

02-636-CD -
JOHN P. PRUSHNOV et al "vs" CLEARFIELD COUNTY

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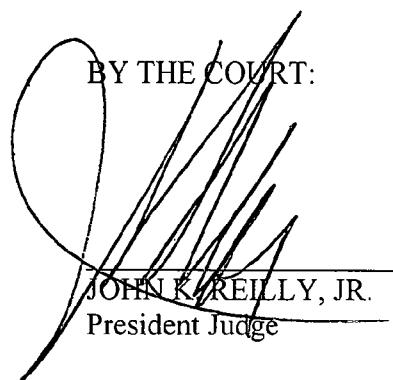
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JOHN P. PRUSHNOK, GEORGE :
DANIEL PRUSHNOK, and DAVID :
M. PRUSHNOK, t/a ANDRAY :
MINING COMPANY :
vs. : No. 02-636-CD
CLEARFIELD COUNTY :
:

O R D E R

AND NOW, this 24th day of April, 2002, upon consideration of Plaintiffs' Petition Stating Objections, Exceptions and Appeal of Tax Sale, a Rule is hereby issued on the Defendant to appear and show cause why the Petition should not be granted. Rule Returnable the 12th day of June, 2002, at 2:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


JOHN K. REILLY, JR.
President Judge

FILED

APR 24 2002

01538/2cc atty Carmella
William A. Shaw
Prothonotary
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOHN P. PRUSHNOK, GEORGE :
DANIEL PRUSHNOK, and DAVID :
M. PRUSHNOK, t/a ANDRAY :
MINING COMPANY, :
Petitioners :
vs. :
CLEARFIELD COUNTY :
Respondent. :
: TYPE OF PLEADING:
: PETITION STATING OBJECTIONS,
: EXCEPTIONS AND APPEAL OF TAX
: SALE
: FILED ON BEHALF
: OF: PETITIONERS
: COUNSEL OF RECORD FOR THIS
: PARTY:
: James D. Carmella, Esquire
: 724 Church Street
: Indiana, PA 15701
: 724-349-7722
: PA Supreme Court ID# 23378

FILED

APR 22 2002

William A. Shaw
Prothonotary

JOHN P. PRUSHNOK, GEORGE : IN THE COURT OF COMMON PLEAS
DANIEL PRUSHNOK, and DAVID : CLEARFIELD COUNTY, PENNSYLVANIA
M. PRUSHNOK, t/a ANDRAY :
MINING COMPANY :
Petitioners :
vs. : NO.
CLEARFIELD COUNTY :
Respondent. :

ORDER OF COURT

AND NOW, this _____ day of _____, 2002, upon consideration of with Petition, and motion of James D. Carmella, Esquire, attorney for Petitioners, the Court issues a Rule upon Respondent to Answer the Petition by _____, 2002, after which date either party may request the Court to set a hearing. Until a hearing is established, the Tax Sale of September 13, 1996 of the property of Petitioners is stayed.

BY THE COURT:

J.

JOHN P. PRUSHNOK, GEORGE	:	IN THE COURT OF COMMON PLEAS
DANIEL PRUSHNOK, and DAVID	:	CLEARFIELD COUNTY, PENNSYLVANIA
M. PRUSHNOK, t/a ANDRAY	:	
MINING COMPANY	:	
Petitioners	:	
	:	
vs.	:	NO.
	:	
CLEARFIELD COUNTY	:	
Respondent.	:	

PETITIONS STATING
OBJECTIONS, EXCEPTIONS AND APPEAL OF TAX SALE

AND NOW COMES, Petitioners, by and through their attorney James D. Carmella, Esquire and files this Petition based on the following:

1. Petitioners are adult individuals, partners in a business known as Andray Mining Company whose principal address is 240 West Mahoning Street, Punxsutawney, Pennsylvania 15767, hereinafter referred to as "Petitioners".
2. Clearfield County is a political subdivision of the Commonwealth of Pennsylvania with its principal offices at 230 East Market Street, Clearfield, Pennsylvania 16830, hereinafter referred to as "County".
3. At all times relevant hereto, the Clearfield County Tax Claim Bureau operated as an agency of the County in conducting a Tax Sale of various properties in Clearfield County on September 13, 1996.
4. At all times relevant hereto, Petitioners were the owners and occupied real estate located in Burnside Borough, Clearfield County, Pennsylvania known as Clearfield County assessment map number 002-A13-000-00024, said property having been conveyed to Petitioners by several deeds, identified in Exhibit "A" attached hereto and incorporated herein by reference.

