity and notify him. The bureau's efforts shall include, but not necessarily be restricted to, a search of current telephone directories for the county and of the dockets and indices of the county tax assessment offices, recorder of deeds office and prothonotary's office, as well as contacts made to any apparent alternate address or telephone number which may have been written on or in the file pertinent to such property. When such reasonable efforts have been exhausted, regardless of whether or not the notification efforts have been successful, a notation shall be placed in the property file describing the efforts made and the results thereof, and the property may be rescheduled for sale or the sale may be confirmed as provided in this act.*

72 P.S. §5860.607a(a) (emphasis added).

When the return receipt for notice of the sale by certified mail is not received by the Bureau, before sending notice of the sale by first class mail, Section 602(e)(2) requires the Bureau to determine the last known address of the owner "by virtue of the knowledge and information possessed... by the tax collector for the taxing district making the return, and by the county [assessment office]." Section 607.1(a) further provides that when a tax claim bureau's certified mailing is "not returned or acknowledged at all... the bureau *must* exercise reasonable efforts to discover the whereabouts of such person or entity and notify him." 72 P.S. §5860.607a(a) (emphasis added). Section 607.1(a), while identifying certain specific efforts that must be made to locate an owner, does not provide an

exhaustive list of the efforts the Bureau must take to satisfy due process. “Due process requires that the ‘practicalities and peculiarities of the case’ are considered and given their ‘due regard’”. Famagelitto, 133 A.3d at 345 (citing and quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). Nor does Section 607.1 specify what type of notice is required, only that the Bureau engage in reasonable efforts to notify the taxpayer. Grove v. Franklin Cnty. Tax Claim Bureau, 705 A.2d 162, 163 n.7 (Pa.Cmwltth. 1997), appeal denied, 737 A.2d 745 (Pa. 1999).

Here, the Bureau did not contact the local tax collector to determine what information he had regarding the last known address of M&D before sending the Notice of Sale by first class mail on October 2, 2023. Nor did the Bureau, other than determining the last known post office address on record with the Assessment Office, inquire into the knowledge and information possessed by the Assessment Office regarding M&D’s whereabouts, which, as evidenced by the Bureau’s review of these records after the filing of M&D’s Objections, would have revealed Mr. Debenedictis’ e-mail address contained in Exhibit No. R-7 and provided an additional means of contacting M&D and ascertaining whether the 330 Harwicke Rd., Springfield, Pennsylvania 19064–3104 address was still valid.<sup>7</sup> As required by Section 607.1(a) of the Real Estate Tax Sale Law, which must be read in conjunction with Section 602(e)(2) and strictly construed, the Bureau was required

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<sup>7</sup> The Bureau did not learn of Exhibit No. R-7 until after M&D filed its Objections at which time, for the first time, the Bureau examined the records in the Carbon County Tax Assessment Office.

to "exercise reasonable efforts to discover" M&D's whereabouts and notify M&D. 72 P.S. §5860.607a(a). This it failed to do. Cf. McElvenny v. Bucks County Tax Claim Bureau, 804 A.2d 719, 722 (Pa.Cmwlth. 2002) (*en banc*) (noting that "where the tax collector fails to record an address change or notify the taxing bureau of it, the tax sale must be invalidated"), appeal denied, 819 A.2d 549 (Pa. 2003).

Although we recognize that had the Bureau contacted Mr. Debeneditis using his e-mail address to verify M&D's mailing address, or contacted the local tax collector for the same purposes, this would likely have only confirmed the address already known by the Bureau, rather than providing a new address, the exercise of reasonable efforts under Section 607.1 applies even when the notices have been sent to the correct address. Grove, 705 A.2d at 164. Because the Bureau had the burden of showing strict compliance with the specific requirements of Section 602(e)(2) and satisfaction of its obligations under 607.1, Fernandez, 925 A.2d at 213, its failure to do so, even if such efforts would have resulted in no new address at which to send notice, is sufficient, by itself to grant M&D's Objections. See Maya, 59 A.3d at 56-57;<sup>8</sup> McElvenny, 804 A.2d at 722 (noting its

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<sup>8</sup> On this point the Commonwealth Court in Maya noted that such efforts must be made even if no new address to send notice is discovered, stating:

In Grove v. Franklin County Tax Claim Bureau, 705 A.2d 162 (Pa.Cmwlth.1997), *petition for allowance of appeal denied*, 558 Pa. 623, 737 A.2d 745 (1999), the tax claim bureau sent notice of a sale to the taxpayer's correct address, and it was returned unclaimed. The tax claim bureau sent taxpayer a second notice, but its file did not document that it took any additional efforts to discover taxpayer's whereabouts. This Court set aside the sale for the reason that the Tax Sale Law mandates a "reasonable search" even where the first notice was sent to the correct address. A search must be conducted "regardless of the correctness of the address to which the Bureau sent the notices." Id. at 164. Likewise, in Steinbacher v. Northumberland County Tax Claim Bureau, 996 A.2d 1095 (Pa.Cmwlth. 2010), this Court refused to excuse the tax claim bureau from having to undertake reasonable efforts even though such efforts would have been futile. We explained that the

decision in Sabarese v. Tax Claim Bureau of Monroe County, 451 A.2d 793 (Pa.Cmwlt. 1982) where the Court “rejected the taxing bureau’s argument that even if it had sent notice addressed ‘personal addressee only,’ as statutorily required, notices would not have been received and, thus, any error was harmless, observing that the notice provisions in the [Real Estate Tax Sale Law] must be strictly complied with in order to guard against the deprivation of property without due process of law”); Willis v. Schuylkill Cnty. Tax Claim Bureau, 2024 WL 187967 (Pa.Cmwlt. 2024) (Memorandum Opinion).

### CONCLUSION

For the foregoing reasons, we grant M&D's Objections and invalidate the November 3, 2023, upset tax sale of its property.<sup>9</sup>

BY THE COURT:



P.J.

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tax sale notice provisions are strictly construed and even where “ ‘the statutory task is pointless [it] does not excuse its attempted performance.’ ” Id. at 1099 (quoting Smith v. Tax Claim Bureau of Pike County, 834 A.2d 1247, 1252 (Pa.Cmwlt. 2003)). This is “because it is the reasonableness of the effort that is important, not whether it would have led to discovery of [another] address.” Rice v. Compro Distributing, Inc., 901 A.2d 570, 577 (Pa.Cmwlt. 2006).

Maya v. County of Erie Tax Claim Bureau, 59 A.3d 50, 56-57 (Pa.Cmwlt. 2013).

<sup>9</sup> In granting M&D's Objections, it is not our intention to criticize the regularity of the proceedings undertaken by the Bureau in conducting upset tax sales. We are aware of the volume of cases the Bureau deals with on an annual basis and the difficulty in strictly complying with all provisions of the Real Estate Tax Sale Law, 72 P.S. §§5860.101 to 5860.803. These provisions, however, have a purpose – to avoid depriving an owner of his property without due process, Famagelto v. Erie Cnty. Tax Claim Bureau, 133 A.3d 337, 339 (Pa.Cmwlt. 2016) (*en banc*) – with the consequence that a failure “to comply with all the statutory notice requirements ordinarily nullifies a sale.” Cruder v. Westmoreland Cnty. Tax Claim Bureau, 861 A.2d 411, 415 (Pa.Cmwlt. 2004), appeal denied, 871 A.2d 193 (Pa. 2005).