

Mortgage Holder's Petition to Set Aside Judicial Tax Sale Rejected

A panel of the Commonwealth Court held that the trial court properly denied a mortgage holder's petition to set aside the judicial tax sale of a property in Lackawanna County due to alleged improper service of notice and other errors committed under the Real Estate Tax Sale Law (RETSL). *HSBC Bank USA, N.A. v. Lackawanna County Tax Claim Bureau*, No. 2027 C.D. 2013 (Pa. Commw. Aug. 1, 2014).

HSBC Bank USA, N.A. was the mortgage holder on property located in Lackawanna County, which mortgage was acquired by the bank through assignment. The address of the bank as provided in the Assignment of Mortgage on the property was an address in Florida, which address was certified by the bank as assignee in the assignment.

No taxes were paid on the property and the property was subjected to an upset tax sale at which no bids were made for the upset price. Thereafter, the Lackawanna County Tax Claim Bureau conducted a records search for the property, which identified the bank as the property's mortgage holder, and subsequently filed a Petition to Sell the property with the trial court. The trial court issued a Rule to Show Cause upon all the parties with interests in the property as to why the property should not be sold free and clear of all encumbrances (including any mortgages). The Rule was served upon the bank by the Lackawanna County Sheriff's Office via certified mail, with the sheriff's address as the return, at the Florida address of the bank listed in the assignment. The Rule was accepted and signed for at the Florida address. The sale of the property was advertised, a hearing on the Rule (at which the bank did not appear) was held, and the trial court issued an order to sell the property free and clear. The property was thereafter sold on February 27, 2012.

The bank filed a Petition to Set Aside the judicial tax sale on July 17, 2013, arguing that: (1) the bureau did not properly serve the Rule on the bank because the bank had branches in Pennsylvania where it could have been personally served; (2) the bureau, not the sheriff, prepared the certified mailing for service on the bank; and (3) the bureau did not file and present all the necessary documents with its Petition to Sell.

The trial court denied the bank's Petition to Set Aside, holding that the petition was filed well beyond the six-month statute of limitations period. The trial court also addressed the bank's substantive arguments, holding that service of the Petition to Sell and Rule on the bank at the Florida address complied with the service requirements of Section 611 of the RETSL because the documents were sent by the sheriff via certified mail return receipt requested to the bank at the address listed in the assignment for the mortgage on the property. Given that the certified mail was not returned as unclaimed or unaccepted, the bureau had no obligation to do anything further in the way of notice to the bank. The trial court also held that there was no error in the bureau's attorney preparing the materials for the sheriff to send to the bank because Section 611 requires only that the sheriff serve the Rule by certified mail. Finally, the trial court concluded that the bureau's documentation regarding its title search of the property satisfied Section 610 of the RETSL because it contained the information required by that section.

The Commonwealth Court affirmed, holding that the bank's Petition to Set Aside was untimely filed. Section 611 requires that notice be sent to a lienholder's "last known post office address." The Commonwealth Court held that the Tax Claim Bureau reasonably concluded that the Florida address listed in the assignment was its last known address, and thus, was the correct address for service on the bank. Because service of the Rule via certified mail was successful, there was no need for the bureau to attempt to find an alternate address at which to serve the bank. Having concluded that the bank was properly notified of the sale, the Commonwealth Court held that the six-month statute of limitations for filing the Petition to Set Aside started on the date of the sale,



Joseph C. Bright

Member

jbright@cozen.com
Phone: (215) 665-2053
Fax: (866) 206-6090



Dan A. Schulder

Member

dschulder@cozen.com
Phone: (717) 703-5905
Fax: (717) 703-5901



Cheryl A. Upham

Member

cupham@cozen.com
Phone: (215) 665-4193
Fax: (866) 248-5674

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February 27, 2012. Thus, the bank's filing of the petition some 17 months later was untimely.

The Commonwealth Court also rejected the bank's argument that it is not bound by the six month statute of limitations because it included in its Petition to Set Aside a distinct and separate request to have its mortgage lien reinstated. The court found that the bank's request to reinstate its mortgage lien could not be made in a vacuum, and absent the setting aside of the tax sale, there would be no legal grounds on which to reinstate the mortgage.

To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact: Joseph C. Bright at jbright@cozen.com or 215.665.2053, Dan A. Schulder at dschulder@cozen.com or 717.703.5905 or Cheryl A. Upham at cupham@cozen.com or 215.665.4193.