

07-1343-CD
A. Gates vs Clkd Cty Tax Claim

Civil Other-COUNT

Date	Judge
8/21/2007	New Case Filed. No Judge
(1) Filing: Petition to Disapprove Private Sale Paid by: Gates, Andrew P. (plaintiff) Receipt number: 1920325 Dated: 08/21/2007 Amount: \$85.00 (Check) 6CC Atty Seaman.	4 No Judge
(2) Order AND NOW, this 21st day of August 2007, upon consideration of the foregoing Petition, IT IS ORDERED AND DECREED that the proposed private sale by the Clearfield County Tax Claim Bureau of 162.8 acres coal rights assessed to Robert Spencer and identified by Clearfield County Assessment Map. No. 108-C14-02 for the sum of \$200.00 is disapproved. Respondent shall conduct an auction-style bid of said 162.8 acres coal rights between petitioner and the party who made the private bid of \$200.00, with a starting price below which the same shall not be sold in the amount of \$5,270.74. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 6CC Atty Seaman (will serve)	1 Fredric Joseph Ammerman
(3) Motion to Rescind Court Order and Motion for Declaratory Judgment, filed by s/ F. Cortez Bell II Esq. 7CC Atty.	13 Fredric Joseph Ammerman
(4) Order, this 19th day of Sept., 2007, it is Ordered that the Order of Court issued in this matter on August 21, 2007 is rescinded and vacated. Further Ordered that a Rule is granted on the Petitioner, Andrew P. Gates, to appear and show cause why the Motion for Declaratory Judgment should not be granted. Rule Returnable for Answer by the Petitioner Andrew P. Gates and hearing on said Motions to be held on the 16th day of Nov., 2007, at 11:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 8CC to Atty.	1 Fredric Joseph Ammerman
(5) Order, this 9th day of Oct., 2007, it is Ordered that private sale scheduled for August 29, 2007 shall not take place, nor shall any other private sale be held at least until after a hearing on the Petition to Disapprove Private Sale to be held on the 16th day of Nov., 2007 commencing at 11:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 7 CC to Atty. Gates (will serve)	1 Fredric Joseph Ammerman
(6) Affidavit of Service filed. Mailed on the 10th day of October 2007 by certified maile a certified copy of Order dated October 9, 2007 to Burnside Township, Robert G. Spencer-c/o Shad B. Spencer, Harmony School District, Clearfield County Tax Claim Bureau and Clearfield County Commissioners-c/o Kim C. Kesner Esq., filed by s/ Laurance B. Seaman Esq. No CC.	3 Fredric Joseph Ammerman
(7) Answer to Petition to Disapprove Private Sale, filed by s/F. Cortez Bell, III, Esq. 10 CC Attorney Bell	6 Fredric Joseph Ammerman
(8) Answer to Motion to Rescind Court Order and Motion for Declaratory Judgment, filed by s/Laurance B. Seaman, Esq. Five CC Attorney Seaman	15 Fredric Joseph Ammerman
(9) Order, this 16th day of Nov., 2007, following the taking of testimony, it is Ordered that counsel for the petitioner and respondents shall supply the Court with an appropriate brief within no more than 30 days from this date. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Seaman, 1CC Atty. Bell; 1CC Def.	1 Fredric Joseph Ammerman

Date: 4/4/2008
Time: 09:46 AM
Page 2 of 2

Clearfield County Court of Common Pleas
ROA Report
Case: 2007-01343-CD

User: GLKNISLEY

Current Judge: Fredric Joseph Ammerman

Andrew P. Gatesvs.Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge
12/13/2007 ⑩	Order, NOW, this 13th day of December 2007, the Court being in receipt of Fredric Joseph Ammerman a letter from F. Cortez Bell III, Esquire, Counsel for Michael A. Rudella, one of the Petitioners in the above captioned matter, seeking a continuance of the briefing schedule set forth by the Court in its Order dated November 16, 2007, and it appearing that the other counsel involved are in agreement therewith, it is the ORDER of this Court that said request be and is hereby granted and the briefs of all parties shall be due to the Court on or before January 25, 2008. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 5CC Atty Bell.
1/7/2008 ⑪	Transcript of Proceedings, filed. Held on Nov. 16, 2007 before Fredric J. Fredric Joseph Ammerman Ammerman, Pres. Judge.
2/28/2008 ⑫	Opinion and Order, Order: this 28th day of Feb., 2008, following evidentiary Fredric Joseph Ammerman hearing and consistent with the foregoing Opinion, it is Ordered: (see ⑬ original). By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty: 8 Seaman, F. Bell; 1CC Def. - Tax Claim; 1CC D. Mikesell; 1CC Law Library
3/27/2008 ⑬	Filing: Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Fredric Joseph Ammerman Rudella, Michael A.) Receipt number: 1923304 Dated: 3/27/2008 ⑭ Amount: \$50.00 (Check) Filed by s/ F. Cortez Bell, III, Esquire. 7CC to Atty. Bell, 1CC Commonwealth Court w/check for \$60.00
3/31/2008 ⑭	From Commonwealth Court of Pennsylvania: Notice of Docketing Appeal Fredric Joseph Ammerman and Notice to Counsel, filed. no CC ⑮
4/1/2008 ⑮	Order, this 31st day of march, 2008, this Court having been notified of Appeal, it is Ordered that Michael A. Rudella, Appellant, file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to: Atty. Seaman; Clfd. Co. Tax Claim Bureau; and Atty. F. Cortez Bell ⑯

Date: 5/2/2008

Time: 08:31 AM

Page 1 of 1

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2007-01343-CD

Current Judge: Fredric Joseph Ammerman

Andrew P. Gatesvs.Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Selected Items	Judge
4/21/2008	Statement of Matters Complained of on Appeal, filed by s/ F. Cortez Bell, Esquire. 6CC Atty. Bell	Fredric Joseph Ammerman <i>(Handwritten signature)</i>

IN THE COMMONWEALTH COURT OF PENNSYLVANIA.

Andrew P. Gates

:

07-1343-CD

v.

:

Clearfield County Tax
Claim Bureau

:

FILED

m1124781
OCT 27 2008

(cc)
S William A. Shaw
Prothonotary/Clerk of Courts

Appeal of: Michael A. Rudella

:

No. 541 C.D. 2008

:

Argued: September 8, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE BUTLER**

FILED: October 23, 2008

Michael A. Rudella (Rudella) appeals from an order of the Court of Common Pleas of Clearfield County (trial court) wherein the trial court declared that Section 205(d) of the Real Estate Tax Sale Law (Tax Sale Law)¹ provides the proceeds distribution scheme for the private sale of certain coal rights of Robert G. Spencer (Spencer), and that Andrew P. Gates (Gates) is qualified to bid on the subject property at the sale.

Rudella submitted a private sale bid of \$200.00 to the Clearfield County Tax Claim Bureau (TCB) to purchase 162.8 acres of coal rights owned by Spencer on January 31, 2007. The TCB accepted the bid and published the

¹ Act of July 7, 1947, P.L. 1368, *as amended*, 72 P.S. § 5860.205(d).

required notice of the proposed sale. On August 21, 2007, Gates timely filed a Petition to Disapprove Private Sale. The trial court entered an order on that same date disapproving the sale and ordering an auction-style sale between Gates and Rudella with the starting price set at a minimum of \$5,270.74.

On September 12, 2007, Rudella filed a Motion to Rescind Court Order and Motion for Declaratory Judgment. On September 19, 2007, the trial court entered an order rescinding and vacating the prior order and entered a Rule to Show Cause (Rule) why the Motion for Declaratory Judgment should not be granted. On October 9, 2007, the trial court entered an order by agreement of Gates and Rudella that the sale would not take place until after the hearing on the Rule. Gates filed his Answer to Petition to Disapprove Private Sale and his Answer to Motion to Rescind Court Order and Motion for Declaratory Judgment on November 15, 2007.

The trial court held an evidentiary hearing on November 16, 2007, and ordered briefs at that time. On February 28, 2008, the trial court entered an opinion and order finding that the provisions of Section 205(d) apply to the instant sale, thereby providing the distribution scheme for the proceeds of the sale, and that Gates is qualified to bid on the subject property at the instant sale. Rudella appealed the trial court's order to this Court.²

There are two specific issues before us: whether the trial court erred in applying the proceeds distribution scheme in Section 205(d) to the instant sale; and

² The appellate standard of review in a tax sale case is limited to determining whether the trial court abused its discretion, rendered a decision lacking supporting evidence, or clearly erred as a matter of law. *Santarelli Real Estate, Inc. v. Tax Claim Bureau of Lackawanna County*, 867 A.2d 717 (Pa. Cmwlth. 2005).

whether Gates is qualified to bid on the subject property given his involvement with the record owner of the property.

Rudella argues on appeal that the provisions of Section 205(d) should not apply to private tax sales. We disagree.

Section 205(d) sets forth:

It shall be the duty of the bureau to distribute all moneys collected as the result of any tax sale conducted under the provisions of this act, less the deductions authorized by subsection (c), 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.

(5) Fifth, to the owner of the property.

(Emphasis added). Without qualification, this section is the distribution scheme for all monies collected as a result of tax sales under the Tax Sale Law, and it does

not set apart private tax sales as Rudella suggests.³ In fact, in *Fieg v. Somerset County Tax Claim Bureau*, 658 A.2d 476 (Pa. Cmwlth. 1995), this Court held that Section 205(d) applies to private tax sales.

Rudella argues that amendments made to Sections 618 (repurchase by owner) and 619 (restrictions on purchases) of the Tax Sale Law⁴ after *Fieg*, disallow repurchase of property at any sale by its owner and, therefore, the owner should, likewise, be precluded from recovering the excess proceeds from the sale. In 1998, Section 618 of the Tax Sale Law, subsection (a), was amended to provide “[t]he owner shall have no right to purchase his own property at a judicial sale, private sale or from the bureau’s repository for unsold property under the provisions of this act.” Previously, Section 618 merely read that “[t]he owner shall have no right to purchase his own property at either a judicial sale or a private sale conducted under the provisions of this act.” Gates argues, and we agree, that Section 618’s substantive restriction on repurchase by an owner from a tax sale was already in effect when Section 205 was last amended, and when *Fieg* was decided in 1995. We also agree with Gates’ interpretation that Section 619 is inapplicable here, since it primarily addresses judicial sales of real estate subject to uncorrected housing code violations.⁵ Thus, we hold that the trial court did not err in applying the proceeds distribution scheme in Section 205(d) to the instant sale.

As to the issue of whether Gates is qualified to bid on the subject property, Section 613 of the Tax Sale Law⁶ provides in pertinent part:

³ See also Section 630 of the Tax Sale Law, 72 P.S. § 5860.630 (distribution of proceeds from sales of property from the repository for unsold properties must follow Section 205).

⁴ 72 P.S. §§ 5860.618, 5860.619.

⁵ Judicial sales of property are governed by Article VI, subsection (b) of the Tax Sale Law, which encompass Sections 610 through 612-2, 72 P.S. §§ 5860.610 - 612-2. The instant case is a private sale, which is governed by Article VI, subsection (c) of the Tax Sale Law.

⁶ 72 P.S. § 5860.613.

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 a 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.*

(Emphasis added). Pursuant to this statute, Gates was permitted to file the Petition to Disapprove Sale in his own capacity, as well as on behalf of Spencer, the owner of record. There is no question, however, that Section 618 precludes an owner from repurchasing his own property at a private tax sale. Pursuant to Section 618, therefore, neither Spencer, nor Gates if he were representing Spencer, could bid on the property at the private sale. Section 618 does not, however, preclude Gates from purchasing Spencer's property on his own or on behalf of Kyle Morgan (Morgan), Spencer's grandson and potential heir.

Rudella argues that Section 618(c) provides that an owner cannot repurchase his own property, and that Section 619(e) includes "beneficiary" within its definition of purchaser. He claims, therefore, that if Gates is permitted to bid on the property and to sell it to Morgan, a potential beneficiary of Spencer, the tax sale could be a sham which could result in the owner's retention of the property. We disagree.

Section 618(c) defines "owner," for purposes of that section only, as "any individual, partner, shareholder, trust, partnership, limited partnership, corporation or any other business association or any trust, partnership, limited partnership, corporation or any other business association that has any individual as part of the business association who had any ownership interest or rights in the property." There is nothing in the record that qualifies either Gates or Morgan as

an owner under Section 618(c).⁷ Gates has no interest in any of the owner's business associations, or any ownership interests or rights in the property in question. (Hearing Notes of Testimony, November 16, 2007, (N.T.) at 32). He would not be acting at the sale as an agent for the owner or any of his business associations. (N.T. at 12). Further, Gates stipulated at the hearing, and the court so ordered, that if Gates were to purchase the property, he is not permitted to sell it to the owner of record or any other legal entity in which the owner has or acquires an interest. (N.T. at 26; Trial Ct. Order at 8). Finally, while Morgan is an heir to Spencer, he has no interest in any of Spencer's business associations, or any ownership interests or rights in the property in question. (N.T. at 32-33, 42, 48-50).

As Gates and Morgan have no interest in any of Spencer's business associations, or any ownership interests or rights in the subject property, Gates is permitted to purchase the property in his own capacity, as well as on behalf of Morgan. As a precaution, if Gates succeeds in purchasing the property, by order of the trial court, he is precluded from selling it back to the owner, or any business entity wherein the owner has an interest. This measure would prevent the owner from using Gates to effectuate a sham upon the court as Rudella contends.

We hold that the provisions of Section 205(d) are applicable as the distribution scheme for the instant sale, and Gates is a qualified bidder, as he is not precluded thereunder from purchasing the instant property.

Accordingly, the order of the trial court is affirmed.

JOHNNY J. BUTLER
JOHNNY J. BUTLER, Judge

⁷ Since we found that Section 619 is inapplicable to the instant matter, we find that its definition of "purchaser" in Section 619(e) which includes "beneficiary" is also inapplicable.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Andrew P. Gates :
:
:
v. :
:
:
Clearfield County Tax :
Claim Bureau :
Appeal of: Michael A. Rudella : No. 541 C.D. 2008

ORDER

AND NOW, this 23rd day of October, 2008, the order of the Court of
Common Pleas of Clearfield County is hereby affirmed.

Johnny J. Butler

JOHNNY J. BUTLER, Judge

Certified from the Record

OCT 23 2008

and Order Exit

07-1343-CD



Supreme Court of Pennsylvania

Western District

November 24, 2008

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Andrew P. Gates
v.
Clearfield County Tax Claim Bureau

Petition of: Michael A. Rudella
Commonwealth Docket Number - 541 CD 2008

Trial Court/Agency Dkt. Number: 07-1343-CD
No. 555 WAL 2008

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: November 24, 2008

Disposition:
Date:

Reargument/Reconsideration Disposition:
Reargument/Reconsideration
Disposition Date:

/kao

FILED
NOV 26 2008
600
Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

March 28, 2008

nye

RE: Gates v. Clearfield Cnty Tax Claim Bur et al
No.: 541 CD 2008
Agency Docket Number: 07-1343-CD
Filed Date: March 27, 2008

07-1343-CD

Notice of Docketing Appeal

A Notice of Appeal from an order of your court has been docketed in the Commonwealth Court of Pennsylvania. The Commonwealth Court docket number must be on all correspondence and documents filed with the court.

Under Chapter 19 of the Pennsylvania Rules of Appellate Procedure, the Notice of Appeal has the effect of directing the Court to transmit the certified record in the matter to the Prothonotary of the Commonwealth Court.

The complete record, including the opinion of the trial judge, should be forwarded to the Commonwealth Court within sixty (60) days of the date of filing of the Notice of Appeal. Do not transmit a partial record.

Pa.R.A.P. 1921 to 1933 provides the standards for preparation, certification and transmission of the record.

The address to which the Court is to transmit the record is set forth on Page 2 of this notice.

Notice to Counsel

A copy of this notice is being sent to all parties or their counsel indicated on the proof of service accompanying the Notice of Appeal. The appearance of all counsel has been entered on the record in the Commonwealth Court. Counsel has thirty (30) days from the date of filing of the Notice of Appeal to file a praecipe to withdraw their appearance pursuant to Pa. R.A.P. 907 (b).

Appellant or Appellant's attorney should review the record of the trial court, in order to insure that it is complete, prior to certification to this Court. (Note: A copy of the Zoning Ordinance must accompany records in Zoning Appeal cases).

The addresses to which you are to transmit documents to this Court are set forth on Page 2 of this Notice.

If you have special needs, please contact this court in writing as soon as possible.

Attorney Name

F. Cortez Bell, III, Esq.

Kim C. Kesner, Esq.

Laurance B. Seaman, Esq.

Party Name

Michael A. Rudella

Clearfield County Tax Claim
Bureau

Andrew P. Gates

Party Type

Appellant

Appellee

Appellee

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
5 MAY 2008 07 58
cc: William A. Shaw
Prothonotary/Clerk of Courts

FILED NO CC
MAR 31 2008
GR

(#14)

Address all written communications to:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Room 624
Irvis Office Building
Harrisburg, PA 17120
(717) 255-1650

Filings may be made in person at the following address (except on Saturdays, Sundays and holidays observed by Pennsylvania Courts) between 9:00 a.m. and 4:00 p.m.

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Room 624
Sixth Floor
Irvis Office Building
Harrisburg, PA 17120
(717) 255-1650

Pleadings and similar papers (but not paperbooks or certified records) may also be filed in person only at:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Filing Office
Suite 990
The Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 560-5742

The hours of the Philadelphia Filing Office are 9:00 a.m. to 4:00 p.m.

Under Pa.R.A.P. 3702, writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office.

**CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(c)**

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the Court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

Andrew P. Gates

VS.

Clearfield County Tax Claim Bureau

Michael A. Rudella

07-1343-CD

In compliance with Pa. R.A.P. 1931 (c).

The documents compromising the record have been numbered from **No. 1 to**
17, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is

May 2, 2008.



William A. Shaw
Prothonotary/Clerk of Courts

(seal)

Date: 5/2/2008

Time: 10:28 AM

Page 1 of 2

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-01343-CD

Current Judge: Fredric Joseph Ammerman

Andrew P. Gatesvs.Clearfield County Tax Claim Bureau

Civil Other-COUNT

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Time: 10:28 AM

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Clearfield County Court of Common Pleas

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Civil Other-COUNT

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5/2/2008 V	May 2, 2008, Mailed Appeal to Commonwealth Court. May 2, 2008, Letters, Re: Notification of mailing appeal mailed to Laurance B. Seaman, Esq.; Clearfield County Tax Claim Bureau; and F. Cortez Bell, III, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	Fredric Joseph Ammerman

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAY 02 2008

Attest.

