

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

IN RE: COUNTY OF CARBON TAX :
CLAIM BUREAU JUDICIAL SALE OF :
LAND IN THE COUNTY OF CARBON : No. 16-0984
FREE AND DISCHARGE FROM ALL : No. 16-0985
TAX AND MUNICIPAL CLAIMS, : No. 16-0986
MORTGAGES, LIEN CHARGES, AND :
ESTATES WHATSOEVER, HELD :
NOVEMBER 6, 2015 :

Robert S. Frycklund, Esquire Counsel for Carbon County Tax
Claim Bureau, Appellee

Robert P. Daday, Esquire Counsel for Lehigh Area School
District and Panther Valley School
District, Appellants

MEMORANDUM OPINION

Serfass, J. - September 12, 2017

Appellants, Lehigh Area School District and Panther Valley School District (hereinafter the "School Districts"), have taken this appeal from the Order of Court entered on June 20, 2017, denying their "Exceptions and Objections to the Carbon County Tax Claim Bureau's Petition for Confirmation of Distribution." We file the following Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) and recommend that the aforesaid Order of Court be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL HISTORY

On May 20, 2016, in each of the above-referenced cases, the School Districts filed nearly identical exceptions and objections to the Carbon County Tax Claim Bureau's petition for confirmation

of distribution of the proceeds of a judicial sale held on November 6, 2015. The School Districts contend that they should receive monies from the judicial sales of the three (3) tax parcels currently at issue. The subject tax parcels, with corresponding docket numbers and the amounts the School Districts claim they are owed, are as follows:

Docket No.	Tax Parcel No.	Overbid Amount	Delinquent school taxes, commissions, interest, counsel fees, costs and expenses	
16-0984	83-35-B71	\$2770.45	2013-\$1,448.90	
			2014-\$1,222.17	
			2015-\$1,163.97	
16-0985	70C-12-72	\$17,931.35	2014-\$2,916.49	
			2015-\$2,596.53	
16-0986	123A-24-J33	\$2,504.25	2013-\$1,766.13	
			2014-\$1,365.97	
			2015-\$1,300.92	

The Lehigh Area School District and the Panther Valley School District are municipal bodies created and existing under the laws of the Commonwealth of Pennsylvania, having their administrative offices located at 1000 Union Street, Lehigh, Pennsylvania, and 1 Panther Way, Lansford, Pennsylvania, respectively. The Carbon County Tax Claim Bureau (hereinafter the "Bureau") is an agency of the County of Carbon, organized and existing under the Pennsylvania Real Estate Tax Sale Law (hereinafter "RETSL"), 72 P.S. §5860.101, et seq., and maintains

its principal place of business at the Carbon County Courthouse Annex, 2 Hazard Square, Jim Thorpe, Pennsylvania.

The impetus for the instant litigation began when the School Districts elected to contract with Portnoff Law Associates, Ltd. to independently collect their delinquent real estate taxes pursuant to the Pennsylvania Municipal Claims and Tax Liens Act (hereinafter "MCTLA"), 53 P.S. §7101, et seq. Subsequently, Plaintiff filed claims for tax liens under MCTLA against delinquent properties, consisting of the amounts of the School Districts' original unpaid school taxes plus various additional commissions, counsel fees, costs and expenses. Each of the owners of the three tax parcels listed hereinabove was delinquent in paying his/her real estate taxes.

On November 6, 2015, each of the subject parcels was duly exposed to judicial sale by the Bureau and sold to the highest bidder pursuant to the procedures outlined in RETSL. Following the sale, but prior to the Bureau's distribution of the proceeds thereof, the School Districts provided the Bureau with a list of balances due to the School Districts for delinquent real estate taxes concerning the three subject parcels. These balances included commissions, counsel fees, costs and expenses.

On May 20, 2016, the School Districts filed their exceptions and objections raising the following two issues for our review: whether the Bureau was authorized to collect the School Districts'

delinquent real estate taxes even though the districts opted to collect those delinquent taxes pursuant to MCTLA; and, if so, whether the School Districts' claims may be collected with the same priority as other taxing districts which employ the Bureau to collect their delinquent taxes.

