

04-280-CD
IN RE CLEARFIELD COUNTY TAX CLAIM, ETAL.

Clfd. Co. Tax Claim, Howard Harkleroad et
2004-280-CD

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

IN RE: CLEARFIELD COUNTY :
TAX CLAIM NO. 108-C16-000-00004 and : No. 04- 280-CD
TAX CLAIM NO. 108-C16-000-00005 :

CASE NUMBER: 04- -CD

TYPE OF CASE: Civil

TYPE OF PLEADING: MOTION TO SET ASIDE TAX SALE

FILED ON BEHALF OF: Howard Harkleroad and Margaret Harkleroad

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

FILED

FEB 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

IN RE: CLEARFIELD COUNTY :
TAX CLAIM NO. 108-C16-000-00004 and : No. 04-
TAX CLAIM NO. 108-C16-000-00005 :

MOTION TO SET ASIDE TAX SALE


AND NOW COMES Howard Harkleroad and Margaret Harkleroad, by and through their attorney, R. Denning Gearhart, who moves to set aside the sale of certain real estate by the Clearfield County Tax Claim Bureau, and in support thereof avers as follows:

1. Margaret Harkleroad is the daughter of Melvin Brothers, deceased.
2. Mr. Brothers was the owner of a 20% interest in the coal, minerals, gas and oil of two separate tracts of real estate located in Burnside Township Clearfield County, indicated by the Tax Assessment maps found at the Clearfield County Tax Claim Bureau as Map No. 108-C16-000-00004 and Map No. 108-C16-000-00005.
3. Since the death of Mr. Brothers, Margaret Harkleroad has been paying the real estate taxes on his interest.
4. Despite her belief that she had been paying all of the taxes that were due, and what she was advised were due, she received two letters dated January 23, 2004, (copies attached as Movants' Exhibit A and B.) notifying her that she did not get credit for the payment of taxes in 1994, 1995 and 1996.
5. The letter went on to notify Mrs. Harkleroad that the Clearfield County Tax Claim Bureau had accepted a bid of \$150.00 for each tract.
6. The letter states that the property had previously been offered at a Public Tax Sale.

7. Mrs. Harkleroad had never been notified of any scheduled tax sale or other attempts to collect taxes on this property.
8. She is entitled to notice, not only that the property taxes have been sent to the Clearfield County Tax Claim Bureau, but that they are being offered at the Public Tax Sale.
9. Because she had not been notified, the proposed sale should be set aside and the taxpayers should be given an opportunity to pay the owed taxes.

WHEREFORE, your Movant prays Your Honorable Court to set aside and disallow the sales of the above referenced tracts of real estate upon payment of the taxes due.

Respectfully submitted,



R. Denning Gearhart, Esq.
Attorney for Movants

AFFIDAVIT


R. DENNING GEARHART, being duly sworn according to law, deposes and says that he is the agent of the Movant, HOWARD HARKLEROAD and MARGARET HARKLEROAD, that said Movant cannot make the verification to the foregoing Motion because they were not present on the day and date this Answer was filed, and further, that the Movant would not be available until after the day of the filing of this Motion, and that the facts set forth in the foregoing Motion are based on information provided to Counsel by the Movant and based partially upon personal knowledge of the Movant's Attorney. However, the Movant verified this information to R. DENNING GEARHART, their counsel, fully aware of the penalties of false statements under 18 Pa. C.S.A., section 4904, relating to unsworn falsification to authorities.


R. Denning Gearhart

Sworn to and subscribed

before me this 26 day

of February, 2004.


Notary Public

NOTARIAL SEAL
KATHLEEN A. RICOTTA, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires June 7, 2005

Clearfield County Tax Claim Bureau



230 EAST MARKET STREET
SUITE 121
Clearfield, Pennsylvania 16830

TELEPHONE (814) 765-2641
FAX (814) 765-2640

January 23, 2004

Melvin Brothers
C/O Margaret Harkleroad
1013 Harkle Road
Westover PA 16692

RE: Map #108-C16-000-00004
Desc: 20% INT IN 11 A COAL, MIN, GAS & OIL
OWNER: MELVIN BROTHERS

Dear Mr. Brothers,

Please be advised that this office has received and accepted a bid of \$150.00 for the above referenced property. Real estate taxes have been unpaid on this property from 1994 to 1996, although offered at tax sale, no bid has been received until now.

