

01-1519-CD
IN RE: PROPERTY OF THOMAS R. WICK

IN RE: PROPERTY OF THOMAS R. WICK
TAX MAP NOS. 4.3-K8-211-00065 and 4.3-K8-211-00066

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

IN RE: PROPERTY OF THOMAS R. WICK
 TAX MAP NOS. 4.3-K8-211-00065 and 4.3-K8-211-00066

ORDER

AND NOW, this 12th day of September, 2001, upon consideration of the foregoing Petition, it is the **ORDER** of this Court that the private tax sale scheduled for Friday, September 14, 2001 at 10:00 is stayed until hearing scheduled for the 10th day of October, 2001 at 10:00 o'clock A.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania. Notice of the stay and the hearing date shall be served on the Tax Claim Bureau by attorney for the Petitioner.

BY THE COURT

JUDGE

FILED

SEP 12 2001

011513ccatty
William A. Shaw
Prothonotary

[Signature]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

IN RE: PROPERTY OF THOMAS R. WICK
 TAX MAP NOS. 4.3-K8-211-00065 and 4.3-K8-211-00066

TO: THE HONORABLE JUDGES OF THE COURTS OF COMMON PLEAS

OBJECTIONS TO SALE OF PROPERTY
BY THE TAX CLAIM BUREAU

The Petition of Thomas R. Wick, with his attorney, R. Denning Gearhart, respectfully represents:

1. Thomas R. Wick is the record owner of a property identified on the tax roles as lots in the Third Ward of the Borough of Clearfield, Clearfield County, Pennsylvania, Map Nos. 4.3-K08-211-00065 and 4.3-K08-211-00066.
2. That he purchased those lots at a sale from the Tax Claim Bureau with the Deeds being filed for record to (a) Instrument No. 199919924 and Instrument No. 199919926 and (b) Instrument No. 199919923 and Instrument No. 199919925 and each dated December 3, 1999.
3. That he received notices that said the properties were to be sold for nonpayment of 1999 taxes at a public tax sale to be held on September 14, 2001 at 10:00 a.m.
4. That he was advised in the notices that the approximate upset price for each of the properties is (a) \$2,711.80 and (b) \$5,386.08.

5. That your Petitioner objects to, and questions the assessment to him of the 1999 taxes when he did not become the record owner of said properties until December 3, 1999.

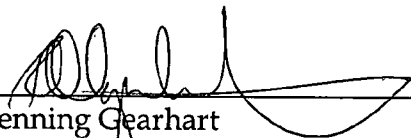
6. He questions the assessment for 1999 in that it appears to be four times the assessment from the year 2000. Accordingly, he questions the accuracy of the upset price.

7. That your Petitioner further contests the consolidation of the four Deeds by which he obtained title into one.

WHEREFORE, your Petitioner respectfully requests that your Honorable Court enter an Order providing the following:

1. Staying the sale of the properties listed above
2. Scheduling a hearing at which time the Court may accept whatever evidence the parties may desire to present and the Court requires.
3. Provide for notice of this Stay be given to the Tax Claim Bureau.
4. Provide for Notice of Hearing to the Tax Claim Bureau, the proposed purchase, whose name is unknown to your Petitioner, and any other interested parties.

Respectfully submitted,

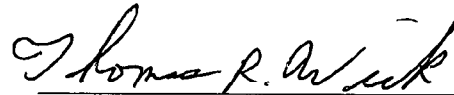


R. Denning Gearhart
Attorney for Petitioner

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :

AFFIDAVIT

Before me, the undersigned officer, personally appeared, THOMAS R. WICK who being duly sworn according to law deposes and says that the facts set forth in the foregoing Petition are true and correct to the best of his knowledge, information, and belief.


THOMAS R. WICK

Sworn to and subscribed
before me this 11th day
of September, 2001.


Notary Public



Clearfield County Tax Claim Bureau - 10 DAY NOTICE OF PUBLIC TAX SALE

Date: August 24th, 2001

Claim # 99 - 370

Owner Or Reputed Owner

WICK, THOMAS R

PO BOX 150

WEST DECATUR PA 16878 0150

Control # 004.3 - 04594

Map# K08-211-00066

Property Description

BLDGS & PART OF 2 L 32-33

Delinquent 1999 Real Estate Tax

WARNING

YOUR PROPERTY IS ABOUT TO BE SOLD WITHOUT YOUR CONSENT FOR DELINQUENT TAXES. YOUR PROPERTY MAY BE SOLD FOR A SMALL FRACTION OF IT'S FAIR MARKET VALUE. IF YOU HAVE ANY QUESTIONS AS TO WHAT YOU MUST DO IN ORDER TO SAVE YOUR PROPERTY, PLEASE CALL YOUR ATTORNEY, THE TAX CLAIM BUREAU AT THE FOLLOWING TELEPHONE NUMBER: (814)-765-2641 ext. 5998 OR THE COUNTY LAWYER REFERRAL SERVICE.