William L. Hudson
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1343-CD

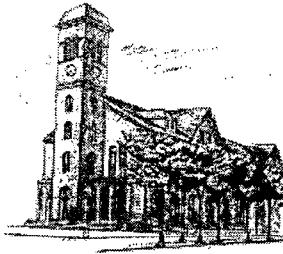
Andrew P. Gates

Vs.

Clearfield County Tax Claim Bureau

Michael A. Rudella

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	08/21/07	Petition to Disapprove Private Sale	04
02	08/21/07	Order, Re: Sale disapproved; respondent shall conduct auction-style bid	01
03	09/17/07	Motion to Rescind Court Order and Motion for Declaratory Judgment	13
04	09/19/07	Order, Re: Order issued August 21, 2007, rescinded and vacated; rule granted; rule returnable for answer and hearing	01
05	10/09/07	Order, Re: private sale shall not take place	01
06	10/19/07	Affidavit of Service, Re: Order dated October 9, 2007	03
07	11/15/07	Answer to Petition to Disapprove Private Sale	06
08	11/15/07	Answer to Motion to Rescind Court Order and Motion for Declaratory Judgment	15
09	11/30/07	Order, Re: briefs to be submitted	01
10	12/13/07	Order, Re: briefing schedule continued	01
11	01/07/08	Transcript of Proceedings	Separate Cover
12	02/28/08	Opinion and Order	08
13	03/27/08	Appeal to Commonwealth Court	12
14	03/31/08	Notice of Docketing Appeal and Notice to Counsel	02
15	04/01/08	Order, Re: concise statement to be filed	01
16	04/21/08	Statement of Matters Complained of on Appeal	03
17	05/02/08	Letters, Re: Notification of mailing appeal mailed to Laurance B. Seaman, Esq.; Clearfield County Tax Claim Bureau; and F. Cortez Bell, III, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	04



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

Fredric J. Ammerman, P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Laurance B. Seaman, Esq.
PO Box 846
2 North Front Street
Clearfield, PA 16830

Clearfield County Tax Claim Bureau
231 East Market Street
Clearfield, PA 16830

F. Cortez Bell, III, Esq.
PO Box 670
Clearfield, PA 16830

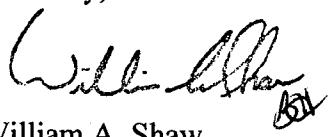
Andrew P. Gates
Vs.
Clearfield County Tax Claim Bureau
Michael A. Rudella

Court No. 07-1343-CD; Commonwealth Court No. 541 CD 2008

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Commonwealth Court of Pennsylvania on May 2, 2008.

Sincerely,



William A. Shaw

Prothonotary/Clerk of Courts

FILED
010-03621
MAY 02 2008


William A. Shaw
Prothonotary/Clerk of Courts

#17

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1343-CD

Andrew P. Gates

vs.

Clearfield County Tax Claim Bureau

Michael A. Rudella

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	08/21/07	Petition to Disapprove Private Sale	04
02	08/21/07	Order, Re: Sale disapproved; respondent shall conduct auction-style bid	01
03	09/17/07	Motion to Rescind Court Order and Motion for Declaratory Judgment	13
04	09/19/07	Order, Re: Order issued August 21, 2007, rescinded and vacated; rule granted; rule returnable for answer and hearing	01
05	10/09/07	Order, Re: private sale shall not take place	01
06	10/19/07	Affidavit of Service, Re: Order dated October 9, 2007	03
07	11/15/07	Answer to Petition to Disapprove Private Sale	06
08	11/15/07	Answer to Motion to Rescind Court Order and Motion for Declaratory Judgment	15
09	11/30/07	Order, Re: briefs to be submitted	01
10	12/13/07	Order, Re: briefing schedule continued	01
11	01/07/08	Transcript of Proceedings	Separate Cover
12	02/28/08	Opinion and Order	08
13	03/27/08	Appeal to Commonwealth Court	12
14	03/31/08	Notice of Docketing Appeal and Notice to Counsel	02
15	04/01/08	Order, Re: concise statement to be filed	01
16	04/21/08	Statement of Matters Complained of on Appeal	03

Date: 5/2/2008
Time: 09:46 AM
Page 1 of 2

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-01343-CD

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

Andrew P. Gatesvs.Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date		Judge
8/21/2007	New Case Filed. Filing: Petition to Disapprove Private Sale Paid by: Gates, Andrew P. (plaintiff) Receipt number: 1920325 Dated: 08/21/2007 Amount: \$85.00 (Check) 6CC Atty Seaman. Order AND NOW, this 21st day of August 2007, upon consideration of the foregoing Petition, IT IS ORDERED AND DECREED that the proposed private sale by the Clearfield County Tax Claim Bureau of 162.8 acres coal rights assessed to Robert Spencer and identified by Clearfield County Assessment Map. No. 108-C14-02 for the sum of \$200.00 is disapproved. Respondent shall conduct an auction-style bid of said 162.8 acres coal rights between petitioner and the party who made the private bid of \$200.00, with a starting price below which the same shall not be sold in the amount of \$5,270.74. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 6CC Atty Seaman (will serve)	No Judge No Judge Fredric Joseph Ammerman
9/17/2007	Motion to Rescind Court Order and Motion for Declaratory Judgment, filed by s/ F. Cortez Bell II Esq. 7CC Atty.	Fredric Joseph Ammerman
9/19/2007	Order, this 19th day of Sept., 2007, it is Ordered that the Order of Court issued in this matter on August 21, 2007 is rescinded and vacated. Furthur Ordered that a Rule is granted on the Petitioner, Andrew P. Gates, to appear and show cause why the Motion for Declaratory Judgment should not be granted. Rule Returnable for Answer by the Petitioner Andrew P. Gates and hearing on said Motions to be held on the 16th day of Nov., 2007, at 11:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 8CC to Atty.	Fredric Joseph Ammerman
10/9/2007	Order, this 9th day of Oct., 2007, it is Ordered that private sale scheduled for August 29, 2007 shall not take place, nor shall any other private sale be held at least until after a hearing on the Petition to Disapprove Private Sale to be held on the 16th day of Nov., 2007 commencing at 11:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 7 CC to Atty. Gates (will serve)	Fredric Joseph Ammerman
10/19/2007	Affidavit of Service filed. Mailed on the 10th day of October 2007 by certified maile a certified copy of Order dated October 9, 2007 to Burnside Township, Robert G. Spencer-c/o Shad B. Spencer, Harmony School District, Clearfield County Tax Claim Bureau and Clearfield County Commissinners-c/o Kim C. Kesner Esq., filed by s/ Laurance B. Seaman Esq. No CC.	Fredric Joseph Ammerman
11/15/2007	Answer to Petition to Disapprove Private Sale, filed by s/F. Cortez Bell, III, Esq. 10 CC Attorney Bell Answer to Motion to Rescind Court Order and Motion for Declaratory Judgment, filed by s/Laurance B. Seaman, Esq. Five CC Attorney Seaman	Fredric Joseph Ammerman Fredric Joseph Ammerman
11/30/2007	Order, this 16th day of Nov., 2007, following the taking of testimony, it is Ordered that counsel for the petitioner and respondents shall supply the Court with an appropriate brief within no more than 30 days from this date. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Seaman, 1CC Atty. Bell; 1CC Def.	Fredric Joseph Ammerman

Date: 5/2/2008
Time: 09:46 AM
Page 2 of 2

Clearfield County Court of Common Pleas
ROA Report
Case: 2007-01343-CD

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

Andrew P. Gatesvs.Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge	
12/13/2007	Order, NOW, this 13th day of December 2007, the Court being in receipt of a letter from F. Cortez Bell III, Esquire, Counsel for Michael A. Rudella, one of the Petitioners in the above captioned matter, seeking a continuance of the briefing schedule set forth by the Court in its Order dated November 16, 2007, and it appearing that the other counsel involved are in agreement therewith, it is the ORDER of this Court that said request be and is hereby granted and the briefs of all parties shall be due to the Court on or before January 25, 2008. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 5CC Atty Bell.	Fredric Joseph Ammerman
1/7/2008	Transcript of Proceedings, filed. Held on Nov. 16, 2007 before Fredric J. Ammerman, Pres. Judge.	Fredric Joseph Ammerman
2/28/2008	Opinion and Order, Order: this 28th day of Feb., 2008, following evidentiary hearing and consistent with the foregoing Opinion, it is Ordered: (see original). By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty: Seaman, F. Bell; 1CC Def. - Tax Claim; 1CC D. Mikesell; 1CC Law Library	Fredric Joseph Ammerman
3/27/2008	Filing: Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Rudella, Michael A.) Receipt number: 1923304 Dated: 3/27/2008 Amount: \$50.00 (Check) Filed by s/ F. Cortez Bell, III, Esquire. 7CC to Atty. Bell, 1CC Commonwealth Court w/check for \$60.00	Fredric Joseph Ammerman
3/31/2008	From Commonwealth Court of Pennsylvania: Notice of Docketing Appeal and Notice to Counsel, filed. no CC	Fredric Joseph Ammerman
4/1/2008	Order, this 31st day of march, 2008, this Court having been notified of Appeal, it is Ordered that Michael A. Rudella, Appellant, file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to: Atty. Seaman; Clfd. Co. Tax Claim Bureau; and Atty. F. Cortez Bell	Fredric Joseph Ammerman
4/21/2008	Statement of Matters Complained of on Appeal, filed by s/ F. Cortez Bell, Esquire. 6CC Atty. Bell	Fredric Joseph Ammerman

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAY 02 2008

Attest,

William L. Hudson
Prothonotary/
Clerk of Courts

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

ANDREW P. GATES, :
Appellee :
V. : NO. 07-1343-CD
CLEARFIELD COUNTY TAX CLAIM : Type of Case: Civil
BUREAU, :
Appellee : Type of Pleading:
MICHAEL A. RUDELLA, : Statement of Matters
Appellant : Complained of on Appeal
: Filed on Behalf of:
: Michael A. Rudella, Appellant
: Counsel of Record for
: This Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
: 318 East Locust Street
: P.O. Box 1088
: Clearfield, PA. 16830
: Telephone: 814-765-5537

FILED 6 CC Atty
0/9:45 am Bell
APR 21 2008

William A. Shaw
Prothonotary/Clerk of Courts

FILED

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

ANDREW P. GATES, :
Appellee :
: :
V. : NO. 07-1343-CD
: :
CLEARFIELD COUNTY TAX CLAIM :
BUREAU, :
Appellee :
: :
Appeal of Michael A. Rudella, :
Appellant :
:

STATEMENT OF MATTER COMPLAINED OF ON APPEAL

NOW comes the Appellant, Michael A. Rudella, by and through his attorney, F. Cortez Bell, III, Esquire, who for the Appellant's Statement of Matters Complained of on Appeal pursuant to the provisions of the Pennsylvania Rules of Appellate Procedure, Rule 1925(b) respectfully sets forth said statement as follows:

1. That the Trial Court erred by finding that the provisions of 72 P.S. § 5860.205(d) is applicable to and provides the distribution of proceeds scheme applicable to the instant private sale.
2. That the Trial Court erred in finding that the Appellee Gates is qualified to bid on the subject property at the private sale.

Respectfully submitted,

F. Cortez Bell III
F. Cortez Bell, III, Esquire
Counsel for Appellant Rudella

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

ANDREW P. GATES, :
Appellee :
: :
V. : NO. 07-1343-CD
: :
CLEARFIELD COUNTY TAX CLAIM :
BUREAU, :
Appellee :
: :
Appeal of Michael A. Rudella, Appellant :
:

PROOF OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Statement of Matters
Complained of on Appeal upon the persons and in the manners indicated below:

Service By First Class Mail, Postage Pre-paid

Mr. Laurance B. Seaman, Esquire
Two North Front Street
P.O. Box 846
Clearfield, PA. 16830
Attorney for Appellee Gates

Mr. Kim C. Kesner, Esquire
Belin, Kubista & Ryan
15 North Front Street
P.O. Box 1
Clearfield, PA. 16830
Clearfield County Solicitor
Attorney for Appellee Tax Claim Bureau

By

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Counsel for Appellant Rudella

Dated: April 21, 2008

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

ANDREW P. GATES,
Appellee

vs.
CLEARFIELD COUNTY TAX CLAIM BUREAU,
Appellee

MICHAEL A. RUDELLA,
Appellant

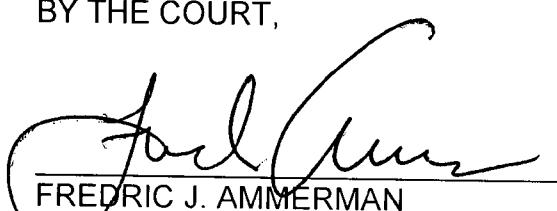
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NO. 07-1343-CD

ORDER

NOW, this 31st day of March, 2008, this Court having been notified of Appeal to the Commonwealth Court of Pennsylvania in the above-captioned matter; it is the ORDER of this Court that **MICHAEL A. RUDELLA**, Appellant, file a concise statement of the matters complained of on said Appeal no later than twenty-one (21) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
01:45PM GK
APR 01 2008

William A. Shaw
Prothonotary/Clerk of Courts

1CC TO:
ATTY SEAMAN
CLF O CO. TAX CLAIM BUREAU
ATTY F. CORTEZ BELL

68

#15

March 28, 2008

RE: Gates v. Clearfield Cnty Tax Claim Bur et al
No.: 541 CD 2008
Agency Docket Number: 07-1343-CD
Filed Date: March 27, 2008

07-1343-CD

Notice of Docketing Appeal

A Notice of Appeal from an order of your court has been docketed in the Commonwealth Court of Pennsylvania. The Commonwealth Court docket number must be on all correspondence and documents filed with the court.

Under Chapter 19 of the Pennsylvania Rules of Appellate Procedure, the Notice of Appeal has the effect of directing the Court to transmit the certified record in the matter to the Prothonotary of the Commonwealth Court.

The complete record, including the opinion of the trial judge, should be forwarded to the Commonwealth Court within sixty (60) days of the date of filing of the Notice of Appeal. Do not transmit a partial record.

Pa.R.A.P. 1921 to 1933 provides the standards for preparation, certification and transmission of the record.

The address to which the Court is to transmit the record is set forth on Page 2 of this notice.

Notice to Counsel

A copy of this notice is being sent to all parties or their counsel indicated on the proof of service accompanying the Notice of Appeal. The appearance of all counsel has been entered on the record in the Commonwealth Court. Counsel has thirty (30) days from the date of filing of the Notice of Appeal to file a praecipe to withdraw their appearance pursuant to Pa. R.A.P. 907 (b).

Appellant or Appellant's attorney should review the record of the trial court, in order to insure that it is complete, prior to certification to this Court. (Note: A copy of the Zoning Ordinance must accompany records in Zoning Appeal cases).

The addresses to which you are to transmit documents to this Court are set forth on Page 2 of this Notice.

If you have special needs, please contact this court in writing as soon as possible.

Attorney Name	Party Name	Party Type
F. Cortez Bell, III, Esq.	Michael A. Rudella	Appellant
Kim C. Kesner, Esq.	Clearfield County Tax Claim Bureau	Appellee
Laurance B. Seaman, Esq.	Andrew P. Gates	Appellee

COPIED
MAR 31 2008
NO CC
GR

William A. Shaw
Prothonotary/Clerk of Courts

(#14)

Address all written communications to:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Room 624
Irvis Office Building
Harrisburg, PA 17120
(717) 255-1650

Filings may be made in person at the following address (except on Saturdays, Sundays and holidays observed by Pennsylvania Courts) between 9:00 a.m. and 4:00 p.m.

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Room 624
Sixth Floor
Irvis Office Building
Harrisburg, PA 17120
(717) 255-1650

Pleadings and similar papers (but not paperbooks or certified records) may also be filed in person only at:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Filing Office
Suite 990
The Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 560-5742

The hours of the Philadelphia Filing Office are 9:00 a.m. to 4:00 p.m.

Under Pa.R.A.P. 3702, writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office.

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

ANDREW P. GATES,
Appellee
V.
CLEARFIELD COUNTY TAX
CLAIM BUREAU,
Appellee
Appeal of Michael A. Rudella,
Appellant

: NO. 07-1343-CD
: Type of Case: Civil
: Type of Pleading:
: Notice of Appeal
: Filed on Behalf of:
: Michael A. Rudella
: Appellant
: Counsel of Record for
: This Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
: F. CORTEZ BELL, III, ESQUIRE
: 318 East Locust Street
: P.O. Box 1088
: Clearfield, PA. 16830
: Telephone: 814-765-5537

1414 P.M.
\$50 TO PETTY
\$60 TO COMMONWEALTH COURT
FILED
09:40 AM GK
MAR 27 2008
7CC TO CITY BELL
William A. Shaw
Prothonotary/Clerk of Courts
1 CC COMMONWEALTH
COURT WITH
CHECK FOR \$60.00

(60)

(13)

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

ANDREW P. GATES,	:	
Appellee	:	
	:	
V.	:	No. 07-1343-CD
	:	
CLEARFIELD COUNTY TAX	:	
CLAIM BUREAU,	:	
Appellee	:	
	:	
Appeal of Michael A. Rudella,	:	
Appellant	:	

NOTICE OF APPEAL

Notice is hereby given that Michael A. Rudella, Appellant in the above captioned matter, hereby appeals to the Commonwealth Court of Pennsylvania from the Order of the Court of Common Pleas of Clearfield County dated February 28, 2008. Said Order was entered as to a Motion for Declaratory Judgment filed by Michael A. Rudella, as a Petitioner in the above captioned matter. A copy of said Order is attached hereto, as well as is evidenced by the entry of said Order upon the docket in this matter as indicated by the attached copy of the docket entries.