Via order dated June 20, 2017, this Court denied and dismissed the School Districts' exceptions and objections for the reasons set forth in our memorandum opinion of that same date, a copy of which is attached hereto for the convenience of the Honorable Commonwealth Court. The School Districts' Notice of Appeal of our decision was filed on July 18, 2017. Pursuant to our order of July 20, 2017, Appellants timely filed their concise statements of matters complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Those concise statements raise the following issues for appellate review:

1. Whether this Court erred in holding that the School Districts' decision to collect delinquent real estate taxes under MCTLA transformed its taxes into something other than taxes for the purposes of second priority status under §205(d)(2) of RETSL because:
 - i. RETSL does not require, as a predicate to a taxing district's entitlement to have its taxes included in the distribution of the proceeds of a sale held under

RETSL, that the tax claim bureau be the entity collecting the taxing district's taxes;

ii. A taxing district's right to distribution and priority of distribution, under §205(d) of RETSL, is not dependent on whether the tax claim bureau is an agent of the taxing district;

iii. The definition of "taxes" in §102 of RETSL is not limited in any way to only those taxes collected under RETSL;

iv. There is no language in RETSL that manifests the intent of the Legislature to deviate from well-settled legislative intent that real estate taxes be given priority over all other liens; and

2. Whether this Court erred in ignoring the School Districts' alternative argument that even assuming *arguendo* that MCTLA charges added to taxes are not entitled to second priority status under §205(d) of RETSL, the portion of the School Districts' tax claims that constitute the face amount of the taxes, together with added penalty and interest, nevertheless must be given second priority status because:

i. Section 102 of RETSL defined "taxes" as "all taxes, with added interest and penalties, levied by a taxing district upon real property, including improvements;"

thus, the definition of "taxes" under both statutes includes the face, penalty, and interest;

- ii. The face amount of the taxes, including penalties and interest, is a fact of record; and
- iii. Section 205(e) of RETSL provides that "the court shall forthwith hear any objections and exception to the proposed distribution and thereafter adjust the schedule of distribution as it deems just and equitable according to law"; thus, any decision that the School Districts' underlying taxes lose their priority status merely because purportedly improper charges were included in the balances—without calculating the tax amount without those charges—is inconsistent with the obligation imposed on courts to effectuate a "just and equitable result."

DISCUSSION

Having previously addressed several of the foregoing issues in our memorandum opinion of June, 20, 2017, we will now address the remaining issues raised in Appellants' Pa. R.A.P. 1925(b) statement.

I. Selecting MCTLA instead of RETSL divests the Bureau of its authority to collect delinquent taxes

Appellants argue that delinquent taxes should retain second priority status under RETSL even when the taxing district elects

to collect those taxes under MCTLA. As discussed in our attached memorandum opinion, the Bureau could not collect the delinquent taxes on behalf of the School Districts because the districts chose to collect those taxes pursuant to MCTLA, thereby divesting the Bureau of its authority to collect those taxes. The Pennsylvania Commonwealth Court has held that, "[T]he tax claim bureaus [RETSL] creates become operative only to the extent counties and municipalities elect to utilize them; in other words, the RETSL tax collection scheme is optional rather than mandatory." City of Allentown v. Kauth, 874 A.2d 164, 168 (Pa. Cmwlth. 2005) citing Cedarbrook Realty, Inc. v. Nahill, 399 A.2d 374, 382 (Pa. 1979). "[T]he tax claim bureau shall ... be the agent of the taxing districts whose claims are returned to the bureau for collection and prosecution under the powers of this act." Id. at 168 citing 72 P.S. §5860.208.

It is true that RETSL does not require the tax claim bureau to be the entity that collects the relevant taxes. However, once the taxing district utilizes the procedures of MCTLA instead of RETSL for a particular tax owed, the taxing district essentially renounces the authority of the Bureau to collect those delinquent taxes.