TO: All owners of property described in this notice, and all persons having tax liens and judgements or municipal claims against such properties. Notice is hereby given by the Tax Claim Bureau in and for the County of Clearfield under and by the authority of the provisions of the Act of 1947, P.L. 1368, known as "Real Estate Tax Law", as amended, that the said BUREAU will expose at public sale at the CAST Building, 112 East Locust Street, Clearfield, Pennsylvania, at **10:00 AM on September 14th, 2001** or any day to which the sale may be adjourned, re-adjourned or continued, for the purpose of collecting unpaid taxes, municipal claims and all costs incident thereto, the above described real estate for at least the upset price in the amount herein approximately set forth. The sale of this property may, at the option of the Bureau, be stayed in the owner thereof or any lien creditors of the owner, on or before the sale date, enters into an agreement with the BUREAU to pay the taxes and costs owing on said property in the manner provided by said law.

TERMS OF SALE: Cash or Certified Check payable to "TAX CLAIM BUREAU" at time property is struck down. Personal Checks accepted subject to final payment and at risk of payor.

Any check returned unpaid by your bank will be subject to a twenty dollar (\$20.00) returned check fee.

APPROXIMATE UPSET PRICE

THE APPROXIMATE UPSET PRICE FOR
WHICH THE PROPERTY SHALL BE SOLD

IS: **\$5,836.08**

CALL FOR EXACT AMOUNT DUE.

Eligible property owners may remove their property from jeopardy of sale by entering into an "AGREEMENT TO STAY SALE". The "AGREEMENT" requires combination of ALL delinquent taxes, costs and interest and payment of 25% of total to begin.

Clearfield County Tax Claim Bureau - 10 DAY NOTICE OF PUBLIC TAX SALE

Date: August 24th, 2001

Claim # 99 - 369

Control # 004 . 3 - 04593

Map# K08-211-00065

Property Description

50% INT. IN TANNERY, BLDG. &

PART L 33

Owner Or Reputed Owner

WICK, THOMAS R

P O BOX 150

WESTDECATUR PA 16878 0150

Delinquent 1999 Real Estate Tax

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YOUR PROPERTY IS ABOUT TO BE SOLD WITHOUT YOUR CONSENT FOR DELINQUENT TAXES. YOUR PROPERTY MAY BE SOLD FOR A SMALL FRACTION OF IT'S FAIR MARKET VALUE. IF YOU HAVE ANY QUESTIONS AS TO WHAT YOU MUST DO IN ORDER TO SAVE YOUR PROPERTY, PLEASE CALL YOUR ATTORNEY, THE TAX CLAIM BUREAU AT THE FOLLOWING TELEPHONE NUMBER: (814)-765-2641 ext. 5998 OR THE COUNTY LAWYER REFERRAL SERVICE.

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TERMS OF SALE: Cash or Certified Check payable to "TAX CLAIM BUREAU" at time property is struck down. Personal Checks accepted subject to final payment and at risk of payor.

Any check returned unpaid by your bank will be subject to a twenty dollar (\$20.00) returned check fee.

APPROXIMATE UPSET PRICE

THE APPROXIMATE UPSET PRICE FOR
WHICH THE PROPERTY SHALL BE SOLD

IS: \$2,711.80

CALL FOR EXACT AMOUNT DUE.

Eligible property owners may remove their property from jeopardy of sale by entering into an "AGREEMENT TO STAY SALE". The "AGREEMENT" requires combination of ALL delinquent taxes, costs and interest and payment of 25% of total to begin.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)
NO.