Respectfully submitted,
By:

F. Cortez Bell III
F. Cortez Bell, III, Esquire
Counsel for Appellant Rudella
Supreme Court No. 30183

F. Cortez Bell, III, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA. 16830
Telephone: 814-765-5537

Dated: March 27, 2008

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

ANDREW P. GATES, *
Petitioner *
vs. * NO. 07-1343-CD
CLEARFIELD COUNTY TAX CLAIM BUREAU, *
Respondent *

OPINION and ORDER

On or about January 31, 2007, Michael A. Rudella (hereafter "Rudella") submitted a private sale bid to Respondent, Clearfield County Tax Claim Bureau (hereafter "the TCB") of \$200.00 to purchase 162.8 acres of coal rights (hereafter "Coal Rights") situate in Burnside Township, Clearfield County (Clearfield County Assessment Map Number 107-C14-2 MN) assessed in the name of and owned by Robert G. Spencer. The Coal Rights had been exposed to the upset sale at least two times before the private sale bid was made. In accordance with 72 P.S. § 5860.613, the TCB accepted the bid made by Rudella and published the required notice of the proposed sale. Thereafter, Petitioner Andrew P. Gates (hereafter "Gates") timely filed a Petition to Disapprove Private Sale, on the basis that the sale price of \$200.00 was not sufficient, and Gates offered to pay at least the then upset price of \$5,270.74. Upon consideration of said Petition, this Court entered an Order of the same date disapproving the proposed private sale and directing the TCB to conduct an auction style sale of the Coal Rights between Gates and Rudella, with the starting price to be \$5,270.74. On September 17, 2007, Rudella filed a Motion to Rescind Court Order and Motion for Declaratory Judgment. This Court entered an Order dated September 19, 2007 which vacated its August 21, 2007 Order, granted a Rule upon Gates to appear and show cause why Rudella's companion Motion for Declaratory Judgment should not

be granted and scheduled a hearing for November 16, 2007. Subsequently, the attorneys for the parties met with the Court and upon agreement, the Court entered a further Order dated October 9, 2007, which directed the auction style sale previously ordered should not take place until after the hearing of November 16, 2007 when the parties were to be heard.

At the evidentiary hearing held November 16, 2007, testimony was presented on behalf of Gates, by himself, Timothy N. Morgan and Mary Anne Wesdock, Director of the TCB. Rudella testified on his behalf. At the conclusion of the hearing, the parties agreed that the Court make an advance determination of the distribution of the sale proceeds from the bidding that is to occur as well as agreed to Rudella's request that the Court direct that the eventual buyer of the property in question be precluded from selling, leasing, or in any way transferring the property to the original property owner, Mr. Spencer, or any business association in which Mr. Spencer is involved. (Transcript of November 16, 2007, pp. 62-64). As a result of that agreement the Court has two remaining issues to decide. As noted above, the first issue is to whom the excess proceeds of the sale are distributed upon conclusion of the sale. The second issue is whether Mr. Gates is permitted to be involved in the bidding on the property at the private auction sale as a result of his testimony as to how he became involved in the matter, his relationship to Mr. Spencer and/or members of the Spencer family and his intent should he be the successful bidder.

The statutory distribution scheme for all moneys collected as a result of tax sales conducted under the provisions of the Real Estate Tax Sale Law (72 P.S. § 5860.101 et seq.) is set forth in 72 P.S. § 5860.205(d), which states as follows:

"(d) It shall be the duty of the bureau to distribute all moneys collected as the result of any tax sale conducted under the provisions of this act, less the deductions authorized by subsection (c), 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 mortgages 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.
- (5) to the owner of the property.".

It is clear that the statutory distribution scheme of 72 P.S. § 5860.205(d) applies to the sale in the case at hand. The sale which will ultimately take place will be: ". . . as the result of any tax sale conducted under the provisions of this Act, . . ." (Section 5860.205(d)). The result of the previously held tax sales for the upset price conducted by the TCB in 1995 and thereafter (Transcript, p.10), albeit unsuccessful, is the sale which will take place in accordance with this Court's subsequent Order. In any event, the Commonwealth Court, in Fieg v. Somerset Tax Claim Bureau, 658 A.2d 476 (Pa. Cmwlth. 1995) made it clear that this distribution scheme applies to the case at hand, when it stated as follows:

Based on the statutory distribution scheme, proceeds from a public, private or judicial sale of property are first distributed to the taxing authorities, then to any mortgages or lien holders, and then to the property owner. Thus, only the later two categories benefit from a sale price in excess of the delinquent taxes owed. Section 205(d) of the TAX SALE LAW, 72 P.S. § 5860.205(d). 658 A.2d at 478 (footnote no. 6)

There are no other statutory provisions in the Real Estate Tax Sale Law for the distribution of moneys collected by the TCB, except for 72 P.S. § 56860.630, which pertains to the distribution of moneys from sales of property from the repository for unsold properties, which states:

"Moneys received under this sub-article shall be distributed as provided for in Section 205.". (72 P.S. § 5860.205).

In regard to the second issue, there seem little doubt that Gates is hopeful of acquiring the Coal Rights so that they can subsequently be sold to Kyle Morgan, grandson of Robert G. Spencer. Rudella contends in his Motion for Declaratory Judgment that Gates is precluded from purchasing the coal rights due to the provisions of 72 P.S. § 5860.618.

The Court finds that Gates should be allowed to bid on or purchase the property at any type of sale on behalf of himself or Kyle Morgan. Kyle Morgan is not an owner, has no ownership interest or rights in the property and has no interests in any trust, partnership, limited partnership, corporation or any other business association in which his grandfather has an interest. This was established by Timothy N. Morgan, father of Kyle Morgan, and a Guardian of the Estate of Robert G. Spencer (Transcript, pp. 32-33). There was no evidence offered to the contrary that Kyle Morgan had any present interest in any of his grandfather's business associations. The only argument Rudella can possibly make to have Kyle Morgan ultimately prohibited from acquiring the Coal Rights under 72 P.S. § 5860.618, is that at some time in the future, Kyle Morgan, as a named beneficiary in his grandfather's Will, may receive from his grandfather's estate some interest in one of his grandfather's business associations. The mere fact that Kyle

Morgan is named as a beneficiary and will supposedly receive something from his grandfather's estate, does not make him an "owner" under 72 P.S. § 5860.618. Because Kyle Morgan is named a beneficiary does not mean that he will receive any interest in any business association in which his grandfather had an interest. It is just as likely that the entire estate would be liquidated and only cash would be distributed. His mother might challenge the Will and he might be cut out of any inheritance. It is also possible that Mr. Spencer's entire estate may be spent for his care in the nursing home where he currently lives, and there may be nothing left to distribute. In any event, this is all speculation about what might happen in the future. The provisions of 72 P.S. § 5860.618 do not talk about any future interest that a purchaser might have, but rather if such a purchaser "has" (from subparagraph (c)) such interest at the time of the sale.

Gates is not precluded from bidding on and purchasing the property on his own behalf as he is not acting as the agent of or straw for the owner, nor does Gates fall within one of the categories mentioned in 72 P.S. § 5860.618(c) as:

"... any trust, partnership, limited partnership, corporation or any other business association that has any individual as part of the business association who had any ownership interest or rights in the property.".

This was also established by the testimony Tim Morgan, that he, as a Guardian of the Estate of Robert G. Spencer, was aware of all of Mr. Spencer's business associations, and that Gates had no interest in any such business associations, nor any ownership interest or rights in the property in question. (Transcript, pp. 31-32). Similarly, just because Gates and Seaman provides legal services to Robert G. Spencer through the Guardians of his Estate and Gates is a partner in that firm, Gates does not fall into any of those categories that would result in him being considered an "owner" under that Section. The furnishing of legal services is a professional relationship with a client, not

a business association. Gates would have to have some type of equity or ownership interest in one of the business associations in which Robert G. Spencer had an interest in order to be considered to be an "owner" under this Section. There is no contrary evidence that he does not.

Rudella in his brief submitted to this Court argued that Gates is precluded from bidding on the Coal Rights and from purchasing the same because of the definition of "Purchaser" in 72 P.S. § 5860.619(e). However, Section 619 does not preclude Gates from bidding on or purchasing the coal rights in this case. This Section does not create a general-type prohibition on who may purchase a property at a tax sale. Instead, it applies only to ". . . any sale held under subarticle (b) of Article VI", which includes 72 P.S. § 5860.610 through 72 P.S. § 5860.612-1. (See the footnote to subsection (a) of Section 619) The Section of the Real Estate Tax Sale Law dealing with the sale in the case at hand is 72 P.S. § 5860.613, which is under subarticle (c) of Article VI.

The only situation in which Section 619 restricts the purchasers of real estate is as shown in subsections (b) and (c), which deal with a municipality filing a petition to prohibit the transfer of a deed where: "the purchaser has over the last three years preceding the filing of the petition exhibited a course of conduct which demonstrates that a purchaser permitted an uncorrected housing code violation to continue unabated after being convicted of such violation: and . . ." met one of the two conditions following that. Thus, this restriction on purchasers does not apply to subarticle (c) of Article VI and only applies to purchasers who have been convicted of uncorrected housing code violations.

In conclusion, the Court, after disapproving the private sale, must determine the scheme of distribution of the proceeds and enter an Order with the requested

restrictions. Pursuant to 72 P.S. § 5860.613, the private sale will be disapproved by the Court as the bid amount of \$200.00 is clearly not a "sufficient" price, when at least the upset price of \$5,354.35 has been offered. It would not be "just and proper" to confirm the private sale and deprive the County, Township and School District of the full amount of their outstanding taxes, interests, penalties and costs, when they could be made whole by the Court disapproving the sale and setting the upset amount as the price below which the property shall not be sold. This will also send a message to prospective private sale bidders that they cannot expect to acquire valuable property for ridiculously low amounts. Any realistic prospective sale bidders should bid at least an amount close to the upset price, which would then make the various taxing districts whole.

Any excess proceeds above the upset price must be distributed in accordance with 72 P.S. § 5860.205(d). There is no statutory or case law basis for any other scheme of distribution. Lastly, Gates is permitted by law to purchase the Coal Rights for himself or for Kyle Morgan, as neither are "owners" under the provisions of 72 P.S. §5860.618.

ORDER

NOW, this 28th day of February, 2008, following evidentiary hearing and consistent with the foregoing Opinion, it is the ORDER of this Court as follows:

1. The Petition to Disapprove Private Sale is hereby granted and the said sale disapproved;

2. The Tax Claim Bureau shall conduct an auction sale of the subject 162.8 acres of coal rights between Andrew P. Gates and Michael A. Rudella with the minimum bid to be \$5,671.07;
3. The Motion for Declaratory Judgment is granted to the extent that it is the finding of this Court that the proceeds from the auction sale shall be distributed pursuant to 72 P.S. § 5860.205(d);
4. The Motion for Declaratory Judgment is denied to the extent that it is the finding of this Court that Andrew P. Gates, on his own behalf or as the agent of Kyle Morgan, is not precluded under either 72 P.S. § 5860.618 or § 5860.619 from purchasing the coal rights in question; and
5. In the event the coal rights are purchased by Andrew P. Gates, neither Mr. Gates or his successors or assigns shall be permitted to give, sell, lease, sublease or in any fashion assign the coal rights to Robert G. Spencer, Hepburnia Coal Co., Spencer Land Co., Cloe Mining Co., L & J Energy Co., and Hepburnia Coal Sales Corporation or to any other legal entity in which Robert G. Spencer has or acquires an interest.

BY THE COURT,

/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

FEB 28 2008

Attest.

William L. Gandy
Prothonotary
Clerk of Courts

Date: 3/26/2008

Time: 05:18 PM

Page 1 of 2

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-01343-CD

Current Judge: Fredric Joseph Ammerman

Andrew P. Gatesvs.Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge	
3/21/2007	New Case Filed. Filing: Petition to Disapprove Private Sale Paid by: Gates, Andrew P. (plaintiff) Receipt number: 1920325 Dated: 08/21/2007 Amount: \$85.00 (Check) 6CC Atty Seaman. Order AND NOW, this 21st day of August 2007, upon consideration of the foregoing Petition, IT IS ORDERED AND DECREED that the proposed private sale by the Clearfield County Tax Claim Bureau of 162.8 acres coal rights assessed to Robert Spencer and identified by Clearfield County Assessment Map. No. 108-C14-02 for the sum of \$200.00 is disapproved. Respondent shall conduct an auction-style bid of said 162.8 acres coal rights between petitioner and the party who made the private bid of \$200.00, with a starting price below which the same shall not be sold in the amount of \$5,270.74. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 6CC Atty Seaman (will serve)	No Judge No Judge Fredric Joseph Ammerman
9/17/2007	Motion to Rescind Court Order and Motion for Declaratory Judgment, filed by s/ F. Cortez Bell II Esq. 7CC Atty.	Fredric Joseph Ammerman
9/19/2007	Order, this 19th day of Sept., 2007, it is Ordered that the Order of Court issued in this matter on August 21, 2007 is rescinded and vacated. Furthur Ordered that a Rule is granted on the Petitioner, Andrew P. Gates, to appear and show cause why the Motion for Declaratory Judgment should not be granted. Rule Returnable for Answer by the Petitioner Andrew P. Gates and hearing on said Motions to be held on the 16th day of Nov., 2007, at 11:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 8CC to Atty.	Fredric Joseph Ammerman
10/9/2007	Order, this 9th day of Oct., 2007, it is Ordered that private sale scheduled for August 29, 2007 shall not take place, nor shall any other private sale be held at least until after a hearing on the Petition to Disapprove Private Sale to be held on the 16th day of Nov., 2007 commencing at 11:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 7 CC to Atty. Gates (will serve)	Fredric Joseph Ammerman
10/19/2007	Affidavit of Service filed. Mailed on the 10th day of October 2007 by certified maile a certified copy of Order dated October 9, 2007 to Burnside Township, Robert G. Spencer-c/o Shad B. Spencer, Harmony School District, Clearfield County Tax Claim Bureau and Clearfield County Commissinners-c/o Kim C. Kesner Esq., filed by s/ Laurance B. Seaman Esq. No CC.	Fredric Joseph Ammerman
11/15/2007	Answer to Petition to Disapprove Private Sale, filed by s/F. Cortez Bell, III, Esq. 10 CC Attorney Bell Answer to Motion to Rescind Court Order and Motion for Declaratory Judgment, filed by s/Laurance B. Seaman, Esq. Five CC Attorney Seaman	Fredric Joseph Ammerman Fredric Joseph Ammerman
11/30/2007	Order, this 16th day of Nov., 2007, following the taking of testimony, it is Ordered that counsel for the petitioner and respondents shall supply the Court with an appropriate brief within no more than 30 days from this date. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Seaman, 1CC Atty. Bell; 1CC Def.	Fredric Joseph Ammerman

Date: 3/26/2008

Time: 05:18 PM

Page 2 of 2

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-01343-CD

Current Judge: Fredric Joseph Ammerman

Andrew P. Gatesvs.Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge
12/13/2007	Order, NOW, this 13th day of December 2007, the Court being in receipt of a letter from F. Cortez Bell III, Esquire, Counsel for Michael A. Rudella, one of the Petitioners in the above captioned matter, seeking a continuance of the briefing schedule set forth by the Court in its Order dated November 16, 2007, and it appearing that the other counsel involved are in agreement therewith, it is the ORDER of this Court that said request be and is hereby granted and the briefs of all parties shall be due to the Court on or before January 25, 2008. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 5CC Atty Bell.
1/7/2008	Transcript of Proceedings, filed. Held on Nov. 16, 2007 before Fredric J. Ammerman, Pres. Judge.
2/28/2008	Opinion and Order, Order: this 28th day of Feb., 2008, following evidentiary hearing and consistent with the foregoing Opinion, it is Ordered: (see original). By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty: Seaman, F. Bell; 1CC Def. - Tax Claim; 1CC D. Mikesell; 1CC Law Library

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

ANDREW P. GATES, :
Appellee :
V. : No. 07-1343-CD
CLEARFIELD COUNTY TAX :
CLAIM BUREAU, :
Appellee :

PROOF OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Notice of Appeal
upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.

R.A.P. 121: Service By Personal Service

Daniel J. Nelson
Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830

Cathy Warrick Provost
Official Court Reporter
Clearfield County Courthouse
Clearfield, PA 16830

Honorable Fredric J. Ammerman
President Judge
Court of Common Pleas of
Clearfield County
Clearfield County Courthouse
Clearfield, PA 16830

Mr. Laurance B. Seaman, Esquire
Two North Front Street
P.O. Box 846
Clearfield, PA 16830
Attorney for Appellee Gates

Mr. Kim C. Kesner, Esquire
Belin, Kubista & Ryan
15 North Front Street
P.O. Box 1
Clearfield, PA. 16830
Clearfield County Solicitor
Attorney for Appellee Tax Claim Bureau

By

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Appellant Rudella
Supreme Court No. 30183

Dated: March 27, 2008

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

FILED

01/11/30 BOL
FEB 28 2008

ANDREW P. GATES,
Petitioner

*

William A. Shaw
Prothonotary/Clerk of Courts
ICC Atty's: Seanan
F. Bell
ICC Def. Tax
Claim

CLEARFIELD COUNTY TAX CLAIM BUREAU,
Respondent

*

NO. 07-1343-CD

ICC S.M. Kesell
ICC Law Library

OPINION and ORDER

On or about January 31, 2007, Michael A. Rudella (hereafter "Rudella") submitted a private sale bid to Respondent, Clearfield County Tax Claim Bureau (hereafter "the TCB") of \$200.00 to purchase 162.8 acres of coal rights (hereafter "Coal Rights") situate in Burnside Township, Clearfield County (Clearfield County Assessment Map Number 107-C14-2 MN) assessed in the name of and owned by Robert G. Spencer. The Coal Rights had been exposed to the upset sale at least two times before the private sale bid was made. In accordance with 72 P.S. § 5860.613, the TCB accepted the bid made by Rudella and published the required notice of the proposed sale. Thereafter, Petitioner Andrew P. Gates (hereafter "Gates") timely filed a Petition to Disapprove Private Sale, on the basis that the sale price of \$200.00 was not sufficient, and Gates offered to pay at least the then upset price of \$5,270.74. Upon consideration of said Petition, this Court entered an Order of the same date disapproving the proposed private sale and directing the TCB to conduct an auction style sale of the Coal Rights between Gates and Rudella, with the starting price to be \$5,270.74. On September 17, 2007, Rudella filed a Motion to Rescind Court Order and Motion for Declaratory Judgment. This Court entered an Order dated September 19, 2007 which vacated its August 21, 2007 Order, granted a Rule upon Gates to appear and show cause why Rudella's companion Motion for Declaratory Judgment should not

#12

be granted and scheduled a hearing for November 16, 2007. Subsequently, the attorneys for the parties met with the Court and upon agreement, the Court entered a further Order dated October 9, 2007, which directed the auction style sale previously ordered should not take place until after the hearing of November 16, 2007 when the parties were to be heard.