It is also true that a taxing district's right to distribution and priority of distribution, under §205(d) of RETSL, is not dependent on whether the tax claim bureau is an agent of the taxing

district. But here, as noted above, the Bureau lacks the authority to collect delinquent taxes on behalf of the School Districts since the districts chose to collect their taxes pursuant to MCTLA. Further, since the monies at issue were collected by the Bureau, and the Bureau was not entitled to collect those delinquent taxes on behalf of the School Districts, the School Districts must take as lien holders with fourth priority status under 72 P.S. §5860.205(d).

Next, Appellants contend that the definition of "taxes" contained in §102 of RETSL, 72 P.S. §5860.102, is not limited to only those taxes collected under RETSL. However, as discussed in our attached memorandum opinion, when a tax sale is commenced under a particular act of the General Assembly, "the procedure therein prescribed must be followed and under that act alone must the validity and effect of the sale be tested. Other legislation providing a different procedure or result cannot be used either to sustain such sale or secure additional rights or results. The Act under which the proceeding is had must show the authority and effect of such sale." JP Morgan Chase Bank v. Zellin, 82 Pa. D. & C.4th 460, 465 (Com. Pl. 2007) (quoting Gordon v. City of Harrisburg, 171 A. 277, 278 (Pa. 1934)). Moreover, the definition of "taxes" set forth in §102 of RETSL is clear, specific and does

not contain expansive language such as, "including, but not limited to".¹

Finally, Appellants reference no legal authority to support their assertion that it is "well-settled legislative intent" that real estate taxes be given priority over all other tax liens. Nevertheless, we do not rely on RETSL in determining that the School Districts should take at fourth priority. Rather, based upon the reasoning of the Pennsylvania Supreme Court and Commonwealth Court, we determined that the Bureau did not have the authority to collect the School Districts' delinquent taxes and, for that reason, Appellants are not afforded second priority status. Thus, the legislative intent behind RETSL is not controlling with regard to this particular issue.

II. Even the portion of the School Districts' tax claims that constitute the face amount of the taxes, together with added penalties and interest, cannot be accorded second priority status

Appellants also maintain that even if they were to concede that MCTLA charges added to taxes are not entitled to second priority status under RETSL, the portion of the School Districts' tax claims that constitute the face amount of the taxes, together

¹ Pursuant to the Real Estate Tax Sale Law, taxes are defined as "all taxes, with added interest and penalties, levied by a taxing district upon real property, including improvements." 72 P.S. §5860.102.

with added penalties and interest, must be given second priority status. As discussed in our attached memorandum opinion, the Bureau could not collect taxes on behalf of the School Districts because the School Districts chose to utilize MCTLA for tax collection purposes. Without the authority that is granted when a taxing district elects to utilize a tax claim bureau, the Bureau could not collect any amount of tax for the School Districts on those properties. City of Allentown v. Kauth, 874 A.2d 164, 168 (Pa. Cmwlth. 2005). Thus, Appellants are not entitled to second priority status for any portion of the subject tax claims and must take at fourth priority under RETSL.

Finally, Appellants argue that any decision holding that the tax claims alone, without MCTLA charges, lose their second priority status, is inconsistent with the obligation imposed on our courts to effectuate just and equitable results. However, allowing the School Districts to collect their taxes at second priority after they have elected to utilize MCTLA instead of the Bureau would not be a just and equitable result for two reasons. First, as stated above, the Bureau does not have the authority to collect delinquent taxes on behalf of the School Districts because the School Districts did not elect to utilize the Bureau as their agent. Second, it is unclear whether the School Districts' delinquent taxes were included in the notice procedures mandated by RETSL under 72 P.S. § 5860.308(a). However, if the School Districts'

delinquent taxes were not included in the Bureau's listed amount due to the several taxing districts, then it is not just and equitable that the Districts take at second priority because the property owners were not given an opportunity to redeem by paying the delinquent taxes owed to the School Districts prior to the sale of those properties.

CONCLUSION

For the reasons set forth both hereinabove and in our memorandum opinion dated June 20, 2017, we respectfully recommend that the instant appeals be denied and that our Order of June 20, 2017, which denied and overruled the School Districts' "Exceptions and Objections to the Carbon County Tax Claim Bureau's Petition for Confirmation of Distribution", be affirmed accordingly.

BY THE COURT:

Steven R. Serfass, J.