5. The County purportedly sold Petitioner's property for taxes to Keystone Land and Timber Company for the delinquent tax amount of \$950.00 at the Tax Sale referred to above.

6. Petitioners believe, and therefore aver, that the Tax Sale was invalid, irregular, illegal and therefore should have no force and effect and should be set aside by the Court.

7. Petitioners file these objections, exceptions and appeal of the Tax Sale based on the following:

A. The regularity or legality of the proceedings of the Tax Claim Bureau of Indiana County with respect to the sale were improper and invalid;

B. The County sold the owner-occupied property of Petitioners without giving the owner-occupant written notice of the sale at least ten (10) days prior to the date of actual sale by personal service by the Sheriff or other designated party in violation of the law, and specifically Section 601 of the Real Estate Tax Sale Law 72 p.s. § 5860.101 et seq.;

C. The County did not have a reasonable basis to conclude that Petitioners as owner-occupants could not be served within twenty-five (25) days, and did not have a basis to petition the Court of Common Pleas to waive the requirement of personal service for good cause shown, because good cause did not exist, in violation of Section 601(a)(3) of the Real Estate Tax Sale Law;

D. The County did not post the property of Petitioners at least ten (10) days prior to the Tax Sale, in violation of Section 602 of the Real Estate Tax Sale Law;

E. The County did not provide proper notice of the Tax Sale to Petitioners by providing at least thirty (30) days before the date of the sale notice to each owner by United States Certified Mail, Restricted Delivery, Return Receipt Requested, postage prepaid, in violation of Section 602(e)(1) of the Real Estate Tax Sale Law;

F. The County did not provide notice to each owner of the property at least ten (10) days before the date of the sale by United States First Class Mail, proof of mailing at their last known address in violation of Section 602(e)(2) of the Real Estate Tax Sale Law;

G. The County did not exercise reasonable efforts to discover the whereabouts of each owner of the property prior to the sale in violation of Section 607 of the Real Estate Tax Sale Law;

H. The County otherwise failed to properly notify the Petitioners of the pending Tax Sale within a reasonable time to allow the Petitioners to exercise their options to pay the tax due prior to sale.

8. Petitioners have tendered \$950.00 to the Clearfield County Tax Claim Bureau for the County in payment of the real estate taxes due at the time of the Tax Sale.

9. Petitioners have been in continuous possession of this property for approximately 14 years, including mining coal, cutting timber and using it as access to other properties.

10. Equity and good conscience would require the Tax Sale to be set aside and avoid what would amount to a forfeiture of Petitioners interest in the subject property.

11. Petitioners bring this Petition with "clean hands" and no party has been harmed by the delay in payment of Petitioner's real estate taxes who cannot be compensated by payment of interest on any funds which were not paid when due or which were paid at the Tax Sale and can now be reimbursed.

12. Petitioners did not become aware of the tax sale of the subject property which allegedly occurred on September 13, 1996 until they were served with notice of a Quiet Title Action by William B. Reilly at Case No. 02-212-CD before the Common Pleas Court of Clearfield County, Pennsylvania, on or about February 14, 2002. The Plaintiff, Mr. Reilly, is claiming ownership of the subject property, apparently as a predecessor in interest to

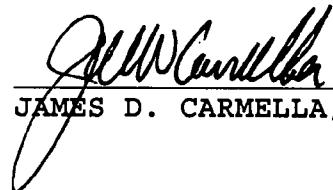
Keystone Land and Timber Company, the Grantee in the Tax Claim Bureau deed dated November 19, 1996 and recorded in Clearfield County at Deed Book Volume 1807, Page 57.

13. Petitioners notified the Clearfield County Tax Assessment Office of their ownership of the subject property, sometimes referred to as control number 002-0-00160, known as 145 acres surface (Burnside Borough) by letter dated March 13, 1992, attached hereto marked Exhibit "B", and again notified the Clearfield County Tax Assessment Office and the Clearfield County Tax Claim Bureau of their ownership by a letter dated June 21, 1994, attached hereto marked Exhibit "C".

14. The Petitioners received tax notices for 145 acres in Burnside Borough and paid the taxes, although it has recently been discovered this may not have included the surface interest although the Petitioners, through no fault of their own, believed that the surface interest was included in the tax notice they received and believed they were paying taxes for the surface ownership of the subject property.

