

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

Robert P. Daday, Esquire Counsel for Objectors/Exceptants

MEMORANDUM OPINION

Serfass, J. - June 20, 2017

Objectors/Exceptants, Lehigh Area School District and Panther Valley School District, (hereinafter the "School Districts") have filed "Exceptions and Objections to the Carbon County Tax Claim Bureau's Petition for Confirmation of Distribution" disputing the priority which the School Districts' liens were given by the Tax Claim Bureau in the distribution of proceeds from a judicial sale. For the reasons set forth hereinafter, we will deny and overrule the School Districts' exceptions and objections.

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

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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.

DISCUSSION

Under RETSL, property taxes may be collected by a county on behalf of all county taxing authorities, including school districts. However, school districts may choose to collect their own taxes under the authority of MCTLA. County of Carbon v. Panther Valley School District, 61 A.3d 326, 332 (Pa. Cmwlth. 2013).

In their exceptions and objections, the School Districts claim that the Bureau was authorized to collect delinquent taxes on their behalf and that the districts are entitled to a distribution of excess sale proceeds with the same priority as other interested taxing districts. The School Districts contend that since MCTLA and RETSL are sufficiently similar, they must be read to operate in conjunction with one another. They also argue that when read in conjunction with one another, MCTLA's definition of taxes must be applied to a judicial sale conducted pursuant to RETSL.

Conversely, the Bureau asserts that because the School Districts chose to contract with Portnoff Law Associates to collect their delinquent real estate taxes under MCTLA, the Bureau is not

authorized to act as their agent for tax collection purposes under RETSL. Moreover, it is maintained that even if the Bureau was authorized to collect the School Districts' delinquent taxes in this instance, the districts would not be able to collect pursuant to 72 P.S. §5860.205(d)(2) because the School Districts included counsel fees, costs and expenses in their demand for funds.

We note that RETSL outlines a specific procedure which must be followed in order for the Bureau to act as a tax collection agent for a taxing district. Initially, the taxing district must file a return and the tax claim bureau must docket the claim. 72 P.S. §5860.306-307. The tax claim bureau then sends notice of the return to the property owners in order to give them an opportunity to satisfy the delinquent taxes or to file an appeal. 72 P.S. §5860.308. If the delinquent taxes are not satisfied, the tax claim bureau initiates a sale of the delinquent property. After the sale is completed, the tax claim bureau must prepare and file a petition for the confirmation of distribution of the proceeds. The court of common pleas then reviews the proposed schedule of distribution and approves or denies the petition accordingly. In the cases presently before the Court, after the Bureau filed its petition for confirmation of distribution, which did not include the districts' "tax claims", the School Districts filed timely objections and exceptions thereto.

The School Districts object to the proposed distribution because they are also owed taxes on the three parcels at issue. As a result, the School Districts claim that they should be permitted to collect those taxes under 72 P.S. §5860.205(d)(2) with the same priority as any other taxing district. Pursuant to 72 P.S. §5860.205(d), monies collected from a judicial sale are to be distributed in the following manner and according to the following priority:

- (1) First, to the Commonwealth, by payment to the State Treasurer through the Department of Revenue, for satisfaction of tax liens of the Commonwealth only if the total amount of such liens or such portion thereof have been included in the purchase price and paid by the purchaser or the property is sold at judicial sale pursuant to this act;
- (2) Second, to the respective taxing districts in proportion to the taxes due them;
- (3) Third, to taxing districts or municipal authorities for satisfaction of municipal claims;
- (4) Fourth, to mortgagees and other lien holders, in order of their priority, for satisfaction of mortgages and liens as they may appear of record, whether or not discharged by the sale; and
- (5) Fifth, to the owner of the property.

In response, the Bureau raises two issues in opposition to the School Districts taking pursuant to 72 P.S. §5860.205(d)(2). First, prior to the sale of the subject parcels, the School

Districts opted to collect their delinquent taxes pursuant to MCTLA by contracting with Portnoff Law Associates. While the decision to file and collect liens against delinquent properties pursuant to MCTLA is an entirely legal alternative to the Bureau's collection under RETSL, the unavoidable consequence of that decision is that the School Districts' MCTLA liens, which include Portnoff's commissions, legal fees and costs, do not qualify as taxes under RETSL and, therefore, are not payable as second priority taxes under RETSL Section 5860.205(d)(2). Instead, those MCTLA liens are only payable to the extent that there are any excess funds available for payment of fourth priority liens under RETSL Section 5860.205(d)(4). 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. Since the School Districts elected to opt out of the Bureau's collection services, they may not now avail themselves of those services unless they have meticulously followed all of the procedures prescribed by

RETSL. Here, even though the School Districts may have provided the Bureau with lien payoffs regarding the delinquent balances for the subject properties prior to the distribution of proceeds from the judicial sale, those balances included Portnoff's commissions, legal fees and costs. If a taxing district has chosen not to have its taxes collected by the tax claim bureau, it has chosen not to utilize the collection procedures under RETSL. It does not file a return with the Bureau listing delinquent taxes, no claim is docketed for it by the Bureau and there is no confirmation granted to the Bureau that the property owners had the right to challenge the claims. Therefore, even though the School Districts have the option to collect their delinquent taxes pursuant to MCTLA, the consequence of doing so and opting out of RETSL procedures is that the Bureau is not authorized to act as the School Districts' agent for tax collection purposes under RETSL.