At the evidentiary hearing held November 16, 2007, testimony was presented on behalf of Gates, by himself, Timothy N. Morgan and Mary Anne Wesdock, Director of the TCB. Rudella testified on his behalf. At the conclusion of the hearing, the parties agreed that the Court make an advance determination of the distribution of the sale proceeds from the bidding that is to occur as well as agreed to Rudella's request that the Court direct that the eventual buyer of the property in question be precluded from selling, leasing, or in any way transferring the property to the original property owner, Mr. Spencer, or any business association in which Mr. Spencer is involved. (Transcript of November 16, 2007, pp. 62-64). As a result of that agreement the Court has two remaining issues to decide. As noted above, the first issue is to whom the excess proceeds of the sale are distributed upon conclusion of the sale. The second issue is whether Mr. Gates is permitted to be involved in the bidding on the property at the private auction sale as a result of his testimony as to how he became involved in the matter, his relationship to Mr. Spencer and/or members of the Spencer family and his intent should he be the successful bidder.

The statutory distribution scheme for all moneys collected as a result of tax sales conducted under the provisions of the Real Estate Tax Sale Law (72 P.S. § 5860.101 et seq.) is set forth in 72 P.S. § 5860.205(d), which states as follows:

"(d) It shall be the duty of the bureau to distribute all moneys collected as the result of any tax sale conducted under the provisions of this act, less the deductions authorized by subsection (c), 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 mortgages 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.
- (5) to the owner of the property."

It is clear that the statutory distribution scheme of 72 P.S. § 5860.205(d) applies to the sale in the case at hand. The sale which will ultimately take place will be: ". . . as the result of any tax sale conducted under the provisions of this Act, . . ." (Section 5860.205(d)). The result of the previously held tax sales for the upset price conducted by the TCB in 1995 and thereafter (Transcript, p.10), albeit unsuccessful, is the sale which will take place in accordance with this Court's subsequent Order. In any event, the Commonwealth Court, in Fieg v. Somerset Tax Claim Bureau, 658 A.2d 476 (Pa. Cmwlth. 1995) made it clear that this distribution scheme applies to the case at hand, when it stated as follows:

Based on the statutory distribution scheme, proceeds from a public, private or judicial sale of property are first distributed to the taxing authorities, then to any mortgages or lien holders, and then to the property owner. Thus, only the later two categories benefit from a sale price in excess of the delinquent taxes owed. Section 205(d) of the TAX SALE LAW, 72 P.S. § 5860.205(d). 658 A.2d at 478 (footnote no. 6)

There are no other statutory provisions in the Real Estate Tax Sale Law for the distribution of moneys collected by the TCB, except for 72 P.S. § 56860.630, which pertains to the distribution of moneys from sales of property from the repository for unsold properties, which states:

"Moneys received under this sub-article shall be distributed as provided for in Section 205.". (72 P.S. § 5860.205).

In regard to the second issue, there seem little doubt that Gates is hopeful of acquiring the Coal Rights so that they can subsequently be sold to Kyle Morgan, grandson of Robert G. Spencer. Rudella contends in his Motion for Declaratory Judgment that Gates is precluded from purchasing the coal rights due to the provisions of 72 P.S. § 5860.618.

The Court finds that Gates should be allowed to bid on or purchase the property at any type of sale on behalf of himself or Kyle Morgan. Kyle Morgan is not an owner, has no ownership interest or rights in the property and has no interests in any trust, partnership, limited partnership, corporation or any other business association in which his grandfather has an interest. This was established by Timothy N. Morgan, father of Kyle Morgan, and a Guardian of the Estate of Robert G. Spencer (Transcript, pp. 32-33). There was no evidence offered to the contrary that Kyle Morgan had any present interest in any of his grandfather's business associations. The only argument Rudella can possibly make to have Kyle Morgan ultimately prohibited from acquiring the Coal Rights under 72 P.S. § 5860.618, is that at some time in the future, Kyle Morgan, as a named beneficiary in his grandfather's Will, may receive from his grandfather's estate some interest in one of his grandfather's business associations. The mere fact that Kyle

Morgan is named as a beneficiary and will supposedly receive something from his grandfather's estate, does not make him an "owner" under 72 P.S. § 5860.618. Because Kyle Morgan is named a beneficiary does not mean that he will receive any interest in any business association in which his grandfather had an interest. It is just as likely that the entire estate would be liquidated and only cash would be distributed. His mother might challenge the Will and he might be cut out of any inheritance. It is also possible that Mr. Spencer's entire estate may be spent for his care in the nursing home where he currently lives, and there may be nothing left to distribute. In any event, this is all speculation about what might happen in the future. The provisions of 72 P.S. § 5860.618 do not talk about any future interest that a purchaser might have, but rather if such a purchaser "has" (from subparagraph (c)) such interest at the time of the sale.

Gates is not precluded from bidding on and purchasing the property on his own behalf as he is not acting as the agent of or straw for the owner, nor does Gates fall within one of the categories mentioned in 72 P.S. § 5860.618(c) as:

"... any trust, partnership, limited partnership, corporation or any other business association that has any individual as part of the business association who had any ownership interest or rights in the property.".

This was also established by the testimony Tim Morgan, that he, as a Guardian of the Estate of Robert G. Spencer, was aware of all of Mr. Spencer's business associations, and that Gates had no interest in any such business associations, nor any ownership interest or rights in the property in question. (Transcript, pp. 31-32). Similarly, just because Gates and Seaman provides legal services to Robert G. Spencer through the Guardians of his Estate and Gates is a partner in that firm, Gates does not fall into any of those categories that would result in him being considered an "owner" under that Section. The furnishing of legal services is a professional relationship with a client, not

a business association. Gates would have to have some type of equity or ownership interest in one of the business associations in which Robert G. Spencer had an interest in order to be considered to be an "owner" under this Section. There is no contrary evidence that he does not.

Rudella in his brief submitted to this Court argued that Gates is precluded from bidding on the Coal Rights and from purchasing the same because of the definition of "Purchaser" in 72 P.S. § 5860.619(e). However, Section 619 does not preclude Gates from bidding on or purchasing the coal rights in this case. This Section does not create a general-type prohibition on who may purchase a property at a tax sale. Instead, it applies only to ". . . any sale held under subarticle (b) of Article VI", which includes 72 P.S. § 5860.610 through 72 P.S. § 5860.612-1. (See the footnote to subsection (a) of Section 619) The Section of the Real Estate Tax Sale Law dealing with the sale in the case at hand is 72 P.S. § 5860.613, which is under subarticle (c) of Article VI.

The only situation in which Section 619 restricts the purchasers of real estate is as shown in subsections (b) and (c), which deal with a municipality filing a petition to prohibit the transfer of a deed where: "the purchaser has over the last three years preceding the filing of the petition exhibited a course of conduct which demonstrates that a purchaser permitted an uncorrected housing code violation to continue unabated after being convicted of such violation: and . . ." met one of the two conditions following that. Thus, this restriction on purchasers does not apply to subarticle (c) of Article VI and only applies to purchasers who have been convicted of uncorrected housing code violations.

In conclusion, the Court, after disapproving the private sale, must determine the scheme of distribution of the proceeds and enter an Order with the requested

restrictions. Pursuant to 72 P.S. § 5860.613, the private sale will be disapproved by the Court as the bid amount of \$200.00 is clearly not a "sufficient" price, when at least the upset price of \$5,354.35 has been offered. It would not be "just and proper" to confirm the private sale and deprive the County, Township and School District of the full amount of their outstanding taxes, interests, penalties and costs, when they could be made whole by the Court disapproving the sale and setting the upset amount as the price below which the property shall not be sold. This will also send a message to prospective private sale bidders that they cannot expect to acquire valuable property for ridiculously low amounts. Any realistic prospective sale bidders should bid at least an amount close to the upset price, which would then make the various taxing districts whole.

Any excess proceeds above the upset price must be distributed in accordance with 72 P.S. § 5860.205(d). There is no statutory or case law basis for any other scheme of distribution. Lastly, Gates is permitted by law to purchase the Coal Rights for himself or for Kyle Morgan, as neither are "owners" under the provisions of 72 P.S. §5860.618.

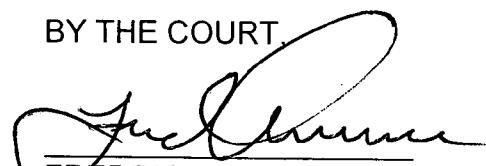
O R D E R

NOW, this 28th day of February, 2008, following evidentiary hearing and consistent with the foregoing Opinion, it is the ORDER of this Court as follows:

1. The Petition to Disapprove Private Sale is hereby granted and the said sale disapproved;

2. The Tax Claim Bureau shall conduct an auction sale of the subject 162.8 acres of coal rights between Andrew P. Gates and Michael A. Rudella with the minimum bid to be \$5,671.07;
3. The Motion for Declaratory Judgment is granted to the extent that it is the finding of this Court that the proceeds from the auction sale shall be distributed pursuant to 72 P.S. § 5860.205(d);
4. The Motion for Declaratory Judgment is denied to the extent that it is the finding of this Court that Andrew P. Gates, on his own behalf or as the agent of Kyle Morgan, is not precluded under either 72 P.S. § 5860.618 or § 5860.619 from purchasing the coal rights in question; and
5. In the event the coal rights are purchased by Andrew P. Gates, neither Mr. Gates or his successors or assigns shall be permitted to give, sell, lease, sublease or in any fashion assign the coal rights to Robert G. Spencer, Hepburnia Coal Co., Spencer Land Co., Cloe Mining Co., L & J Energy Co., and Hepburnia Coal Sales Corporation or to any other legal entity in which Robert G. Spencer has or acquires an interest.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

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

ANDREW P. GATES

V.

NO. 07-1343-CD

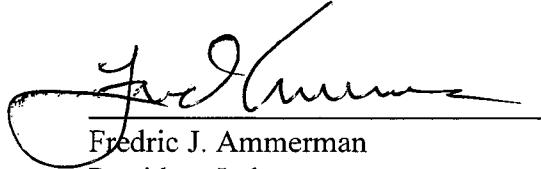
CLEARFIELD COUNTY TAX
CLAIM BUREAU

ORDER

NOW, this 13 day of December, 2007, the Court being in receipt of a letter from F. Cortez Bell, III, Esquire, Counsel for Michael A. Rudella, one of the Petitioners in the above captioned matter, seeking a continuance of the briefing schedule set forth by the Court in its Order dated November 16, 2007, and it appearing that the other Counsel involved are in agreement therewith, it is the ORDER of this Court that said request be and is hereby granted and the briefs of all parties shall be due to the Court on or before January 25th 2008

FSA

BY THE COURT


Fredric J. Ammerman
President Judge

FILED *6cc AMM Bell*
01/11/45pm
DEC 13 2007
(initials)

William A. Shaw
Prothonotary/Clerk of Courts

(initials)

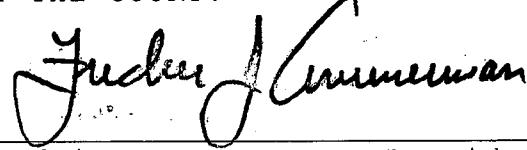
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ANDREW P. GATES, *
Plaintiff *
vs. *
CLEARFIELD COUNTY TAX *
CLAIM BUREAU, *
Defendant * NO. 07-1343-CD

ORDER OF COURT

NOW, this 16th day of November, 2007, following
the taking of testimony in the above-captioned case, IT IS
THE ORDER OF THIS COURT that counsel for the petitioner
and respondents shall supply the Court with an appropriate
brief within no more than 30 days from this date.

BY THE COURT:



Fredric J. Ammerman, President Judge

FILED
01/25/2008
NOV 30 2007 1CC Atty Seaman
1CC Atty Bell
William A. Shaw 1CC Def.
Prothonotary/Clerk of Courts
(GK)

#9

FILED

NOV 30 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/30/07

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:
Plaintiff(s) Plaintiff(s) Attorney Other - **Atty Bell**
Defendant(s) Defendant(s) Attorney

Special Instructions:

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

ANDREW P. GATES, Petitioner
vs.
CLEARFIELD COUNTY TAX CLAIM BUREAU, Respondent

No. 07- 1343 -CD
Type of Case: Civil
Type of Pleading: ANSWER TO MOTION TO RESCIND COURT ORDER AND MOTION FOR DECLARATORY JUDGMENT
Filed on behalf of: Petitioner
Counsel of Record for this Party: Laurance B. Seaman, Esquire
Supreme Court No.: 19620
GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, Pennsylvania 16830
(814) 765-1766

FILED *5cc*
9/15/01 *Atty Seaman*
NOV 15 2001

WAS
William A. Shaw
Prothonotary/Clerk of Courts

(18)

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

ANDREW P. GATES, Petitioner :
: No. 07 - 1343 - CD
-vs- :
: CLEARFIELD COUNTY TAX CLAIM :
BUREAU, Respondent :
:

ANSWER TO MOTION TO RESCIND COURT ORDER
AND MOTION FOR DECLARATORY JUDGMENT

TO THE HONORABLE FREDRIC J. AMMERMAN, PRESIDENT JUDGE OF THE SAID COURT:

AND NOW, Original Petitioner, Andrew P. Gates, by and through his attorney, Laurance B. Seaman, Esquire, answers the Motion to Rescind Court Order and Motion for Declaratory Judgment as follows:

MOTION TO RESCIND COURT ORDER

1. - 11. Admitted.

12. Admitted. In further answer thereto, it is averred that F. Cortez Bell, III, Esquire, Attorney for Michael A. Rudella, and Laurance B. Seaman, Esquire, Attorney for Andrew P. Gates, met with the Court, resulting in an Order dated October 9, 2007, a photocopy of which is attached hereto as Exhibit "A", which scheduled the required Hearing on the original Petition to be held on the 16th day of November, 2007 at 11:00 o'clock A.M., which coincides with the Hearing scheduled by the Court in the Order dated September 19, 2007 upon consideration of the Motion to Rescind Court Order and Motion for Declaratory Judgment.

WHEREFORE, Original Petitioner, Andrew P. Gates, agrees to the rescission and vacation of the Order dated August 21, 2007.

MOTION FOR DECLARATORY JUDGMENT

13. Paragraphs 1 through 12 of this Answer are incorporated herein by reference.

14. Admitted, and requested that the Court make a determination on the distribution of any excess sale proceeds.

15. Denied as stated. In answer thereto, it is averred that 72 P.S. §5860.205(d) provides for, *inter alia*, the priority of distribution of . . . “all moneys collected under the provisions of this act. . .”. See 72 P.S. §5860.101 Short Title, which states: “This act shall be known and may be cited as the ‘Real Estate Tax Sale Law’.¹” “1 (Sections 5860.101 to 5860.803 of this Title)” (Photocopy attached as Exhibit “B”). In further answer thereto, Paragraphs 16 and 18 hereof are incorporated herein by reference.

16. Denied. In answer thereto, it is averred that whether the mineral rights in question are sold at a private sale or at a tax sale, the provisions of 72 P.S. §5860.205 cover the distribution of all moneys collected at such a sale, first to the Commonwealth for the satisfaction of any tax liens, next to the taxing authorities, then to any mortgagees or lien holders, and then to the property owner. In further answer thereto, Paragraphs 15 and 18 hereof are incorporated herein by reference.

17. Admitted.

18. Denied. In answer thereto, just because an owner cannot repurchase the property, does not mean that he cannot receive any proceeds from the sale of said property. In further answer thereto, it is averred that the statutory distribution scheme of 72 P.S. §5860.205 must be followed. See Fieg vs. Somerset County Tax Claim Bureau, 658 A.2d 476 (Cmwlth. 1995), a photocopy of which case is attached hereto and made a part hereof as Exhibit "C". In further answer thereto, Paragraphs 15 and 16 hereof are incorporated herein by reference.

19. Admitted.

20. Denied. In answer thereto, it is averred that no further determination need be made as to any future alienation of the said mineral rights, as the request of Petitioner, Michael A. Rudella, is not supported by law and the same would constitute an unreasonable restraint on the power of alienation of property that would be against public policy.

21. The contents of Paragraph 21 constitute a request of the Court and no response is required thereto. In any event, the sale has been stayed.

WHEREFORE, Original Petitioner, Andrew P. Gates, respectfully requests that your Honorable Court deny the Motion for Declaratory Judgment relative to the request for specific restrictions on the resale, leasing, subletting or assignments of the benefits of said mineral rights and order that the proposed private sale is disapproved and that the Clearfield County Tax Claim Bureau conduct an auction-style bid of said mineral rights between Petitioner, Andrew P. Gates, and Michael A.

Rudella, with a starting price below which the same shall not be sold in the amount of \$5,354.35.

Respectfully submitted:

GATES & SEAMAN
By:

Date: November 15, 2007.



Laurance B. Seaman, Esquire, Attorney for
Original Petitioner, Andrew P. Gates
Two North Front Street, P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

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

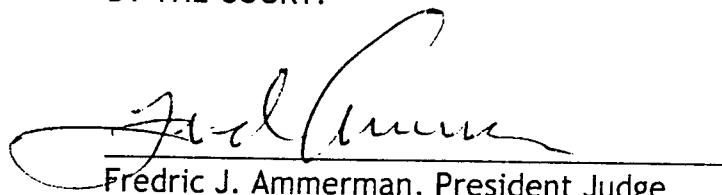
ANDREW P. GATES, Petitioner :
-vs- : No. 07 - 1343 - CD
CLEARFIELD COUNTY TAX CLAIM :
BUREAU, Respondent :
:

ORDER

AND NOW, this 9th day of October, 2007, upon agreement of the original Petitioner, Andrew P. Gates, and the individual who had submitted the private bid of \$200.00, IT IS ORDERED AND DECREED that the private sale scheduled for August 29, 2007 shall not take place, nor shall any other private sale be held at least until after a hearing on the Petition to Disapprove Private Sale to be held on the 16th day of November, 2007, commencing at 11:00 o'clock A.M., in the Clearfield County Courthouse, Clearfield, Pennsylvania, in Courtroom No. 1. Notice of this hearing shall be given by Petitioner by providing a certified copy of this Order to each taxing district, Burnside Township, Clearfield County and Harmony School District, to Robert Spencer, the Clearfield County Tax Claim Bureau, by certified mail, return receipt requested, and an Affidavit of Service of the same shall be filed by Petitioner prior to said hearing.