IN RE: PROPERTY OF THOMAS R. WICK
Tax Map Nos. 4.3-K8-211-65 and
4.3-K8-211-66

OBJECTIONS TO SALE OF PROPERTY
BY THE TAX CLAIM BUREAU

FILED

SEP 13 2001
09:38 AM
William A. Shaw
Prothonotary

3 cc att Gearhart

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

IN RE: PROPERTY OF THOMAS :
R. WICK : No. 01-1519-CD
TAX MAP NOS.: :
4.3-K8-211-00065 and : Type of Case: Civil
4.3-K8-211-00066 :
: Type of Pleading: Preliminary
: Objections/Motion to Dismiss Objections
: of Thomas R. Wick to Tax Sale
:
: Filed on Behalf of: Clearfield County Tax
: Claim Bureau
:
:
: Counsel of Record for this Party:
:
: Kim C. Kesner, Esquire
: Supreme Court I.D. #28307
: 23 North Second Street
: Clearfield, PA 16830
: Phone: (814) 765-1706
: Fax: (814) 765-7006
:
:
: Other Counsel of Record:
:
: R. Denning Gearhart, Esquire
: Supreme Court I.D. #26540
: 215 East Locust Street
: Clearfield, PA 16830
: Phone: (814) 765-1581

William A. Shaw
Prothonotary

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

IN RE: PROPERTY OF THOMAS :
 R. WICK : No. 01-1519-CD
 TAX MAP NOS.: :
 4.3-K8-211-00065 and : Type of Case: Civil
 4.3-K8-211-00066 :

PRELIMINARY OBJECTIONS/MOTION TO DISMISS
OBJECTIONS OF THOMAS R. WICK TO TAX SALE

TO THE HONORABLE JOHN K. REILLY, JR., PRESIDENT JUDGE OF SAID COURT:

AND NOW, comes the Clearfield County Tax Claim Bureau by Kim C. Kesner, Esquire, Solicitor of Clearfield County, who files the following Preliminary Objections/Motion to Dismiss concerning Objections to Tax Sale filed by Thomas R. Wick on September 12, 2001:

I. **THIS COURT HAD NO LEGAL AUTHORITY TO CONSIDER THE OBJECTIONS PRIOR TO THE SALE.**

1. Wick's Petition concedes that the tax sale(s) in question pertain to two (2) assessments identified by Map Numbers 4.3-K08-211-00065 and 4.3-K08-211-00066 for which the upset prices were \$2,711.80 and \$5,386.08.

2. Under the Pennsylvania Real Estate Tax Sale Law, once a tax claim becomes absolute under 72 P.S. §5860.311 the Court has no power to consider objections prior to the sale.

3. The Tax Claim law does provide that objections or exceptions may be filed to any sale within thirty (30) days after the Court has confirmed the sale nisi. 72 P.S. §5860.607(2)(c).

4. However, the bases of any such objections or exceptions are limited as follows:

(d) Any objections or exceptions to such a sale may question the regularity or legality of the proceeding of the bureau in respect to such sale, but may not raise the legality of the taxes on which the sale was held, of the return of the tax collector to the bureau or of the claim entered.

72 P.S. §5860.607(2)(d) (Emphasis added).

5. In this case, Wick has made no allegation of error cognizable by the Court. To the contrary, in Paragraph 5 he “questions the assessment to him of the 1999 taxes...” In Paragraph 6 he “questions the assessment for 1999...(and he)...questions the accuracy of the upset price.” In Paragraph 7 he “contests the consolidation of the four deeds by which he obtained title into one.” Thus in Paragraphs 5 and 6, Wick makes no allegation of error whatsoever but merely “questions” the assessments upon which the sales were based. Moreover, if Paragraphs 5, 6 and/or 7 are construed as allegations of error, they clearly pertain to the underlying assessment which the Court has no power to review after the claim becomes absolute.

WHEREFORE, it is respectfully submitted that Wick’s Objections/Petition should be dismissed summarily without further proceedings.

II. EVEN IF THE COURT HAD POWER TO CONSIDER WICK’S OBJECTIONS, IT HAD NO POWER TO STAY THE SALE.

6. The averments contained in Paragraphs 1 through 5 above are incorporated herein as if set forth verbatim.

7. This Court’s Order of September 12, 2001 stayed “the private tax sale scheduled for Friday, September 14, 2001...” (Emphasis added).

8. While a Court may have discretionary ability to stay a “private” tax sale, the sale of the two assessments here were not private sales under the provisions of 72 P.S. §5860.613. To the contrary, the sales here were public auction sales under 72 P.S. §5860.601-5860.606. The Court’s ability to consider a challenge to a tax claim ceases when the claim becomes absolute. There is no statutory or other legal authority for the grant of a stay as occurred in this case.

9. Certainly, on the face of the Objections/Petition, this Court lacked the power to grant a stay where the sole issues raised or contentions made were to the underlying assessments.