The School Districts appear to claim that because they filed a return pursuant to section 306(a) of RETSL, 72 P.S. §5860.306(a), they are entitled to utilize the Bureau's tax collection services. However, as the School Districts should be keenly aware, they are required to file an annual Section 306(a) return with the Bureau regardless of how they decide to collect their delinquent taxes. County of Carbon v. Panther Valley School District, 61 A.3d at 332. If the School Districts opt out of the Bureau's collection services, as they have here, they are still required to make an

annual return to the Bureau so that the Bureau is able to maintain adequate records. Id. Just because the School Districts are obligated to file an annual return with the Bureau does not mean that they have complied with the RETSL procedure necessary to have the Bureau collect delinquent taxes on their behalf.

The second issue raised by the Bureau in opposition to the School Districts' collection of delinquent taxes as a second priority claim pursuant to 72 P.S. §5860.205(d)(2) is that the districts included commissions, counsel fees, costs and expenses in their request for funds. Pursuant to MCTLA, taxes are defined as "any county, city, borough, incorporated town, township, school, bridge, road, or poor taxes, together with and including all penalties, interest, costs, charges, expenses and fees, including reasonable attorney fees, as allowed by this act and all other applicable laws." 53 P.S. §7101. Conversely, pursuant to RETSL, 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. The School Districts argue that RETSL and MCTLA are sufficiently similar to each other that they must be read to operate in conjunction with one another and, as a result, MCTLA's definition of taxes must apply to judicial sales conducted pursuant to RETSL. In support of this argument, the School Districts cite Pennsylvania Land Title

Association v. East Stroudsburg Area School District, 913 A.2d 961

(Pa. Cmwlth. 2006), in which the Commonwealth Court opined:

[T]he MCTLA and RETSL statutes are not mutually exclusive, but instead are very similar and their provisions are designed to operate in conjunction with one another. Accordingly, we believe that it is possible to give effect to the provisions of both the MCTLA and the RETSL; therefore, the provisions of these two statutory collection schemes are not irreconcilable.

In the Pennsylvania Land Title Association case, the school districts argued that because they chose to collect delinquent taxes under MCTLA, they were not required to comply with Section 306(a) of RETSL. The Commonwealth Court disagreed, holding that even if a school district opted to collect delinquent taxes under MCTLA, the district was nevertheless required to follow the procedure outlined in RETSL which mandates that the district must file an annual return with the Bureau. The Court determined that MCTLA and RETSL were reconcilable on this point because MCTLA merely provided taxing authorities with an alternate means of collecting delinquent taxes. Regardless of which collection method a taxing authority selected, it was still required to comply with certain RETSL provisions. Id. However, we note that Pennsylvania Land Title Association had nothing to do with the interpretation of the definition of taxes in either RETSL or MCTLA and the School Districts' reliance upon that case for such a proposition is misplaced.

We find JP Morgan Chase Bank v. Zellin, 82 Pa. D. & C.4th 460, (Com. Pl. 2007) to be far more compelling on this issue¹. In that case, the court relied upon the Pennsylvania Supreme Court's decision in Gordon v. City of Harrisburg, which held that 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, supra, quoting Gordon v. City of Harrisburg, 171 A. 277, 278 (Pa. 1934).

The three parcels at issue in the cases at bar were sold by the Bureau, which means that they were sold pursuant to RETSL procedure. As a result, RETSL's definition of taxes must be applied in determining the manner in which claims made by taxing authorities are prioritized. Since the School Districts' request for monies realized from the judicial sale includes commissions, counsel fees, costs and expenses, such request cannot be categorized as representing "taxes" using RETSL's definition of that term.

¹ We note that the opinion in JP Morgan Chase Bank v. Zellin was authored by the Honorable Roger N. Nanovic, President Judge of this Court.

Overall, we find that there are two fatal defects with the School Districts' argument claiming an entitlement to collect pursuant to 72 P.S. §5860.205(d)(2). First, the School Districts opted to collect their delinquent taxes in accordance with procedures set forth in MCTLA. Since the judicial sale at issue was conducted pursuant to RETSL and RETSL procedure was not followed with regard to the School Districts' claims, the Bureau was not authorized to collect delinquent taxes for the School Districts. Second, even if the Bureau was authorized to collect delinquent taxes on behalf of the School Districts, the districts would not be entitled to second priority distribution for taxes pursuant to 72 P.S. §5860.205(d)(2) because their requests for funds included commissions, counsel fees, costs and expenses which are excluded from RETSL's definition of taxes.

CONCLUSION

A judicial sale conducted by the Bureau pursuant to RETSL is exclusively subject to the definition of taxes set forth in RESTL and not to the School District's preferred definition under MCTLA. Therefore, the distribution of excess proceeds from the Bureau's judicial sale of the subject properties on November 6, 2015 must be made in accordance with the priorities set forth in RETSL such that the liens filed against those properties by Portnoff are entitled to fourth priority position under 72 P.S. §5860.205(d)(4).

and not the second priority position sought by the School Districts.

For the foregoing reasons, we will **DENY and OVERRULE** the School Districts' "Exceptions and Objections to the Carbon County Tax Claim Bureau's Petition for Confirmation of Distribution" and enter the following

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ORDER OF COURT

AND NOW, to wit, this 20th day of June, 2017, upon
consideration of the "Exceptions and Objections to the Carbon
County Tax Claim Bureau's Petition for Confirmation of
Distribution", oral argument thereon, and our review of the
briefs of counsel, it is hereby

ORDERED and DECREED that the aforesaid exceptions and
objections are DENIED and OVERRULED in accordance with our
Memorandum Opinion bearing even date herewith.

BY THE COURT:



Steven R. Serfass, J.

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CARBON COUNTY
PROthonary