The sale has been scheduled for March 24, 2004 at 9:00 AM in the Tax Claim Bureau, 230 E Market Street Clearfield. Notice of this proposed sale will be published in The Progress and the Clearfield County Legal Journal on January 23, 2004 and February 6, 2004. Any party objecting to the sale price accepted for this property may, within forty-five days of this notice, petition the Court of Common Pleas to disapprove the sale.

Should you have further questions, please contact me at 765-2641.

Sincerely,

Mary Anne Wesdock
Mary Anne Wesdock, Director

MAW/nal

EXHIBIT "A"

Clearfield County Tax Claim Bureau



230 EAST MARKET STREET
SUITE 121
Clearfield, Pennsylvania 16830

TELEPHONE (814) 765-2641
FAX (814) 765-2640

January 23, 2004

Melvin Brothers
C/O Margaret Harkleroad
1013 Harkle Road
Westover PA 16692

RE: Map #108-C16-000-00005
Desc: 20% INT IN 33 A COAL, MIN, GAS & OIL
OWNER: MELVIN BROTHERS

Dear Mr. Brothers,

Please be advised that this office has received and accepted a bid of \$150.00 for the above referenced property. Real estate taxes have been unpaid on this property from 1994 to 1996, although offered at tax sale, no bid has been received until now.

The sale has been scheduled for March 24, 2004 at 9:00 AM in the Tax Claim Bureau, 230 E Market Street Clearfield. Notice of this proposed sale will be published in The Progress and the Clearfield County Legal Journal on January 23, 2004 and February 6, 2004. Any party objecting to the sale price accepted for this property may, within forty-five days of this notice, petition the Court of Common Pleas to disapprove the sale.

Should you have further questions, please contact me at 765-2641.

Sincerely,

Mary Anne Wesdock
Mary Anne Wesdock, Director

MAW/nal

EXHIBIT "B"

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

IN RE: CLEARFIELD COUNTY
TAX CLAIM NO. 108-C16-000-00004
and
TAX CLAIM NO. 108-C16-000-00005

MOTION TO SET ASIDE TAX SALE

FILED 3cc

10/23/25
FEB 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

No Charge

Att Gearhart

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

CP

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

IN RE: CLEARFIELD COUNTY :
TAX CLAIM NO. 108-C16-000-00004 and : No. 04-280-CD
TAX CLAIM NO. 108-C16-000-00005 :

RULE ON MOTION TO SET ASIDE TAX SALE

AND NOW, this 1st Day of March, 2004, upon presentation and consideration of the foregoing Motion to Set Aside Tax Sale, a Rule is hereby issued upon the Respondent, CLEARFIELD COUNTY TAX CLAIM BUREAU, to show cause why the Petitioner's Motion to declare the tax sale invalid and void should not be granted.

RULE RETURNABLE for written response on March, 2004.

HEARING to be scheduled if necessary following the filing of an Answer.

BY THE COURT

Judith J. Ammerman
JUDGE

FILED

MAR 01 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED

3cc Atty General

of 1:06 PM
MAR 01 2004

1cc Atty Kernes

1cc Tax Assessment

William A. Shaw
Prothonotary/Clerk of Courts

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

IN RE: CLEARFIELD COUNTY :
TAX CLAIM NO. 108-C16-000-00004 and : No. 04-280-CD
TAX CLAIM NO. 108-C16-000-00005 :

CASE NUMBER: No. 04-280-CD
TYPE OF CASE: Civil
TYPE OF PLEADING: CERTIFICATE OF SERVICE
FILED ON BEHALF OF: Howard & Margaret Harkleroad

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

FILED

MAR 03 2004

William A. Shaw
Prothonotary


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

IN RE: CLEARFIELD COUNTY :
TAX CLAIM NO. 108-C16-000-00004 and : No. 04-280-CD
TAX CLAIM NO. 108-C16-000-00005 :

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a certified copy
of the MOTION TO SET ASIDE TAX SALE AND RULE ON MOTION TO SET ASIDE
TAX SALE filed in the above captioned matter on Mary Ann Wesdock by personally hand-
delivering a copy to:

Mary Ann Wesdock
Chief Tax Assessor/Director
Tax Claim Bureau
Court House
Clearfield, PA 16830