10. Because a stay was improvidently granted, the Tax Claim Bureau will be prevented from fulfilling its duty to the respective taxing districts because it will be unable to schedule the tax claims for sale for one (1) full year even though no issues cognizable by the Court have been raised and even though Wick's Objections/Petition include no indication whatsoever that he is ready, willing or able to pay the delinquent taxes.

WHEREFORE, it is respectfully submitted that Wick's Objection/Petition should be dismissed summarily without further proceedings.

ANSWER TO OBJECTIONS

By way of further response, the Clearfield County Tax Claim Bureau answers Wick's Objections to Tax Sales as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted. However, the Tax Claim Bureau believes and therefore avers that Wick made an inadvertent error in stating the upset price of the second assessment which was \$5,836.08 rather than the indicated \$5,386.08

5. The averments contained in Paragraph 5 do not constitute an allegation cognizable by the Court. In the most, the averments constitute an allegation of error regarding the underlying assessments which the Court may not consider after the tax claim has become absolute. In the least, the averments contain merely a "question" which does not constitute a sufficient allegation of error justifying review.

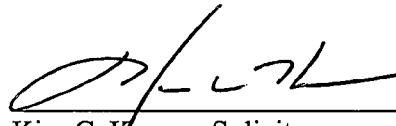
6. The averments contained in Paragraph 6 do not constitute an allegation cognizable by the Court. In the most, the averments constitute an allegation of error regarding the underlying assessments which the Court may not consider after the tax claim has become

absolute. In the least, the averments contain merely a "question" which does not constitute a sufficient allegation of error justifying review.

7. The averments contained in Paragraph 7 do not constitute an allegation cognizable by the Court. The allegation constitutes a challenge to the underlying assessments which the Court cannot review at this stage.

WHEREFORE, the Clearfield County Tax Claim Bureau respectfully requests your Honorable Court to dismiss Wick's Objections/Petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kim C. Kesner', is written over a horizontal line.

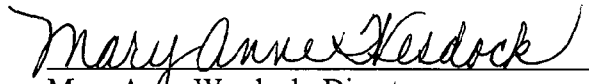
Kim C. Kesner, Solicitor
Clearfield County Tax Claim Bureau

Dated: October 5, 2001

VERIFICATION

I, Mary Anne Wesdock, verify that I am the Director of the Clearfield County Tax Claim Bureau, and as such am authorized and empowered to make this Verification, and that the statements made in this Preliminary Objections/Motion to Dismiss are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 , relating to unsworn falsification to authorities.

Date: 10-5-2001


Mary Anne Wesdock, Director
Clearfield County Tax Claim Bureau

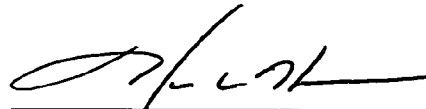
CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 5th day of October, 2001, I caused to be served a true and correct copy of the Preliminary Objections/Motion to Dismiss Objections of Thomas R. Wick to Tax Sale on the following and in the manner indicated below:

By United States Mail, First Class,
Postage Prepaid, Addressed as Follows:

R. Denning Gearhart, Esquire
215 East Locust Street
Clearfield, PA 16830

Date: October 5, 2001



Kim C. Kesner, Esquire

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
No. 01-1519-CD

IN RE: PROPERTY OF THOMAS R.
WICK

TAX MAP NOS:
4.3-K8-211-00065
4.3-K8-211-00066

PRELIMINARY OBJECTIONS/MOTION
TO DISMISS OBJECTIONS OF
THOMAS R. WICK TO TAX SALE

FILED

OCT 10 3 38 PM '01
OCT 05 2001

William A. Shaw
Prothonotary

CLEARFIELD COUNTY
COURT HOUSE
CLEARFIELD, PA 16830
KIM C. KESNER, ESQUIRE
SOLICITOR
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: PROPERTY OF THOMAS R. :
WICK TAX MAP NOS.: : No. 01 - 1519 - CD
4.3-K8-211-00065 and :
4.3-K8-211-00066 :

ORDER

NOW, this 10th day of October, 2001, upon consideration of Preliminary Objections in the form of a Motion to Dismiss Objections of Thomas R. Wick to Tax Sale, it is the ORDER of this Court that said Preliminary Objections be and are hereby sustained and the Objections to Sale of Property by the Tax Claim Bureau filed on behalf of Thomas R. Wick shall be and are hereby dismissed.

By the Court,

President Judge

FILED

OCT 1 7 2001

William A. Shaw
Prothonotary