WHEREFORE, Petitioner's request your Honorable Court to set aside, over rule or invalidate the above mentioned Tax Sale.

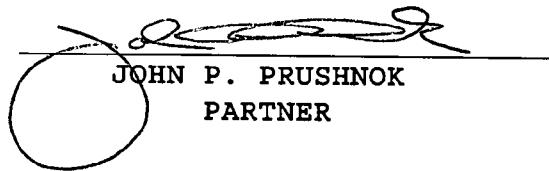
RESPECTFULLY SUBMITTED:



JAMES D. CARMELLA, ESQUIRE

VERIFICATION

I, JOHN P. PRUSHNOK, the within named Petitioner, do verify that the facts contained in the foregoing Objections, Exceptions and Appeal of Tax Sale 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 19 Pa.C.S. Section 4904, relating to unsworn falsification of authorities.



JOHN P. PRUSHNOK
PARTNER

DEFENDANTS' DEEDS

1. Deed of Forney D. Winner and Mary E. Winner, his wife, to John Paul Prushnok, et al., dated September 9, 1988, and recorded in Clearfield County Recorder's Office at Deed Book Volume 1247, Page 577
2. Deed of Mark Bowles, individually and doing business as Bowles Mining Corporation, to John Paul Prushnok, et al., dated March 29, 1989, and recorded in Clearfield County at Deed Book Volume 1275, Page 249
3. Deed of Martha L. Wagner to John Paul Prushnok, et al., dated December 12, 1988, and recorded in Clearfield County at Deed Book Volume 1261, Page 188
4. Deed of John Erbaugh to John Paul Prushnok, et al., dated December 9, 1988, and recorded in Clearfield County at Deed Book Volume 1259, Page 321
5. Deed of Mason Brooks, widower, et al., to John Paul Prushnok, et al., dated October 17, 1988, and recorded in Clearfield County at Deed Book Volume 1262, Page 585
6. Deed of Anna McAulay Kantz to John Paul Prushnok, et al., dated October, 1988, signed on December 6, 1988 and recorded in Clearfield County at Deed Book Volume 1258, Page 580
7. Deed of Alice Kantz Howell, et vir., to John Paul Prushnok, et al., dated December 7, 1988, and recorded in Clearfield County at Deed Book Volume 1259, Page 536
8. Deed of Jane Baird Kantz to John Paul Prushnok, et al., dated December 8, 1988, and recorded in Clearfield County at Deed Book Volume 1259, Page 540
9. Deed of Barbara Gould, also known as Barbara Goold, to John Paul Prushnok, et al., dated October 2, 1988, and recorded in Deed Book Volume 1262, Page 79
10. Deed of Carl Schoenstedt to John Paul Prushnok, et al., dated October, 1988 and signed on December 28, 1988, being recorded in Clearfield County at Deed Book Volume 1262, Page 591

EXHIBIT

"A"

11. Deed of Betty Ashland to John Paul Prushnok, et al., dated December 23, 1988, and recorded in Clearfield County at Deed Book Volume 1261, Page 364
12. Deed of Sheela K. Seeley to John Paul Prushnok, et al., dated December 17, 1988, and recorded in Clearfield County at Deed Book Volume 1261, Page 186
13. Deed of Helen S. Roth to John Paul Prushnok, et al., dated December 9, 1988, and recorded in Clearfield County at Deed Book Volume 1259, page 544
14. Deed of Louis Nairn to John Paul Prushnok, et al., dated December 7, 1988, and recorded in Clearfield County at Deed Book Volume 1258, Page 578
15. Deed of Buelha Kantz to John Paul Prushnok, et al., dated December 8, 1988, and recorded in Clearfield County at Deed Book Volume 1259, Page 323
16. Deed of Garthwood Taylor to John Paul Prushnok, et al., dated December 19, 1988, and recorded in Clearfield County at Deed Book Volume 1262, Page 589
17. Deed of Jessie Taylor to John Paul Prushnok, et al., dated February 3, 1989, and recorded in Clearfield County at Deed Book 1267, Page 598
18. Deed of A.W. Lee Heirs, namely, A.L. Moore, Jr., et al., to John Paul Prushnok, et al., dated October 25, 1988, recorded in Clearfield County at Deed Book Volume 1255, Page 298
19. Deed of Mary Preston to John Paul Prushnok, et al., dated July 21, 1989, recorded in Clearfield County at Deed Book Volume 1294, Page 380
20. Deed of David Passmore, et al., to John P. Prushnok, et al., dated September 2, 1998 and recorded in Clearfield County at Deed Book Volume 1967, Page 299
21. Deed of Robert D. Rorabaugh, et al., trading as Rorabaugh Lumber Company, a partnership, to John P. Prushnok, et al., dated August 3, 1998 and recorded in Clearfield County at Deed Book Volume 1971, Page 422