R. Denning Gearhart, Esq.
Attorney for Howard & Margaret
Harkleroad

Dated: March 2, 2004

FILED

11:40 AM NDC
MAR 03 2004

William A. Shaw
Proprietary

CA

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

FILED

IN RE: CLEARFIELD COUNTY : No. 04-280-CD
TAX CLAIM NO. 108-C16-000-00004 and :
TAX CLAIM NO. 108-C16-000-00005 :

MAR 22 2004

William A. Shaw
Prothonotary

WRITTEN RESPONSE TO RULE RETURNABLE/ANSWER
AND PRELIMINARY OBJECTIONS TO MOTION TO
SET ASIDE TAX SALE

AND NOW comes the Clearfield County Tax Claim Bureau ("TCB") by Kim C. Kesner, Esquire, Solicitor of Clearfield County and files the following written response to this Court's Rule Returnable dated March 1, 2004 in the form of an Answer and Preliminary Objections to the Motion to Set Aside Tax Sale filed by Howard Harkleroad and Margaret Harkleroad:

1. The two tax sales being the subject of the Harkleroad's Motion are both "private sales" authorized and governed by 72 P.S. §5860.613 rather than "upset sales" authorized and governed by 72 P.S. §5860.601.

2. Therefore, as a matter of law, the claims made in Paragraphs 8 and 9 of the Motion that notice to the Movants was defective are irrelevant and immaterial and afford no cognizable basis for the relief requested.

3. Movants' request that "...the proposed sale should be set aside..." is a nonsequetur. Defective notice can be a basis for setting aside an upset sale which has occurred. However, in this case, no sale has yet been conducted.

4. Under 72 P.S. §5860.613, a property for which there are delinquent real estate taxes may be sold by the Tax Claim Bureau at private sale after notice is given to the owner(s) of the property.

5. Such notice was provided to the Harkleroads and in fact, in reaction to this notice, their Motion has been filed prior to the proposed private sales scheduled for March 24, 2004.

6. 72 P.S. §5860.613 provides the following procedural rights to an owner:

The corporate authorities of any taxing district having any tax claims or tax judgments against the property which is to be sold, the owner, an interested party, or person interested in purchasing the property may, if not satisfied that the sale price approved by the Bureau is sufficient, within forty-five (45) days after notice of the proposed sale Petition the Court of Common Pleas of the County to disapprove the sale. The Court shall, in such case, after notice to each such taxing district, the owner, the Bureau, the purchaser and any other person who has joined in the Petition, hear all parties. After such hearing, the Court may either confirm or disapprove the sale as to it appears just and proper. If the sale is disapproved, the Court shall, at the same time fix a price below which such property shall not be sold in order that, if no private sale can be arranged, the property will be sold at public judicial sale under this Act. If more than one party agrees to pay the minimum price set by the Court, the Court shall direct the Bureau to conduct an auction-style bid of the property among the parties to the proceedings. If only one party agrees to pay the minimum price set by the Court, the Bureau is to sell the property to that party without the necessity of an auction. (Emphasis added.)

7. The Motion does not deny that the assessments identified by Map Nos. 108-C16-000-00004 and 108-C16-000-00005 are subject to unpaid and delinquent real estate taxes.

8. Under 72 P.S. §5860.613, once a property has been offered at private sale and a proposed purchaser has made an offer, the original property owner cannot thwart the sale by offering all back taxes and penalties. See Getson v. Somerset County Tax Claim Bureau, 696 A.2d 903 (Pa. Cmwlth. 1997). appeal denied 553 Pa. 684, 717 A.2d 535

9. This Court lacks authority to halt, enjoin or “set aside” a private sale except in conformity with 72 P.S. §5860.613.

10. A property owner challenging a private sale is limited to filing a Petition under 72 P.S. §5860.613 which was not done in this case.

11. Therefore, Movants have failed to procedurally and substantively make a claim on which the relief they have requested can be granted.

WHEREFORE, the Clearfield County Tax Claim Bureau respectfully requests your Honorable Court to dismiss the Motion to Set Aside Tax Sale.