BY THE COURT:

I hereby certify this to be a true and attested copy of the original statement filed in this case.


Fredric J. Ammerman, President Judge

OCT 09 2007

Attest.

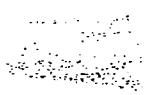

William A. Ammerman
Prothonotary/
Clerk of Courts

EXHIBIT "A"

LOCAL TAXATION

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

ARTICLE I. SHORT TITLE; DEFINITIONS

Savings Clause

Section 602 of Act 1984, Oct. 11, P.L. 876, No. 171 (53 P.S. § 27602) provides that said act (53 P.S. §§ 27601 to 27605) does not affect rights and obligations under this act, except insofar as inconsistent with specific provisions of said act.

§ 5860.101. Short title

This act ¹ shall be known and may be cited as the "Real Estate Tax Sale Law."

1947, July 7, P.L. 1368, No. 542, art. I, § 101.

¹ Sections 5860.101 to 5860.803 of this title.

Historical and Statutory Notes

Title of Act:

An Act amending, revising and consolidating the laws relating to delinquent county, city, except of the first and second class and second class A, borough, town, township, school district, except of the first class and school districts within cities of the second class A, and institution district taxes, providing when, how and upon what property, and to what extent liens shall be allowed for such taxes, the return and entering of claims therefor; the collection and adjudication of such claims, sales of real property, including seated and unseated lands, subject to the lien of such tax claims; the disposition of the proceeds thereof, including state taxes and municipal claims recovered and the redemption of property; providing for the discharge and divestiture by certain tax sales of all

estates in property and of mortgages and liens on such property, and the proceedings therefor; creating a Tax Claim Bureau in each county, except counties of the first and second class, to act as agent for taxing districts; defining its powers and duties, including sales of property, the management of property taken in sequestration, and the management, sale and disposition of property heretofore sold to the county commissioners, taxing districts and trustees at tax sales; providing a method for the service of process and notices; imposing duties on taxing districts and their officers and on tax collectors, and certain expenses on counties and for their reimbursement by taxing districts; and repealing existing laws. 1947, July 7, P.L. 1368, No. 542. Title as amended 1981, Sept. 26, P.L. 274, No. 92, § 1, imd. effective.

Cross References

Public School Code of 1949 not construed to repeal Real Estate Tax Sale Law, see 24 P.S. § 1-103.

Validation of sales when this law not followed, see § 5883 of this title.

For Title 72, Consolidated Statutes, see Appendix following this Title

content or degree of data required shall be submitted to the Court for resolution. The School District shall also develop an external monitoring process.



Scott E. FIEG t/d/b/a et al., Kevin Fieg t/a/d/b/a et al., Fieg Brothers Coal Company et al., Fieg Brothers Coal Co. et al.,

v.

SOMERSET COUNTY TAX CLAIM BUREAU, Penn Pocahontas Coal Co., Brothersvalley Township Supervisor, Somerset County, et al., Berlin-Brothersvalley School District, William L. Cicciarelli.

William L. Cicciarelli, Appellant.

Commonwealth Court of Pennsylvania.

Argued March 17, 1995.

Decided April 28, 1995.

Proposed purchaser of real property at private tax sale sought approval of sale, and another bidder petitioned for disapproval of tax sale. The Court of Common Pleas, Somerset County, No. 27 Miscellaneous 1994, Fike, J., granted petition to disapprove, and proposed purchaser appealed. The Commonwealth Court, No. 2966 C.D. 1994, Friedman, J., held that trial court was not required to approve proposed private tax sale of real property, even though bid equaled amount of delinquent real estate taxes and administrative costs.

Affirmed.

Taxation & 678

Trial court was not required to approve proposed private tax sale of real property, even though bid equaled amount of delinquent real estate taxes and administrative costs, where higher guaranteed bid was later

presented by way of petition to disapprove the sale; fact that proposed sale was for price equaling amount of delinquent taxes and administrative costs did not automatically render such price "sufficient." 72 P.S. § 5860.613.

See publication Words and Phrases for other judicial constructions and definitions.

Daniel R. Tobin, for appellant.

Jeffrey L. Berkey, for appellee.

Before McGINLEY and FRIEDMAN, JJ., and RODGERS, Senior Judge.

FRIEDMAN, Judge.

[1] William L. Cicciarelli appeals from an order of the Court of Common Pleas of Somerset County granting the Petition to Disapprove Private Tax Sale filed by Fieg Brothers Coal Company (Fieg Brothers) and fixing the minimum sale price for the property at \$15,000.

On September 8, 1986, the subject property was exposed to public sale for non-payment of delinquent real estate taxes. However, because no one bid the minimum upset price established by the Somerset County Tax Claim Bureau (Bureau), the property was not sold. Subsequently, on February 10, 1994, Cicciarelli made a private bid on the property pursuant to section 613 of the Real Estate Tax Sale Law (Tax Sale Law), Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. § 5860.613. Cicciarelli's bid of \$9,853.96 was equivalent to the upset price; that is, it was equal to 100% of the amount of outstanding county, township and school real estate taxes due on the property. See section 605 of the Tax Sale Law, 72 P.S. § 5860.605. Cicciarelli also tendered to the Bureau the costs for processing the sale. When none of the taxing authorities objected to the bid, the Bureau approved the sale and made the proper notices and advertisements as required by section 613 of the Tax Sale Law.

On April 11, 1994, Fieg Brothers filed a timely Petition to Disapprove Private Tax Sale (Petition), alleging that the property's value exceeded the amount of Cicciarelli's

on to disapproved sale was for delinquent taxes not automatically sufficient." 72 P.S.

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bid,¹ and that Fieg Brothers was willing to pay a greater amount to purchase the property. On October 26, 1994, following the July 13, 1994 hearing on the Petition,² the trial court disapproved the sale, established a minimum price equal to Fieg Brothers' bid of \$15,000 and directed an auction sale of the property if more than one party appeared to offer the price set by the court. In its opinion, the trial court rejected Fieg Brothers' arguments that its higher bid automatically precluded approval of the sale to Cicciarelli or that the Bureau acted as trustee for all those identified in the Tax Sale Law's distribution scheme and, therefore, had a fiduciary duty to obtain the highest possible price for the property.³ Nevertheless, the trial court held that where an interested purchaser has submitted a significantly higher bona fide and irrevocable bid, the sale would not be approved absent circumstances which would lead the court to approve the original sale.

Cicciarelli appeals to this court,⁴ asking us to determine whether, in a private tax sale governed by section 613(a) of the Tax Sale Law, a bid that equals the amount of delinquent real estate taxes and administrative costs is a "sufficient" price such as to preclude a court from disapproving the proposed sale even where there has been a subsequent, higher bid presented by way of a petition to disapprove the sale.

1. Cicciarelli has stipulated to this as fact. (R.R. at 50.)
2. Before the hearing took place, Cicciarelli filed a Motion for Judgment on the Pleadings; however, the trial court denied the motion as a remedy unavailable in a case commenced by a petition to disapprove a private tax sale under section 613 of the Tax Sale Law. (R.R. at 42-45.) In addition, on July 12, 1994, the record owner of the property filed a joinder in Fieg Brothers' Petition; however, sustaining Cicciarelli's objection, the trial court dismissed the joinder as outside the 45 day time limit imposed by section 613 of the Tax Sale Law. (R.R. at 93.)
3. In making this argument, Fieg Brothers notes that it is not only taxing authorities which may benefit from a private sale of property under the Tax Sale Law; rather, once the taxing bodies have been made whole out of the sale proceeds, any excess funds are distributed to mortgagees and other lien holders of record and, finally, to

Resolution of this issue revolves around the intended meaning of the word "sufficient" in the context of section 613(a) of the Tax Sale Law, which provides in pertinent part:

§ 5860.613. Properties not sold because of insufficient bid may be sold at private sale

(a) At any time after any property has been exposed to public sale and such *property was not sold because no bid was made equal to the upset price*, ... the bureau may ... agree to sell the property at private sale, at *any price approved by the bureau*.... 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 a person interested in purchasing the property may, if not satisfied that the sale price approved by the bureau is sufficient, ... petition the court of common pleas of the county to disapprove the sale. The court shall, in such case, ... hear all parties. After such hearing, the court may either confirm or disapprove the sale as to it appears just and proper....

72 P.S. § 5860.613(a). (Emphasis added.)

Cicciarelli's argument on appeal can be simply stated. He notes that the only statutory basis to seek disapproval of a private tax sale is insufficiency of price. Cicciarelli reasons that because a bid which equals the amount of the tax delinquency is, by definition, sufficient,⁵ a court must approve any bid

the owner of the property. Section 205(d)(1-5) of the Tax Sale Law, 72 P.S. § 5860.205(d)(1-5).

4. Our scope of review over a proposed private sale under section 613 of the Tax Sale Law is limited to determining whether the trial court abused its discretion. *Mehalic v. County Tax Claim Bureau*, 111 Pa. Commonwealth Ct. 398, 534 A.2d 157 (1984).

5. Cicciarelli arrives at this conclusion by noting that section 613 of the Tax Sale Law, entitled "Properties not sold because of insufficient bid may be sold at private sale," begins by stating ... "such property was not sold because no bid was made equal to the upset price." Therefore, reasons Cicciarelli, an insufficient bid is one that is not equal to the upset price. From this, Cicciarelli extracts the principle that, by definition, a bid equal to the upset price is, automatically, "sufficient" as a matter of law.

equal to the upset price and, in fact, is precluded from disapproving a private tax sale for that amount, even where a higher purchase price is subsequently offered.

Cicciarelli maintains that this position also represents the intent of the legislature, reasoning that because the legislature authorized the Bureau to approve a sale at *any* price, the disapproval provisions are intended only as a review mechanism to ensure that the best price is obtained *to the benefit of the various taxing authorities*. In support of this argument, Cicciarelli relies on our decision in *Mehalic v. County Tax Claim Bureau*, 111 Pa. Commonwealth Ct. 398, 534 A.2d 157 (1984), in which we observed that "the proper criterion 'to gauge the merits of a proposed [private] sale is not established as the largest sum which the property will bring, but rather whether the prospective terms of sale satisfy the court that the bargain is proper and *to the advantage of all the taxing authorities interested*.'" *Id.* at 403, 534 A.2d at 159, quoting *Schuylkill County Tax Claim Bureau v. Tremont Township*, 104 Pa. Commonwealth Ct. 338, 345 n. 6, 522 A.2d 102, 105 n. 6 (1987). Relying on this language, Cicciarelli contends that judicial inquiry should end when the upset price is bid because, although a bid which exceeds this amount benefits a delinquent owner and/or a dilatory prospective purchaser, the

6. Based on the statutory distribution scheme, proceeds from a public, private or judicial sale of property are first distributed to the taxing authorities, then to any mortgagees or lien holders, and then to the property owner. Thus, only the latter two categories benefit from a sale price in excess of the delinquent taxes owed. Section 205(d) of the Tax Sale Law, 72 P.S. § 5860.205(d). However, as the trial court noted, if the owner does not claim excess proceeds within three years of the sale, that excess will, in fact, be distributed to the taxing districts. Section 205(f) of the Tax Sale Law, 72 P.S. § 5860.205(f).

7. Cicciarelli asserts that if Fieg Brothers' position is adopted, it will destroy incentives to participate in a private sale by creating a situation where a party expends considerable time, energy and resources pursuing a private sale only to be outbid at the eleventh hour by a party with greater resources and, thereby, forced to participate in extensive and expensive court proceedings. Thus, Cicciarelli maintains that the more rational view is to hold that the amount obtained at any sale is "just" and "sufficient" within the

public fisc garners no further advantage once the upset price is met.⁶ Moreover, Cicciarelli urges us to adopt his position as affirmation of the long standing judicial philosophy of strengthening tax titles and making them less subject to attack, the overriding objective of which is to encourage such sales in order to recoup delinquent taxes and return the property to the tax rolls. *In re: Private Sale of .7682 Acres, Lavansville Tract*, 51 Somerset L.J. 333 (1993), quoting *Thompson v. Frazier*, 159 Pa. Superior Ct. 395, 48 A.2d 6 (1946);⁷ see also *Schuylkill County Tax Claim Bureau* (stating that one of the purposes of the Tax Sale Law is to get property back on the tax rolls on terms advantageous to the taxing districts).

Fieg Brothers counters that under the express provisions of section 613 of the Tax Sale Law, the legislature requires the court, in all situations, to exercise its independent judgment as to whether a proposed private sale is both just and proper⁸ under the circumstances of each case, and allows the court great latitude in making that determination. Fieg Brothers contends that in a proper exercise of that discretion, a court may disapprove the Bureau's private tax sale even where the bid equals the upset price and even though none of the taxing authorities

meaning of the statute where the taxing authorities are made whole, and the only time that the court should consider the question of value to determine the justness of a private sale is where the private bid is less than the upset price.

The trial court conceded that recognition of higher bids at this stage of the proceedings might have a possible chilling effect on persons willing to acquire properties held by the Bureau. However, guided by the statutory language, the trial court accepted that interested bidders must assume the risk that a higher bid may be submitted. Moreover, we note that where an individual is subsequently outbid, it is permissible to reimburse that person for the out-of-pocket costs incurred in the bid process by making those costs part of the new minimum bid. (R.R. at 69-70.) As to reimbursement for time expended, the record indicates that the trial court can also take this into account in setting a minimum bid price. (R.R. at 88-91.)

8. Here, it is the justness of the sale which is at issue; there is no question raised as to whether the sale was proper, i.e., whether it was conducted in full compliance with statutory procedures.

no further advantage once net.⁶ Moreover, Cicciarelli's position as affirmation of his judicial philosophy of titles and making them back, the overriding objection to encourage such sales in delinquent taxes and return the tax rolls. *In re: Private res, Lavansville Tract*, 51 (1993), quoting *Thompson Superior Ct.* 395, 48 A.2d 6 (1953), quoting *Schuylkill County Tax Sale* (1953) indicating that one of the purposes of the Tax Sale Law is to get property on terms advantageous to the districts).

counters that under the express of section 613 of the Tax Sale Law, the legislature requires the court to exercise its independent discretion whether a proposed private and proper⁸ under the circumstances, and allows the court making that determination. It contends that in a proper discretion, a court may disapprove a private tax sale even if it equals the upset price and one of the taxing authorities

statute where the taxing authorities, and the only time that the consider the question of value to the taxiness of a private sale is where it is less than the upset price.

It conceded that recognition of this stage of the proceedings might have a chilling effect on persons willing to bid on property held by the Bureau. However, the statutory language, the trial court held, interested bidders must assume that a higher bid may be submitted. We note that where an individual outbids, it is permissible to reimburse the bidder for the out-of-pocket costs in the bidding process by making those costs a minimum bid. (R.R. at 69-70.) The amount of time expended, the record reflects, the trial court can also take into account in setting a minimum bid price.)

The justness of the sale which is at no question raised as to whether proper, i.e., whether it was conducted in accordance with statutory procedures.

object where, as here, the circumstances warrant it. We agree with Fieg Brothers.

Section 613(a) of the Tax Sale Law clearly provides that the trial court, when petitioned to disapprove a private tax sale, shall hear all parties and, after such hearing, may confirm or disapprove the sale as to it appears "just and proper." Here, the trial court acknowledged that it must accord deference to the Bureau's decision to accept a given bid and agreed that the Bureau had no duty to maximize the sale price for the benefit of an owner or lien creditor. Indeed, the trial court stated that if the offer covers the delinquent taxes and costs, the Bureau performs its duty by approving the sale. However, the trial court also insisted that at the stage of the proceedings where the trial court becomes involved, it is not bound to approve a sale solely because the proposed bid equals the upset price. Rather, guided by the statutory language, the trial court concluded that even where the taxing bodies will be made whole by a proposed bid, when the property owner or other interested person petitions for disapproval, the trial court should look at all the circumstances to determine whether to approve or disapprove the sale as it deems just and proper. In an exercise of this discretion, the trial court here disapproved the private sale under circumstances where another party made a timely, guaranteed and substantially higher offer for the property, a bid that was more in line with the actual value of the real estate and provided some financial return to the property owner, and

9. An example of this eventuality can be found in *In re Private Sale of County Owned Lands*, 40 Pa. D. & C.2d 301 (1965). In that case, two prospective purchasers of county owned property participated in a sealed bid proceeding, after which the county commissioners accepted the higher bid. Subsequently, the losing bidder submitted a new bid which was higher than the one already accepted and petitioned the court to set the now lower bid aside. The court recognized the paramount interest of the taxing bodies which would benefit from the higher amount but, nevertheless, approved the sale at the price originally accepted by the county commissioners, pointing out that this was the only fair method of permitting prospective purchasers to buy the property.

Similarly, in *In re: Private Tax Sale of 384 Acres Minerals, Somerset Township* 42-035980, — Somerset L.J. — 1994, No. 13 Miscellaneous 1994, slip op. (October 27, 1994), a companion

there were no other factors presented which would lead the trial court to approve the originally proposed sale. In doing so, the trial court did not abuse its discretion.

This result does not conflict with the case law relied upon by Cicciarelli. In *Mehalic*, a bid representing 76% of the taxes due on the property was deemed sufficient where no taxing bodies objected, the owners that petitioned for disapproval offered no bid of their own and no other higher bidders appeared. Again, in *Private Tax Sale of .7682 Acres, Lavansville Tract*, the proposed price for private sale of property was considered adequate where the bidder offered 100% of the delinquent taxes, none of the taxing bodies objected to the proposed sale, and no other bidders appeared at the hearing to offer a higher bid. By comparison, in *In re: Private Sale of County Owned Lands*, 25 Northumberland L.J. 97 (1953), although it is unclear whether the initial bid equalled the taxes due on the property, the court disapproved an offer of \$15,100 in the face of a higher offer of \$20,000.