JAMES D. CARMELLA
ATTORNEY AT LAW
724 CHURCH STREET
INDIANA, PENNSYLVANIA 15701

TELEPHONE
(412) 349-7722
FAX: (412) 349-7733

FILE COPY

March 13, 1992

Clearfield County Tax Assessment Office
219 East Market Street
Clearfield, PA 16830

ATTENTION: Mary Ann Wesdock

RE: Correction of Assessment

Dear Mary Ann:

I thank you for speaking with me by telephone recently on change of assessment information for certain parcels in Burnside Township and Burnside Borough.

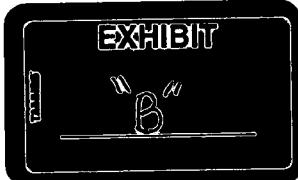
By Order dated January 17, 1992, President Judge John K. Reilly, Jr., resolved a question on the title to the subject properties in a Quiet Title Action filed at No. 89-330-CD. A copy of the Opinion and Order are attached.

The identity and ownership of the parcels involved are as follows:

Control # 108-0-33984

Owners: 5/6th Interest in 84 Acres Coal, Gas and Oil
John Paul Prushnok, et al.
c/o Quintech-Information Systems
115 South Sixth Street
Indiana, PA 15701

1/6th Interest in 84 Acres Coal, Gas and Oil
Barbara Beasley Fog, et al.
c/o Winnifred Jones-Wenger
20 North Second Street
Philipsburg, PA 16866



March 13, 1992
Clearfield County Tax Assessment Office
Page 2.

Control # 002-0-48759

Owners: 5/6th Interest in 145 Acres Coal, Gas and Oil
John Paul Prushnok, et al.
c/o Quintech-Information Systems
115 South Sixth Street
Indiana, PA 15701

1/6th Interest in 84 Acres Coal, Gas and Oil
Barbara Beasley Fog, et al.
c/o Winnifred Jones-Wenger
20 North Second Street
Philipsburg, PA 16866

Control # 002-0-00160 145 Acres Surface (Burnside Borough)

Owners: John Paul Prushnok, et al.
c/o Quintech-Information Systems
115 South Sixth Street
Indiana, PA 15701

Ownership of the Township surface over lying Control #
108-0-33984 shall remain as is.

If you should have any further questions on this matter, please
feel free to contact me.

Very truly yours,

JAMES D. CARMELLA

JDC:mkm
Enclosure
MK258.004

bc:John Newcom

FILE COPY

JAMES D. CARMELLA

ATTORNEY AT LAW

724 CHURCH STREET • INDIANA, PENNSYLVANIA 15701
TELEPHONE (412) 349-7722 FAX (412) 349-7733

June 21, 1994

Clearfield County Assessment Office
1 North Second Street
Clearfield, PA 16830

RE: Change in Assessment
A-13 2 24
A-12 108 39

Dear Ladies and Gentlemen:

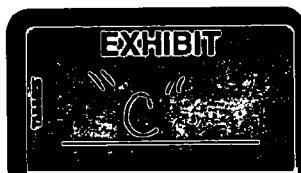
Please be advised that I am attorney for Andray Mining Company who recently acquired an interest in property (surface and coal) in Burnside Borough and coal in Burnside Township. I believe the above mentioned assessment numbers relate to these properties.

My client's ownership of this property is as a result of an Opinion and Order issued by Judge Reilly on January 17, 1992 in a case filed at No. 89-330-CD before the Common Pleas Court of Clearfield County. Post-Trial Motions were filed to this Order which were dismissed by Order dated August 3, 1992. An appeal to Superior Court was taken on this case in which case Judge Reilly's opinion was affirmed by Order dated November 24, 1993. I enclose copies of these three Orders for your information.

The Burnside Borough property was formerly assessed to Robert Rorabaugh, known as 145 acres. The present owner of the surface and 5/6 of the coal interest is:

John Paul Prushnok, George Daniel Prushnok and David Mark Prushnok, trading as Andray Mining Company

c/o P & N Coal Company
240 West Mahoning Street
Punxsutawney, PA 15767



June 21, 1994
Clearfield County Assessment Office
Page 2

The township property was formerly assessed in the name of J&G Iraca and is known as 21 acres. The above mentioned Andray Mining Company owns a 5/6 interest in the coal underlying such property.