Respectfully submitted,

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


Kim C. Kesner, Esquire
Solicitor - Clearfield County
23 North Second Street
Clearfield, PA 16830

CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 22nd day of March, 2004, I caused to be served a true and correct copy of the Written Response of the Clearfield County Tax Claim Bureau to the Motion to Set Aside 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



Kim C. Kesner, Esquire

FILED
D 8:50 AM 300 to 214
MAR 22 2004

William A. Shaw
Prothonotary

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

FILED

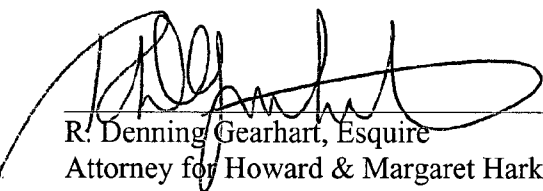
01/11/05 2:00 PM
FEB 04 2005

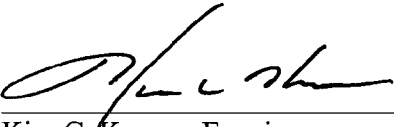
IN RE: CLEARFIELD COUNTY : No. 04-280-CD
Tax Claim No. 108-C16-000-00004 and :
Tax Claim No. 108-C16-000-00005 :

William A. Shaw
Prothonotary

STIPULATION

The undersigned hereby signify their Stipulation and Agreement that the following Order be entered in full and final disposition of the Motion to Set Aside Tax Sale filed to the above term and number.


R. Denning Gearhart, Esquire
Attorney for Howard & Margaret Harkleroad


Kim C. Kesner, Esquire
Solicitor of Clearfield County Tax Claim
Bureau

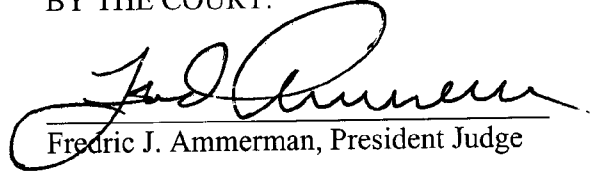
ORDER

AND NOW, this 4 day of February, 2005, upon the foregoing Stipulation and in adjudication of the pending Motion to Set Aside Tax Sale(s), it is hereby ORDERED and DECREED as follows:

1. The proposed private sales being the subject of the Motion are hereby disapproved by authority of 72 P.S. §5860.613(a).
2. Subject to further order of this Court, the assessments being the subject matter of the Motion, shall not be sold for less than their upset price(s).
3. The Clearfield County Tax Claim Bureau shall conduct an auction-style bidding of the assessments being the subject matter of the Motion between the bidder(s) and the

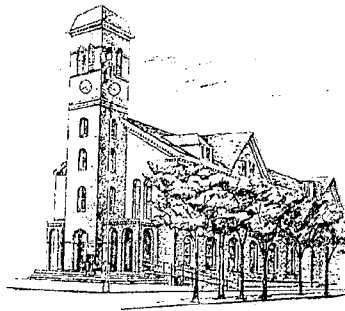
Movants. The minimum bid for each and both assessment(s) shall be the upset price(s) which is
Two Hundred Nine and 90/100 (\$209.90) Dollars per assessment.

BY THE COURT:



Fredric J. Ammerman, President Judge

Mark B. McCracken
Rex D. Read
Michael R. Lytle
County Commissioners



Kim C. Kesner
Solicitor
Lisa McFadden
Chief Clerk

Clearfield County

Court House
230 East Market Street
Suite 101
Clearfield, Pennsylvania 16830
PHONE (814) 765-2641
FAX (814) 765-2640

January 19, 2005

Honorable Fredric J. Ammerman, President Judge
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

**RE: IN RE: Clearfield County Tax Claim No. 108-C16-000-00004 and 108-C16-000-00005
No. 04-280-CD**

Dear Judge Ammerman:

We join in this letter and request your consideration of the within Stipulation and proposed Order for entry. Pending before you is Mr. Gearhart's Motion to Set Aside Tax Sale. As the record will reflect, upon presentation of the Motion, you issued a rule to the Clearfield County Tax Claim Bureau, returnable by written response. The Tax Claim Bureau did file a written response. The rule which you issued provided that "hearing to be scheduled if necessary following the filing of an answer."

However, we submit the within Stipulation in lieu of a hearing and we submit that the proposed Order fully and properly resolves the matter.

If you would require anything further from us in consideration of this, kindly advise.

Sincerely yours,

Kim C. Kesner

R. Denning Gearhart

KCK/klz
Enclosure