As indicated by these cases, an objector will not succeed on a petition for disapproval when that petition is based on grounds that a higher price can be expected if a purchaser can be obtained. However, where, as here, there is a tangible offer in the form of a bona fide bid, accompanied by a check in that amount, we agree that the court should not have to ignore the higher offer unless presented with a reason for doing so.⁹

In this case to the one currently before us, the trial court confirmed the private sale of land to Cicciarelli even though the petitioner, Svonavec, Inc., submitted a higher bid. In that case, Cicciarelli submitted a bid of \$621.72 in December 1993, an amount equal to the outstanding 1991 and 1992 taxes and costs. Although Cicciarelli's December bid did not include any amount for payment of 1993 taxes, which would become past due in January 1994, he agreed to pay the 1993 taxes and the Bureau accepted Cicciarelli's bid on that condition. Svonavec, a party interested in purchasing the subject property, filed a timely petition to disapprove the sale contending that the bid was insufficient. At the hearing, Svonavec offered to pay \$1,000 for the property, which differed from Cicciarelli's bid only in that it included an amount to defray the 1993 tax obligation. Recognizing that Cicciarelli had already agreed to assume responsibility for the 1993 taxes, the trial court determined that, under

We also note that if we were to accept Cicciarelli's argument, it would mean that a private bid equal to the amount of delinquent taxes and costs would automatically withstand any objection based on insufficiency, including one made by the property owner. In this regard, we consider our decision in *Breinig v. North Penn School District*, 19 Pa. Commonwealth Ct. 377, 339 A.2d 617 (1975), instructive. In *Breinig*, we determined that a taxing district has no standing to object to a private sale on grounds of insufficiency where the private bid equals the upset sale price. We reasoned that because this amount fully satisfies all of the taxing district's claims in the property, it is necessarily sufficient *as to the taxing district*. However, we stopped short of holding that such a sale price was "sufficient" as a matter of law with regard to all possible objectors. In fact, we specifically noted that any excess monies above the upset price would be awarded to the owner, thereby implying that, whereas the taxing district would have no standing to object to a private bid that was equal to the amount of delinquent taxes, an owner still would retain the ability to challenge a private sale bid for insufficiency under those same circumstances because the owner had something to gain from a higher sale price.

Cicciarelli makes some persuasive arguments; however, ultimately they must fail.

these circumstances, it was just and proper to deny the petition for disapproval.

10. Cicciarelli contends that the legislature does, in fact, express this limitation, albeit somewhat obliquely. However, under the express language of the statute, once a petition to disapprove a private tax sale is filed, the trial court is *required* to hear all parties and then determine whether the sale is just and proper. If, as Cicciarelli suggests, there are cases where the legislature intended the trial court to be without discretion in making this determination, it is difficult to believe that the legislature would not have *specifically* disallowed the filing of such petitions in those cases.

11. In fact, we note that the legislature amended section 613 of the Tax Sale Law in 1986. Whereas previously only the affected taxing districts and the property owner had standing to petition for disapproval of a private tax sale, the statute now specifically allows interested parties and persons interested in purchasing the property to seek disapproval of the private sale where

Contrary to his claim, it is far from clear that Cicciarelli's position is the one intended by the legislature, particularly where the legislature could have easily made that intention plain through the statutory language, but did not. As written, section 613 of the Tax Sale Law clearly does not limit the right to object to a proposed private sale to circumstances where the original bid is less than the delinquent taxes and costs.¹⁰ At the hearing, Mr. Nathan Rascona, appearing for the Bureau, attempted to explain this admitted inconsistency between the Tax Sale Law and Cicciarelli's position, asking us to assume that the legislature omitted such a limitation simply because the legislature never contemplated the possibility that private bids might equal the upset price. Rather, Mr. Rascona suggests that the legislature, anticipating that such bids would always be lower than the taxes due on the property, included sufficiency provisions only to prevent a private buyer from purchasing property with a large tax responsibility at an absurdly low price. (R.R. at 67, 81-83, 85-86.) Finding no evidentiary support for this theory, we decline to accept it.¹¹

Because we can perceive no abuse of discretion, we affirm the order of the trial court.

ORDER

AND NOW, this 28th day of April, 1995, the order of the Court of Common Pleas of

they feel that the price bid is insufficient. The amendment also altered the notice provisions for a private sale. Where formerly only the taxing districts and property owner were notified of the proposed sale, the statute now calls for notice by publication, requiring notice to appear a minimum of two times in at least one newspaper of general circulation in the county where the property is located and in that county's official legal journal. Section 613(a) of the Tax Sale Law, 72 P.S. § 5860.613(a).

It is reasonable to conclude that the purpose of this amendment was to elicit higher bids from otherwise uninvolved parties in order to achieve a more just price for the property. In doing so, the statute does not expressly limit its solicitation to circumstances where the original bid is less than the delinquent tax and costs. Indeed, potential purchasers are not restricted to objecting only where the sale price approved by the bureau is *insufficient*; rather, they are entitled to petition for disapproval of any proposed sale within 45 days if they are not satisfied that the approved bid is *sufficient*.

om clear that intended by the legislature's intention to use, but did the Tax Sale right to object to circumstances in the delinquent hearing. Mr. of the Bureau, stated inconsistently and Cicciarini assume that the intention simply contemplated that might equal Raseona anticipating that owner than the stated sufficient private buyer in a large tax at low price. Finding no evidence, we decline

to abuse of discretion by the trial court.

of April, 1995, Common Pleas of

insufficient. The state provisions for only the taxing were notified of the calls for notice by to appear a mini-one newspaper of y where the property's official legal Tax Sale Law, 72

hat the purpose of higher bids from in order to achieve property. In doing so, limit its solicitation original bid is less costs. Indeed, restricted to objecting over by the bureau are entitled to petitioned sale within that the approved

Somerset County, dated October 26, 1994, is hereby affirmed.



In the Matter of the CONDEMNATION OF the SURFACE OF that CERTAIN TRACT OF LAND LOCATED IN the BOROUGH OF CENTRALIA, COLUMBIA COUNTY, PENNSYLVANIA, and Described in Columbia County Deed Book 451 at Page 899, in the Office of the Columbia County Recorder of Deeds in Bloomsburg, Pennsylvania, and Further Identified as 436 Troutwine Street, in the Borough of Centralia, Columbia County, Pennsylvania, by the Columbia County Redevelopment Authority, as Agent of the Department of Community Affairs of the Commonwealth of Pennsylvania, in Connection with the Acquisition of Surface Rights to Certain Real Properties Threatened by an Underground Mine Fire Located in and Around the Borough of Centralia and the Township of Conyngham, Columbia County, Pennsylvania.

Betty Noble, William P. Noble and
Bonnie Hynoski, Appellants.

Commonwealth Court of Pennsylvania.

Argued Dec. 6, 1994.

Decided April 28, 1995.

Condemnees filed preliminary objections to declarations of taking filed by county redevelopment authority as agent of Department of Community Affairs (DCA). The Court of Common Pleas, Columbia County, No. 185 of 1993, Naus, J., denied preliminary objections, and condemnees appealed. The Commonwealth Court, No. 655 C.D. 1994, Kelley, J., held that: (1) county redevelopment authority was not acting ultra vires of its powers and authority vested in it pursuant to urban redevelopment law when it acted as agent of

DCA and sought to acquire condemnees' property pursuant to state planning code section giving DCA power, in name of Commonwealth, to exercise right of eminent domain, and (2) there was no requirement that bond be filed with declaration of taking in condemnation.

Affirmed.

1. Eminent Domain \Leftrightarrow 262(1)

Scope of review of trial court order dismissing condemnees' preliminary objection to declarations of taking was limited to determination of whether trial court abused its discretion or committed error of law.

2. Eminent Domain \Leftrightarrow 18.5

In order for county redevelopment authority to acquire any property by eminent domain pursuant to urban redevelopment law, area in question must first be certified as blighted. 35 P.S. §§ 1701-1719.1.

3. Eminent Domain \Leftrightarrow 9

County redevelopment authority was not acting ultra vires of its powers and authority vested in it pursuant to urban redevelopment law when it acted as agent of Department of Community Affairs (DCA) and sought to acquire condemnees' property pursuant to state planning code section giving DCA power, in name of Commonwealth, to exercise right of eminent domain; no provision in state planning code or urban redevelopment law was shown to prohibit DCA, as agency of Commonwealth, from contracting with another agency of Commonwealth to act as DCA's agent, to assist DCA in carrying out its statutory duties and obligations, nor was there any prohibition in urban redevelopment law precluding redevelopment authority from acting as DCA's agent. 35 P.S. §§ 1701-1719.1; 71 P.S. § 1049.4.

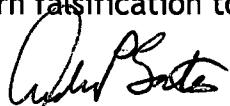
4. Principal and Agent \Leftrightarrow 1

Implicit in principal-agent relationship is consent by principal that one may act on his or her behalf and is subject to his or her control.

VERIFICATION

I verify that the statements made in the foregoing document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

11/15/07
Date


Andrew P. Gates

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

ANDREW P. GATES, Petitioner :
: :
-vs- : No. 07 - 1343 - CD
: :
CLEARFIELD COUNTY TAX CLAIM :
BUREAU, Respondent : :

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of Answer to Motion to Rescind Court Order and Motion for Declaratory Judgment on November 15, 2007, by personally delivering the same upon the following:

F. Cortez Bell, III, Esquire
Attorney for Michael A. Rudella
Clearfield County Courthouse
District Attorney's Office
Clearfield, PA 16830

Kim C. Kesner, Esquire
Attorney for Clearfield County Tax Claim Bureau
15 North Front Street
Clearfield, PA 16830

GATES & SEAMAN

BY: _____
Laurance B. Seaman, Esquire
Attorney for Original Petitioner,
Andrew P. Gates

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

FILED 10cc
018:45 AM
NOV 15 2007 Atty F. Bell

William A. Shaw
Prothonotary/Clerk of Courts

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

ANDREW P. GATES :
: :
: :
V. : NO. 07-1343-CD
: :
CLEARFIELD COUNTY TAX CLAIM :
BUREAU :
:

ANSWER TO PETITION TO DISAPPROVE PRIVATE SALE

NOW, comes the Petitioner, Michael A. Rudella by and through his attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth the Petitioner's Answer to Petition to Disapprove Private Sale and avers as follows:

1. Paragraph one of the Petition is admitted.
2. Paragraph two of the Petition is admitted.
3. Paragraph three of the Petition is admitted.
4. Paragraph four of the Petition is admitted.
5. Paragraph five of the Petition is denied in part and can neither be admitted or denied in part. It would be denied that the bid of \$200.00 is insufficient. It can neither be admitted or denied as to whether Petitioner, Andrew P. Gates, is willing to offer at least the amount of the outstanding taxes and costs as his initial bid as to the property.
6. The Petitioner, Michael A. Rudella, would aver that the Petitioner, Andrew P. Gates is not a valid bidder and as such the Petition to Disapprove Private Sale must be dismissed.
7. The Petitioner, Michael A. Rudella, would aver that the provisions of statute, 72 P.S. § 5860.618 specifically provides as follows:

“§ 5860.618. Repurchase by owner

- (a) The owner shall have no right to purchase his own property at a judicial sale, a private sale or from the bureau's repository for unsold property under the provisions of this act.
- (b) A change of name or business status shall not defeat the purpose of this section.
- (c) For the purpose of this section, “owner” means any individual, partner, shareholder, trust, partnership, limited partnership, corporation or any other business association or any trust, partnership, limited partnership, corporation or any other business association that has any individual as part of the business association who had any ownership interest or rights in the property.”

8. That the Petitioner, Michael A. Rudella, on or about August 9, 2007, received a telephone call from Tim Morgan, representative of Robert Spencer the assessed owner of the property in question.
9. That the Petitioner, Michael A. Rudella, on that same date attempted two return telephone calls to said Tim Morgan.
10. That Tim Morgan returned the calls and indicated that he was calling in regard to the bid placed by the Petitioner, Michael A. Rudella, and that he was inquiring as to whether the Rudella bid could be withdrawn as Mr. Morgan indicated he was representing the interest of Robert Spencer as well as Mr. Morgan's son Kyle, grandson of Robert Spencer. Mr. Morgan indicated that he wished to protect the inheritance of his son and that he received a call in regard to the coal rights from an interested party and wished to re-secure those rights from the Tax Claim Bureau.
11. Mr. Morgan indicated that if Michael A. Rudella would withdraw his bid that all costs incurred by Mr. Rudella would be reimbursed.
12. Mr. Morgan indicated that should the bid not be withdrawn that he would secure someone to challenge the bid and that the bid could be bid up past the point of the

outstanding taxes and costs at no harm to Mr. Spencer as after that point any excess amounts above the outstanding taxes and costs would be returned to Mr. Spencer at the conclusion of the sale for whatever price was secured.

13. That the Petitioner, Andrew P. Gates, filed a Petition to Disapprove Private Sale on August 21, 2007.
14. That no other individuals have entered an appearance in the matter nor have there been any other Petitions filed to disapprove the private sale.
15. That Petitioner, Michael A. Rudella, would aver that Andrew P. Gates is acting as the agent or straw person for the owner of the property as defined by 72 P.S. § 5860.618 which is not allowed by statute and therefore the Petition to Disapprove Private Sale must be dismissed.

WHEREFORE, your Petitioner, Michael A. Rudella, would respectfully request that the Court find that the Petition to Disapprove Private Sale has been filed contrary to the provisions statute and as such the same must be dismissed.

Respectfully Submitted,

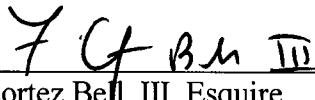


F. Cortez Bell, III, Esquire
Attorney for Petitioner Michael A. Rudella

VERIFICATION

I, F. Cortez Bell, III, Esquire, Counsel for Petitioner herein, verify that the statements made within the foregoing Answer to Petition to Disapprove Private Sale are true and correct to the best of my knowledge, information and belief based upon the facts supplied by the Petitioner as well as based upon the documents attached hereto. This verification is made in order to allow the prompt filing of the instant pleading and the verification of the Petitioner shall be filed of record in this matter. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

Date: November 15, 2007


F. Cortez Bell, III, Esquire

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

ANDREW P. GATES

:

:

:

V.

:

NO. 07-1343-CD

:

:

CLEARFIELD COUNTY TAX CLAIM
BUREAU

:

CERTIFICATE OF SERVICE

I hereby certify this 15th day of November, 2007, a copy of the Answer to Petition to Disapprove Private Sale has been served upon the following persons and in the manner indicated below:

Service via personal delivery addressed as follows:

Maryanne Wesdock
Director, Clearfield County Assessment Office
and Tax Claim Bureau
Clearfield County Courthouse
230 East Market Street
Clearfield, Pa. 16830

Clearfield County Commissioners
Clearfield County Courthouse
230 East Market Street
Clearfield, Pa. 16830

Kim C. Kesner, Esquire
Belin, Kubista & Ryan
15 North Front Street
P.O. Box 1
Clearfield, PA. 16830

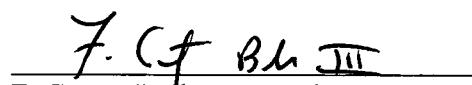
Laurance B. Seaman, Esquire
Gates & Seaman
Two North Front Street
P.O. Box 846
Clearfield, PA. 16830

Via first class mail, postage prepaid, addressed as follows:

Mr. David Goodin
Harmony Area School District
5239 Ridge Road
Westover, PA. 16692

Burnside Township Board
of Supervisors
R.D. #1
Westover, PA. 16692

Respectfully Submitted,


F. Cortez Bell, III, Esquire
Attorney for Petitioner Michael A. Rudella

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

ANDREW P. GATES, Petitioner

-vs-

No. 07 - 1343 - CD

CLEARFIELD COUNTY TAX CLAIM
BUREAU, Respondent

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA

:SS.

COUNTY OF CLEARFIELD

:

LAURANCE B. SEAMAN, ESQUIRE, of the Law Offices of Gates & Seaman, being duly sworn according to law, states that he mailed on the 10th day of October, 2007 by certified mail, return receipt requested, a certified copy of Order dated October 9, 2007 to:

Burnside Township
2447 Ridge Road
Westover, PA 16692

Clearfield County Tax Claim Bureau
230 East Market Street
Clearfield, PA 16830

Robert G. Spencer
c/o Shad B. Spencer
Timothy N. Morgan, Co-Guardians
P. O. Box 1
Grampian, PA 16836

Clearfield County Commissioners
c/o Kim C. Kesner, Esquire, Solicitor
P. O. Box 1
Clearfield, PA 16830

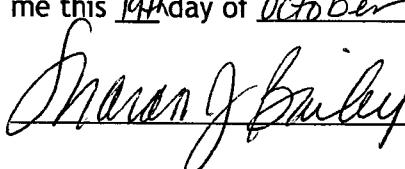
Harmony School District
4575 Ridge Road
Westover, PA 16692

Attached hereto and made a part hereof, collectively, as Exhibit "A" is a photocopy of green Return Receipt cards for the Certified Mail.


GATES & SEAMAN

Laurance B. Seaman, Esquire

Sworn to and subscribed before
me this 19th day of October, 2007.