For your information, 1/6 of the coal underlying both tracts is presently owned by Barbara Beasly Fog whose attorney is Winifred H. Jones-Wenger, Esquire of 20 North Second Street, P.O. Box 469, Philipsburg, PA 16866.

I am also directing a copy of this letter to the Tax Claim Bureau of Clearfield County for their information. If there are any back taxes due on these assessments, please notify me immediately.

Should you have any questions on this please feel free to contact me.

Very truly yours,

James D. Carmella

JDC:mjb
mj94512.doc

cc: Clearfield County Tax Claim Bureau (with enclosures)
Winifred H. Jones-Wenger (without enclosures)

BC Joh Neuvore

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012421 GTH Carmella
William A. Shew
Preston Gregory
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3cc atth.

JOHN P. PRUSHNOK, GEORGE : IN THE COURT OF COMMON PLEAS
DANIEL PRUSHNOK, and DAVID : CLEARFIELD COUNTY, PENNSYLVANIA
M. PRUSHNOK, t/a ANDRAY :
MINING COMPANY :
Petitioners :
: :
vs. : No. 02636 CD :
: :
CLEARFIELD COUNTY :
Respondent. :
:

ACCEPTANCE OF SERVICE

I, Kim C. Kesner, Esquire, County Solicitor, do hereby accept service of a true and correct copy of Petitioners' Objections, Exceptions and Appeal of Tax Sale in the above-captioned action on behalf of Clearfield County, Respondent.

DATE: 4/22/02



Kim C. Kesner, Esquire
Attorney for Respondent

1k02047appealoftaxsale

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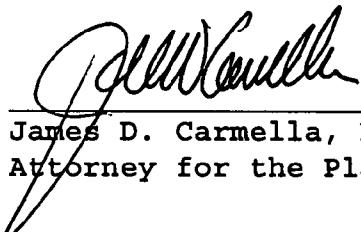
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William A. Shaw
Prothonotary

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M. PRUSHNOK, t/a ANDRAY :
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vs. : No. 02-636-CD
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:

AFFIDAVIT OF SERVICE

I, James D. Carmella, Esquire, do hereby certify that on April 30, 2001, I have served a true and correct copy of Plaintiff's Petition Stating Objections, Exceptions and Appeal of Tax Sale and the Order dated April 24, 2002 in the above-captioned action by United States First Class Mail, postage prepaid, upon the following:

Kim C. Kesner, Esquire
Solicitor for Clearfield County
23 North Second Street
Indiana, PA 15701


James D. Carmella, Esquire
Attorney for the Plaintiff

FILED

MAY 02 2002
mjh/mcc
William A. Shaw
Prothonotary

1k02086affofservice

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOHN P. PRUSHNOK, GEORGE :
DANIEL PRUSHNOK, and DAVID :
M. PRUSHNOK, t/a ANDRAY : No. 02-636-CD
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FILED

SEP 18 2003

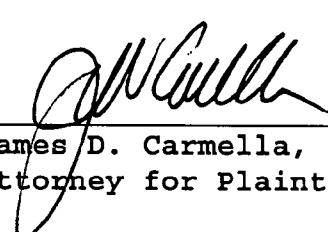
William A. Shaw
Prothonotary

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DANIEL PRUSHNOK, and DAVID	:	CLEARFIELD COUNTY, PENNSYLVANIA
M. PRUSHNOK, t/a ANDRAY	:	
MINING COMPANY	:	
Petitioners	:	
	:	
vs.	:	No. 02-636-CD
	:	
CLEARFIELD COUNTY	:	
Respondent.	:	

PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Please discontinue the above captioned action.



James D. Carmella, Esquire
Attorney for Plaintiff

FILED

M 1:46 PM 1^{CC + CUST}
SEP 18 2003
CUST TO CR

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

**John P. Prushnok
George Daniel Prushnok
David M. Prushnok
Andray Mining Company**

vs.
Clearfield County

No. 2002-00636-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on September 18, 2003, marked:

Discontinued, settled and ended

Record costs in the sum of \$80.00 have been paid in full by Attorney.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 18th day of September A.D. 2003.

William A. Shaw, Prothonotary