Sharon J. Bailey

NOTARIAL SEAL
SHARON J. BAILEY, Notary Public
Bradford Twp., Clearfield County
My Commission Expires June 23, 2009

FILED No CC.
6/2/00 pm
OCT 19 2007
JW

William A. Shaw
Prothonotary/Clerk of Courts

#6

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Burnside Township
2447 Ridge Road
Westover, PA 16692

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X John Rose

Agent
 Addressee

B. Received by (Printed Name)

John Rose

C. Date of Delivery

10/11/07

D. Is delivery address different from item 1?

Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

**2. Article Number
(Transfer from service label)**

7006 3450 0003 9553 0842

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert G. Spencer,
c/o Shad B. Spencer and
Timothy N. Morgan, Co-
Guardians
P. O. Box I
Grampian, PA 16836

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X Shad B. Spencer

Agent
 Addressee

B. Received by (Printed Name)

Sherie Morgan

C. Date of Delivery

10/12/2007

D. Is delivery address different from item 1?

Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number

(Transfer from service label)

7006 3450 0003 9553 0880

PS Form 3811

Receipt

102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Harmony School District
4575 Ridge Road
Westover, PA 16692

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X Abby Rolopbaugh

Agent
 Addressee

B. Received by (Printed Name)

Abby Rolopbaugh

C. Date of Delivery

10/11/07

D. Is delivery address different from item 1?

Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number

(Transfer from service label)

7006 3450 0003 9553 0903

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

EXHIBIT "A"
2 pages

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Clearfield County Tax
Claim Bureau
230 East Market Street
Clearfield, PA 16830

2. Article Number

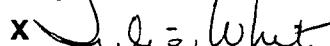
(Transfer from service label)

7006 3450 0003 9553 0835

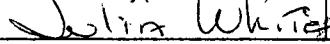
PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

Yes

If YES, enter delivery address below:

No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Clearfield County
Commissioners
c/o Kim C. Kesner, Esq.
Solicitor
P. O. Box 1
Clearfield, PA 16830

2. Article Number

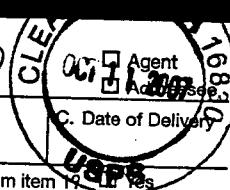
(Transfer from service label)

7006 0100 0003 4232 0769

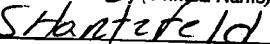
PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

Yes

If YES, enter delivery address below:

No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

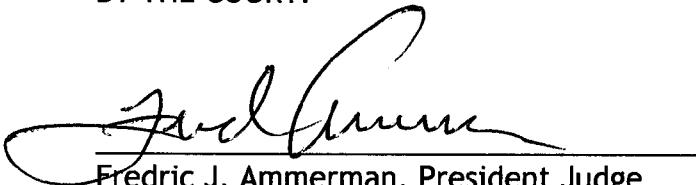
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

ANDREW P. GATES, Petitioner :
: No. 07 - 1343 - CD
-vs- :
CLEARFIELD COUNTY TAX CLAIM :
BUREAU, Respondent :
:

ORDER

AND NOW, this 9th day of October, 2007, upon agreement of the original Petitioner, Andrew P. Gates, and the individual who had submitted the private bid of \$200.00, IT IS ORDERED AND DECREED that the private sale scheduled for August 29, 2007 shall not take place, nor shall any other private sale be held at least until after a hearing on the Petition to Disapprove Private Sale to be held on the 16th day of November, 2007, commencing at 11:00 o'clock A.M., in the Clearfield County Courthouse, Clearfield, Pennsylvania, in Courtroom No. 1. Notice of this hearing shall be given by Petitioner by providing a certified copy of this Order to each taxing district, Burnside Township, Clearfield County and Harmony School District, to Robert Spencer, the Clearfield County Tax Claim Bureau, by certified mail, return receipt requested, and an Affidavit of Service of the same shall be filed by Petitioner prior to said hearing.

BY THE COURT:


Fredric J. Ammerman, President Judge

FILED 7CC
043-03-621 Atty Gates
OCT 09 2007 (will serve)

William A. Shaw
Prothonotary/Clerk of Courts

68

#5

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

ANDREW P. GATES

v.

CLEARFIELD COUNTY TAX CLAIM
BUREAU

NO. 07-1343-CD

FILED

SEP 19 2007

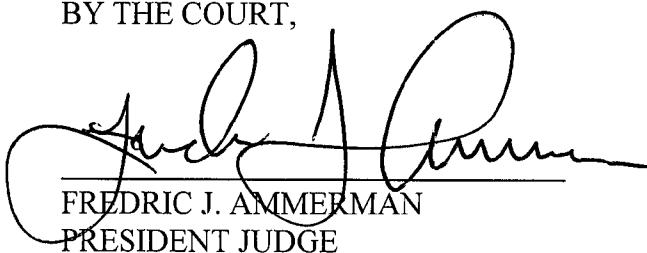
o/11:00 AM
William A. Shaw
Prothonotary/Clerk of Courts

8 cent to ATR

ORDER

NOW this 19 day of September, 2007 upon consideration of the Petitioner, Michael A. Rudella's Motion to Rescind Court Order and Motion For Declaratory Judgment, the Court being aware that the time period in which to appeal the Court Order of August 21, 2007, to the Superior Court of Pennsylvania is about to expire and in consideration of the circumstances of this case, it is the Order of this Court that the Order of Court issued in this matter on August 21, 2007 be and is hereby rescinded and vacated. It is the further Order of this Court that a Rule is hereby granted on the Petitioner, Andrew P. Gates to appear and show cause why the Motion for Declaratory Judgment should not be granted. Rule Returnable for Answer by the Petitioner, Andrew P. Gates and hearing on said Motions to be held on the 16 day of November, 2007, at 11:00 o'clock A.M. in Courtroom No. 1 at the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,


FREDRIC J. AMMERMAN
PRESIDENT JUDGE

#4

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

ANDREW P. GATES

v.

NO. 07-1343-CD

CLEARFIELD COUNTY TAX CLAIM
BUREAU

FILED

SEP 17 2007
0/10-251
William A. Shaw
Prothonotary/Clerk of Courts

7 Cents to
GK
N+TJ

**MOTION TO RESCIND COURT ORDER
AND MOTION FOR DECLARATORY JUDGMENT**

NOW, comes the Petitioner, Michael A. Rudella by and through his attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth the Petitioner's Motion to Rescind Court Order and Motion for Declaratory Judgment and avers as follows:

MOTION TO RESCIND COURT ORDER

1. That the above captioned matter was originally brought before the Court as a result of a Petition to Disapprove Private Sale filed by the original Petitioner, Andrew P. Gates. Said Petition was filed on August 21, 2007.
2. That the Court by Order of the same date, August 21, 2007, Ordered and Decreed that the proposed private sale by the Clearfield County Tax Claim Bureau of certain property located at Clearfield County Assessment Map No. 108-C14-00002 consisting of 162.8 acres coal rights for the sum of \$200.00 was disapproved.
3. That the Court further Ordered that auction style bidding be conducted between the Petitioner, Andrew P. Gates and the individual who had originally offered the private bid.
4. That the instant Petitioner, Michael A. Rudella was the individual who on January 31, 2007 had submitted a private bid of \$200.00 to purchase the coal right assessed at 108-C14-00002.

(#3)

5. That notice provided to the instant Petitioner, Michael A. Rudella, by letter dated June 29, 2007 from the Clearfield County Tax Claim Bureau that the private bid had been accepted by the Bureau.
6. That advertisement of the bid and private sale was made by publication within the Clearfield Progress and the Clearfield County Legal Journal on June 29, 2007 and July 13, 2007.
7. That the original Petitioner, Andrew P. Gates, timely filed a Petition to Disapprove Private Sale challenging the sale pursuant to the provisions of 72 P.S. §5860.613. Said Petition is that Petition referred to within Paragraph 1 above.
8. That the Court, thereafter, on the same date as the filing signed an Order disapproving the sale.
9. That the provisions of 72 P.S. §5860.613 specifically provides that upon the filing of any Petition seeking to disapprove the sale that a hearing shall be held with due and proper notice to the taxing districts involved or effected, the owner, the bureau, the purchaser and any other person who has joined in the Petition. Attached hereto and incorporated herein by reference as Exhibit "A" is a complete copy of 72 P.S. §5860.613.
10. That a review of the Petition to Disapprove Private Sale filed by the original Petitioner, Andrew P. Gates, evidences that there is no Certificate of Service attached thereto evidencing that copies were provided to any other of the parties involved.
11. That the Petitioner herein, Michael A. Rudella would aver that he was never served with a copy of the Petition to Disapprove Private Sale nor was he ever formally served with a copy of the Court Order by which the sale was disapproved. The only knowledge of the matter that was provided to the instant

Petitioner, Michael A. Rudella, was a telephone call received from the Director of the Clearfield County Tax Claim Bureau on August 27, 2007 at approximately 3:45 P.M. indicating that the sale had been disapproved by the Court and attempting to set up the auction sale for August 29, 2007.

12. That as the provisions of the statute, 72 P.S. §5860.613, have not been complied with in that no notice was given to the other parties and no hearing was held, and thus a defect exists in the procedure by which the Order of Court dated August 21, 2007 was obtained.

WHEREFORE, your Petitioner, Michael A. Rudella, would respectfully request that as the provisions of the statute, 72 P.S. §5860.613 have not been complied with in that no notice was provided to necessary parties and no hearing was held as to the Petition to Disapprove Private Sale, that your Honorable Court rescind and vacate that Order issued August 21, 2007 which was entered in violation of statute.

MOTION FOR DECLARATORY JUDGMENT

13. That paragraphs one through twelve of the above Motion to Rescind Court Order would be incorporated herein by reference as if the same were set forth in full at length.
14. That the Petitioner, Michael A. Rudella, would assert that a determination needs to be made by the Court concerning the disposition of any sale proceeds above the minimum bid price of \$5,270.74.
15. That the provisions of statute, 72 P.S. §5860.205, sets forth the disposition of proceeds above the "upset price" should the matter have proceeded to an advertised Tax Claim Bureau Tax Sale. Attached hereto and incorporated herein by reference as Exhibit "B" is a copy of said statutory section

16. That if the property is sold pursuant to an appropriate Court Order said property or mineral rights will have been sold at a private sale rather than a tax sale as dealt with within the tax sale distribution provisions of 72 P.S. §5860.205 set forth in the paragraph above.
17. That the provisions of statute, 72 P.S. §5860.618, specifically provides that the original owner of any property which is the subject of any private sale or judicial sale may not purchase his own property. Attached hereto and incorporated herein as Exhibit "C" is a copy of said statutory section.
18. That if the original owner of the property can not repurchase the property at sale he should likewise be precluded from receiving any proceeds from the sale of the property by private sale or judicial sale as the net effect of such would be that the Tax Claim Bureau and/or the Court would be acting as sales agent for the original owner and the owner could receive the benefit just as if he had purchased the property and resold the same.
19. That an Order as to the distribution of the proceeds of the sale, prior to the sale, would be of benefit to the bidders at the sale, the individual taxing districts who might benefit from said additional proceeds and the Tax Claim Bureau who will be responsible for the proper distribution and accounting of said proceeds.
20. That the Petitioner, Michael A. Rudella, would assert that an additional determination needs to be made by the Court to preclude any resale, leasing, subletting or in any fashion the assignments of the benefit of the subject mineral rights which are the subject of the sale by any successful purchaser to the original owner as defined by the statute 72 P.S. §5860.618 as such would be contrary to the provisions of the statutes set forth above.

21. The Petitioner Michael A. Rudella would respectfully request that any sale pursuant to the Order of August 21, 2007 or any subsequent Order of Court which has been properly entered with due notice and hearing be stayed pending final determination by the Courts of the requests set forth within this Motion for Declaratory Judgment.

WHEREFORE, the Petitioner, Michael A. Rudella, would respectfully request that your Honorable Court grant the Motion for Declaratory Judgement and after hearing thereon, issue an Order setting forth the distribution as to any proceeds from the auction style sale which are received above and beyond the minimum sale price set by the Court as well as that the Court direct that any deed issued by the Tax Claim Bureau as a result of the bid style auction have set forth therein a specific restriction on the resale, leasing, subletting or in any fashion the assignments of the benefit of said mineral rights to the original owner as defined by the provisions of 72 P.S. §5860.618 .

Respectfully Submitted,

F. Cortez Bell III

F. Cortez Bell, III, Esquire
Attorney for Petitioner Michael A. Rudella

VERIFICATION

I, Michael A. Rudella, Petitioner herein, verify that the statements made within the foregoing Motion to Rescind Court Order and Motion for Declaratory Judgment are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

Date: September 12, 2007


Michael A. Rudella

Discretion of commissioners 1

1. Discretion of commissioners

In the sale of county owned land, the county commissioners are fiduciaries holding title to such property as trustee for the benefit of the several taxing authorities, and in the performance of their duties, the commissioners are vested with a wide discretion with which the court will interfere only upon a clear

showing that the discretion has been abused. *In re Private Sale of County Owned Lands*, 40 D. & C.2d 301, 38 N.Y.2d 126, 1966.

2. Resale

Where properties are purchased by county and are later resold proceeds from the resale are property of the county, subject only to any responsibility to the taxing authorities. *County Comrs v. Prothonotary*, 14 D. & C2d 89, 27 Lch. L.J. 402, 1959.

(c) PRIVATE SALE

Subarticle heading "(c) Private Sale" was added by Act 1986, July 3, P.L. 351, No. 81, § 37.

**§ 5860.613. Properties not sold because of insufficient bid
may be sold at private sale**

(a) At any time after any property has been exposed to public sale and such property was not sold because no bid was made equal to the upset price, as hereinbefore provided, and whether or not proceedings are initiated pursuant to sections 610 through 612.1,¹ the bureau may, on its own motion, and shall, on the written instructions of, any taxing district having any tax claims or tax judgments against said property, agree to sell the property at private sale, at any price approved by the bureau. Notice of the proposed sale, stating the price and the property proposed to be sold, shall be given to each such taxing district and to the owner of the property. Notice shall also be given by publication at least two (2) times, with approximately ten (10) days intervening between each publication, in at least one (1) newspaper of general circulation published in the county where the property is located and in the official legal journal of that county. The notice by publication shall set forth the location of the property, the date and place of sale, the price and terms of sale, and the provision that the property will be sold free and clear of all tax claims and tax judgments. 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 a 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

For Title 72, Consolidated Statutes, see Appendix following this Title

taxing district, the owner person who has joined in hearing, the court may either appear just and proper. at the same time fix a price and order that, if not be sold at public judgment, the party agrees to pay the shall direct the bureau property among the partners. agrees to pay the minimum sell the property to that

(b) When an offer is received, and the price bureau shall, on the written application of the owner, submit by petition to the court of common pleas of the county affording the owner and or tax judgments against such notice, as the court deems proper, the sale. If the court approves the sale with like effect as though by all taxing districts having jurisdiction of the property, 1947, July 7, P.L. 1368, art. No. 157, § 2, imd. effective Jan. 1, 1982; 1986, July 1, 1986, P.L. 100, art. No. 157, § 2, imd. effective Jan. 1, 1987.

¹ Sections 5860.610 to 5860.

Histo

The 1973 amendment subs
opening phrase of subsection
1986 amendment, post) pre
words "the bureau may" in
any time within one year after
erty has been exposed to publ
such sale is continued beca
was made equal to the upse
herein before provided."

The 1981 amendment, in the
sense of subsec. (a), substituting
“fifteen (45)” for “fifteen (15)”.

Section 7 of Act 1981, Section 274, No. 92, provides that it
shall come into operation on January 1, 1982 and be applied
to sales agreed to on or after that date.

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 and order that, if no private sale can be arranged, the property 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 shall sell the property to that party without the necessity of an auction.

(b) When an offer to purchase any such property has been received, and the price has been disapproved by the bureau, the bureau shall, on the written instructions of any interested taxing district, submit by petition the proposed sale to the court of common pleas of the county for approval. The court shall, after affording the owner and each taxing district having any tax claims or tax judgments against the property an opportunity to be heard on such notice, as the court deems appropriate, approve or disapprove the sale. If the court approves the sale, it shall be consummated with like effect as though it had been approved by the bureau and by all taxing districts having said interest.

1947, July 7, P.L. 1368, art. VI, § 613. As amended 1973, Dec. 21, P.L. 442, No. 157, § 2, imd. effective; 1981, Sept. 26, P.L. 274, No. 92, § 6, effective Jan. 1, 1982; 1986, July 3, P.L. 351, No. 81, § 38, effective in 30 days.

¹ Sections 5860.610 to 5860.612-1 of this title.

Historical and Statutory Notes

The 1973 amendment substituted the opening phrase of subsection (a) (see the 1986 amendment, post) preceding the words "the bureau may" in lieu of "At any time within one year after any property has been exposed to public sale and such sale is continued because no bid was made equal to the upset price, as hereinbefore provided".

The 1981 amendment, in the fifth sentence of subsec. (a), substituted "forty-five (45)" for "fifteen (15)".

Section 7 of Act 1981, Sept. 26, P.L. 274, No. 92, provides that the amendment to this section "shall take effect January 1, 1982 and be applicable to all sales agreed to on or after the effective date".

The 1986 amendment rewrote subsection (a), which previously read:

"(a) At any time after any property has been exposed to public sale and such sale is not sold because no bid was made equal to the upset price, as hereinbefore provided, and whether or not proceedings are initiated pursuant to sections 610 through 612.1, the bureau may, on its own motion, and shall, on the written instructions of any taxing district having any tax claims or tax judgments against said property, agree to sell the property at private sale, at any price approved by the bureau. Notice of the proposed sale, stating the price and the property proposed to be sold, shall be given to each such taxing district and to the owner of the property. The corporate authorities

For Title 72, Consolidated Statutes, see Appendix following this Title

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Historical and Statutory Notes

Act 2002-16 legislation

Act 2002-16, § 1, inserted "Except as otherwise provided in section 201.1."

Cross References

Assignment of claims, see 72 P.S. § 5860.316.

§ 5860.201a. Alternative collection of taxes

(a) In lieu of or in addition to creating a bureau, counties are authorized to provide by ordinance for the appointment and compensation of such agents, clerks, collectors and other assistants and employés, either under existing departments, in private sector entities or otherwise as may be deemed necessary, for the collection and distribution of taxes under this act. Any alternative collection method shall be subject to all of the notices, time frames, enumerated fees and protections for property owners contained in this act. Two or more counties may enter into a joint agreement under 53 Pa.C.S. Ch. 23 Subch. A¹ (relating to intergovernmental cooperation) to provide for the alternative collection of taxes under this section.

(b) The requirement of section 203² to furnish bonds, provisions of this act relating to accounting and distribution of moneys and other provisions relating to operation of a bureau shall apply to an alternative collection system established under this section. 1947, July 7, P.L. 1368, art. II, § 201.1, added 2002, March 22, P.L. 205, No. 16, § 2, effective in 60 days. Amended 2004, Nov. 29, P.L. 1328, No. 168, § 1, ind. effective.

¹ 53 Pa.C.S.A. § 2301 et seq.

² 72 P.S. § 5860.203.

Historical and Statutory Notes

Act 2004-168 legislation

Act 2004-168, § 1, in subsec. 1, inserted "or in addition to" in the first sentence.

§ 5860.204. County bureau to collect taxes

Research References

Encyclopedias

Summary Pa. Jur. 2d Tax § 23:67, Miscellaneous.

Notes of Decisions

Costs

———
Swarthmore School Dist. v. Kuyumjian, 625 A.2d 1305, 155 Pa.Cmwlth. 635, Cmwlth.1993. Schools ☞ 106.12(3)

1. Validity

The 1986 amendment to Tax Sale Law did not repeal by implication Tax Collection Law section which gave inherent authority to collect taxes to both school district and county tax claim bureau; therefore, school district was not barred from instituting action in assumpsit to collect unpaid school taxes once it returned duplicate tax bills to county tax claim bureau as unpaid. Wallingford

2. Costs
Taxing district was liable to county tax claim bureaus for commissions and costs in connection with taxes which were paid to taxing district and for which returns were made to bureaus. Apollo-Ridge School Dist. v. Tax Claim Bureau of Indiana, 595 A.2d 217, 141 Pa.Cmwlth. 111, Cmwlth.1991. Taxation ☞ 2806

§ 5860.205. System of accounting and distribution

(a) In each county bureau a system of accounting and distribution of all moneys collected or received under the provisions of this act shall be established in the bureau as may be determined by the county commissioners, the county controller, if any, and county treasurer.

(b) The bureau shall keep an accurate account of all money recovered and received by it under this act and maintain a separate account for each property.

(c) Money received on account of costs, fees and expenses advanced by any taxing district shall be repaid to the taxing district making the advance. Other money collected under this act shall be subject, first, to a commission of five per centum (5%) of all money collected to be retained by the bureau to offset costs of the administration of this act. Interest earned on money held by the bureau prior to distribution shall also be retained by the bureau for administrative costs.

(c.1) It shall then be the duty of the bureau to distribute the entire remaining balance of the moneys collected, except moneys collected through any tax sale under the provisions of this act, to the taxing districts at least once every three (3) months in proportion to the taxes due each taxing district.

(d) It shall be the duty of the bureau to distribute all moneys collected as the result of any tax sale conducted under the provisions of this act, less the deductions authorized by subsection (c), 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.

(5) Fifth, to the owner of the property.

(e) Prior to the actual distribution required by subsection (d), the bureau shall petition the court of common pleas for a confirmation of distribution. The petition shall set forth a proposed schedule of distribution for each account and shall request the court to issue a rule to show cause on each distributee why the court should not confirm the distribution as proposed. The rule to show cause and a copy of the petition shall be served by first class mail upon each distributee and upon the purchaser, with proof of mailing to the last residence or place of business of the distributee known to the bureau and to the purchaser at the address given to the bureau. If the rule to show cause is not returned by any distributee or purchaser on or before the time set for its return, the court shall forthwith confirm the distribution absolutely. If any distributee or purchaser makes a return of the rule within the time set by the court, the court shall forthwith hear any objections and exceptions to the proposed distribution and thereafter adjust the schedule of distribution as it deems just and equitable according to law and confirm the distribution absolutely as adjusted. An absolute confirmation of distribution by the court shall be final and nonappealable with respect to all distributees listed in the petition.

(f) Whenever no claim for payment of any balance due the owner of the property is presented by or on behalf of the owner within a period of three (3) years of the date of the sale, the balance of the proceeds shall be distributed to the respective taxing districts pro rata based on the millage imposed by the respective taxing districts as of the year such property was sold. Interest earned by the proceeds of the sale during this three-year period shall be retained by the county.

1947, July 7, P.L. 1368, art II, § 205. As amended 1951, June 30, P.L. 991, § 1; 1952, Jan. 18, P.L. (1951) 2098, § 2. Reenacted and amended 1973, Sept. 27, P.L. 264, No. 74, § 1. As amended 1980, June 22, P.L. 247, No. 70, § 1, effective in 60 days; 1986, July 3, P.L. 351, No. 81, § 4, effective in 30 days; 1990, June 29, P.L. 260, No. 61, § 1, effective in 60 days.

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the bureau to distribute the entire remaining balance moneys collected through any tax sale under the taxing districts at least once every three (3) months in the taxing district.

bureau to distribute all moneys collected as the result of provisions of this act, less the deductions authorized by law and according to the following priority:

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ment of any balance due the owner of the property is owner within a period of three (3) years of the date of the proceeds shall be distributed to the respective taxing districts imposed by the respective taxing districts as of . Interest earned by the proceeds of the sale during retained by the county.

205. As amended 1951, June 30, P.L. 991, § 1; 1952, enacted and amended 1973, Sept. 27, P.L. 264, No. 74, P.L. 247, No. 70, § 1, effective in 60 days; 1986, July 3, 30 days; 1990, June 29, P.L. 260, No. 61, § 1, effective

Historical and Statutory Notes

1990 Legislation

The 1990 amendment added subsec. (c.1) and rewrote the initial clause in subsec. (d), which formerly read: "it shall then be the duty of the bureau to distribute the entire remaining balance of money collected against each account at least once every three (3) months in the following manner and according to the following priority".

The 1990 amendment also, in subsec. (e), in the first sentence following "distribution required

by", substituted "subsec. (d)" for "this section", rewrote the third sentence, which formerly read: "The rule to show cause and a copy of the petition shall be served upon each distributee by first-class mail, with proof of mailing to the last residence or place of business of the distributee known to the bureau."

The 1990 amendment also, in the fourth and fifth sentences of subsec. (e), following "any distributee", inserted "or purchaser".

Cross References

Assignment of claims, see 72 P.S. § 5860.316.

§ 5860.207. Reimbursement of county; charges

(a) In order to reimburse the county for the actual costs and expenses of operating the bureau created by this act, the county shall receive and retain out of all moneys collected or received under the provisions of this act, five per centum (5%) thereof, which percentage shall be deducted by the bureau before paying over moneys to the respective taxing districts entitled thereto. This percentage and interest earned under section 205¹ shall be paid into the county treasury for the use of the county. The reimbursement herein provided for shall be in addition to the costs, fees and expenses advanced by the county, which, upon recovery, are payable to the county as provided by the preceding section of this act.

(b) In addition to the five per centum (5%) authorized by subsection (a), and the reimbursement as therein provided, maximum charges for the following or similar type services are authorized:

(1) Entry of Claim, includes	\$10.00
(i) audit lien sheets	
(ii) enter on property card	
(iii) enter in docket	
(iv) enter in index	
(v) type notice of return	
(vi) mail notice of return	
(2) Satisfaction of Claim, includes	\$ 5.00
(i) prepare receipt	
(ii) satisfy docket	
(iii) satisfy index	
(iv) post property card	
(v) enter on daily distribution sheet	
(3) Preparation of Sale, includes	\$15.00
(i) prepare cost sheet	
(ii) type notice of sale	
(iii) mail notice of sale	
(iv) prepare advertising copy	
(4) Review of Records, includes	\$10.00
(i) check assessment records	
(ii) check Recorder of Deeds	
(iii) check Register of Wills	
(5) Preparation of Deed	\$25.00
(6) Discharge of Tax Claim, Section 501 ²	\$ 5.00
(6.1) Removal from Sale, Section 603 ³	\$ 5.00
(7) Agreement to Stay Sale, Section 603	\$15.00
(8) Postage	Actual cost

It is the intent of this act to authorize the bureau to charge the costs of its operation against the properties for which a delinquent return is made on an equitable and pro-

(e) MISCELLANEOUS

§ 5860.618. Repurchase by owner

(a) The owner shall have no right to purchase his own property at a judicial sale, a private sale or from the bureau's repository for unsold property under the provisions of this act.

(b) A change of name or business status shall not defeat the purpose of this section.

(c) For the purpose of this section, "owner" means any individual, partner, shareholder, trust, partnership, limited partnership, corporation or any other business association or any trust, partnership, limited partnership, corporation or any other business association that has any individual as part of the business association who had any ownership interest or rights in the property.

1947, July 7, P.L. 1368, No. 542, § 618, added 1986, July 3, P.L. 351, No. 81, § 43, effective in 30 days. Amended 1998, June 18, P.L. 501, No. 69, § 2, effective in 60 days.

Historical and Statutory Notes

1998 Legislation

Act 1998-69 rewrote the section, which formerly read:

"The owner shall have no right to purchase his own property at either a judicial sale or a private sale conducted under the provisions of this act."

Section 3 of Act 1998-69 provides that this act shall apply to all sales conducted on or after the effective date of this act.

§ 5860.619. Restrictions on Purchases

(a) Deeds for any property exposed for any sale under Subarticle (b) of Article VI of this act shall not be exchanged any sooner than twenty (20) days nor later than forty-five (45) days after any sale held under subarticle (b) of Article VI. 1

(b) A municipality may, within fifteen (15) days of any sale held under subarticle (b) of Article VI of this act, petition the court of common pleas to prohibit the transfer of any deed for any property exposed for any sale under subarticle (b) of Article VI which is located in that municipality to any purchaser who is proven to meet any of the criteria set forth in the municipality's petition.

(c)(1) The petition of the municipality shall allege that the purchaser has over the last three years preceding the filing of the petition exhibited a course of conduct which demonstrates that a purchaser permitted an uncorrected housing code violation to continue unabated after being convicted of such violation; and

(i) failed to maintain property owned by that purchaser in a reasonable manner such that it posed a threat to health, safety or property; or

(ii) permitted the use of property in an unsafe, illegal or unsanitary manner such that it posed a threat to health, safety or property.

(2) A person who acts as an agent for a purchaser who sought to avoid the limitations placed on the purchase of property by this section shall be subject to the restrictions imposed by this section.

(3) Allegations under this subsection shall be proved by a preponderance of the evidence. In ruling on the petition, a court shall consider whether violations were caused by malicious acts of a current non-owner occupant and the control exercised by a purchaser in regard to his ownership interest or rights with other properties.

(d) A change of name or business status shall not defeat the purpose of this section.

(e) As used in this section:

"Municipality," any county, city, borough, incorporated town, township, home rule municipality, optional plan municipality, optional charter municipality or any similar general purpose unit of government which may be created or authorized by statute.

"Purchaser," any individual, partner, limited or general partner, shareholder, trustee, beneficiary, any other individual with any ownership interest or right in a business association, sole proprietorship, partnership, limited partnership, S or C corporation,

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

ANDREW P. GATES :
:
:
V. : NO. 07-1343-CD
:
CLEARFIELD COUNTY TAX CLAIM :
BUREAU :

CERTIFICATE OF SERVICE

I hereby certify this 17th day of September, 2007, a copy of the Motion to Rescind Court Order and Motion for Declaratory Judgment has been served upon the following persons and in the manner indicated below:

Service via personal delivery addressed as follows:

Maryanne Wesdock	Clearfield County Commissioners
Director, Clearfield County Assessment Office	Clearfield County Courthouse
and Tax Claim Bureau	230 East Market Street
Clearfield County Courthouse	Clearfield, Pa. 16830
230 East Market Street	
Clearfield, Pa. 16830	

Via first class mail, postage prepaid, addressed as follows:

Kim C. Kesner, Esquire	Mr. David Goodin	Burnside Township Board
Belin, Kubista & Ryan	Harmony Area School District	of Supervisors
15 North Front Street	5239 Ridge Road	R.D. #1
P.O. Box 1	Westover, PA. 16692	Westover, PA. 16692
Clearfield, PA. 16830		

Respectfully Submitted,

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Petitioner Michael A. Rudella

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

ANDREW P. GATES, Petitioner :
:
-vs- : No. 07 - 1343 - CD
:
CLEARFIELD COUNTY TAX CLAIM :
BUREAU, Respondent :
:

O R D E R

AND NOW, this 21ST day of August, 2007, upon consideration
of the foregoing Petition, IT IS ORDERED AND DECREED that the proposed private
sale by the Clearfield County Tax Claim Bureau of 162.8 acres coal rights assessed to
Robert Spencer and identified by Clearfield County Assessment Map No. 108-C14-02
for the sum of \$200.00 is disapproved. Respondent shall conduct an auction-style
bid of said 162.8 acres coal rights between Petitioner and the party who made the
private bid of \$200.00, with the starting price below which the same shall not be
sold in the amount of \$5,270.74.

BY THE COURT:



Fredric J. Ammerman, President Judge

FILED
09/10/07
AUG 21 2007 Atty
JW
Seaman
William A. Shaw
Prothonotary/Clerk of Courts
(will serve)
#12

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

ANDREW P. GATES, Petitioner : No. 07-1343CD
vs. : Type of Case: Civil
CLEARFIELD COUNTY TAX CLAIM BUREAU, Respondent : Type of Pleading: PETITION TO
: DISAPPROVE PRIVATE SALE
: Filed on behalf of:
: Petitioner
: Counsel of Record for this Party:
: Laurance B. Seaman, Esquire
: Supreme Court No.: 19620
: GATES & SEAMAN
: Attorneys at law
: Two North Front Street
: P. O. Box 846
: Clearfield, Pennsylvania 16830
: (814) 765-1766

FILED *le cc*
09/00/07 *Atty Seaman*
AUG 21 2007
William A. Shaw
Prothonotary/Clerk of Courts
Atty pd.
85.00
#1

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

ANDREW P. GATES, Petitioner :
: :
-vs- : No. 07 - - CD
: :
CLEARFIELD COUNTY TAX CLAIM :
BUREAU, Respondent :
:

PETITION TO DISAPPROVE PRIVATE SALE

TO THE HONORABLE FREDRIC J. AMMERMAN, PRESIDENT JUDGE OF THE SAID COURT:

AND NOW, comes Petitioner, Andrew P. Gates, by and through his attorney, Laurance B. Seaman, Esquire, and files the within Petition to Disapprove Private Sale, and in support thereof avers as follows:

1. Petitioner is an adult individual residing at 1515 Warren Drive, Clearfield, Clearfield County, Pennsylvania 16830.
2. Respondent is a bureau of Clearfield County, a governmental agency, with offices at 230 East Market Street, Clearfield, Clearfield County, Pennsylvania 16830.
3. Respondent caused the advertisement on June 29, 2007 and July 13, 2007 in the Clearfield County Legal Journal of a proposed private sale of 162.8 acres coal rights assessed to Robert Spencer and identified by Clearfield County Assessment Map No. 108-C14-02 MN.
4. According to said notice, a bid of \$200.00 has been received and accepted by Respondent with the private sale to be held on August 29, 2007 at 9:00 o'clock a.m. in the Tax Claim Bureau, 230 East Market Street, Clearfield, PA 16830.

5. The bid of \$200.00 is insufficient since the amount of outstanding taxes and costs as of July 31, 2007 is the sum of \$5,270.74, and your Petitioner is willing to offer at least the amount of the outstanding taxes and costs.

WHEREFORE, your Petitioner respectfully requests your Honorable Court to disapprove the private sale and to direct the Respondent to hold a private auction for the sale of said interest in the real estate in accordance with the Real Estate Tax Sale Law (72 P.S. §5860.101 et seq.).

Respectfully submitted:

GATES & SEAMAN

By:



Laurance B. Seaman, Esquire
Attorney for Petitioner, Andrew P. Gates

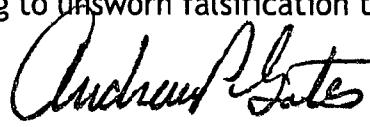
Two North Front Street, P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

Date: August 21, 2007.

VERIFICATION

I verify that the statements made in the foregoing document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

8-1-2007
Date



Andrew P. Gates

IN THE COMMONWEALTH COURT OF PENNSYLVANIA**FILED**MB:JW
JUN 09 2009William A. Shaw
Prothonotary/Clerk of Courts

Andrew P. Gates	:	
	:	
	:	
v.	:	
	:	
	:	
Clearfield County Tax Claim Bureau	:	
	:	
Appeal of: Michael A. Rudella	:	No. 541 C.D. 2008
	:	Argued: September 8, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE JOHNNY J. BUTLER, Judge
 HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED**MEMORANDUM OPINION BY
JUDGE BUTLER****FILED: October 23, 2008**

Michael A. Rudella (Rudella) appeals from an order of the Court of Common Pleas of Clearfield County (trial court) wherein the trial court declared that Section 205(d) of the Real Estate Tax Sale Law (Tax Sale Law)¹ provides the proceeds distribution scheme for the private sale of certain coal rights of Robert G. Spencer (Spencer), and that Andrew P. Gates (Gates) is qualified to bid on the subject property at the sale.

Rudella submitted a private sale bid of \$200.00 to the Clearfield County Tax Claim Bureau (TCB) to purchase 162.8 acres of coal rights owned by Spencer on January 31, 2007. The TCB accepted the bid and published the

¹ Act of July 7, 1947, P.L. 1368, *as amended*, 72 P.S. § 5860.205(d).

required notice of the proposed sale. On August 21, 2007, Gates timely filed a Petition to Disapprove Private Sale. The trial court entered an order on that same date disapproving the sale and ordering an auction-style sale between Gates and Rudella with the starting price set at a minimum of \$5,270.74.

On September 12, 2007, Rudella filed a Motion to Rescind Court Order and Motion for Declaratory Judgment. On September 19, 2007, the trial court entered an order rescinding and vacating the prior order and entered a Rule to Show Cause (Rule) why the Motion for Declaratory Judgment should not be granted. On October 9, 2007, the trial court entered an order by agreement of Gates and Rudella that the sale would not take place until after the hearing on the Rule. Gates filed his Answer to Petition to Disapprove Private Sale and his Answer to Motion to Rescind Court Order and Motion for Declaratory Judgment on November 15, 2007.

The trial court held an evidentiary hearing on November 16, 2007, and ordered briefs at that time. On February 28, 2008, the trial court entered an opinion and order finding that the provisions of Section 205(d) apply to the instant sale, thereby providing the distribution scheme for the proceeds of the sale, and that Gates is qualified to bid on the subject property at the instant sale. Rudella appealed the trial court's order to this Court.²

There are two specific issues before us: whether the trial court erred in applying the proceeds distribution scheme in Section 205(d) to the instant sale; and

² The appellate standard of review in a tax sale case is limited to determining whether the trial court abused its discretion, rendered a decision lacking supporting evidence, or clearly erred as a matter of law. *Santarelli Real Estate, Inc. v. Tax Claim Bureau of Lackawanna County*, 867 A.2d 717 (Pa. Cmwlth. 2005).

whether Gates is qualified to bid on the subject property given his involvement with the record owner of the property.

Rudella argues on appeal that the provisions of Section 205(d) should not apply to private tax sales. We disagree.

Section 205(d) sets forth:

It shall be the duty of the bureau to distribute all moneys collected as the result of any tax sale conducted under the provisions of this act, less the deductions authorized by subsection (c), 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.
- (5) Fifth, to the owner of the property.

(Emphasis added). Without qualification, this section is the distribution scheme for all monies collected as a result of tax sales under the Tax Sale Law, and it does

not set apart private tax sales as Rudella suggests.³ In fact, in *Fieg v. Somerset County Tax Claim Bureau*, 658 A.2d 476 (Pa. Cmwlth. 1995), this Court held that Section 205(d) applies to private tax sales.

Rudella argues that amendments made to Sections 618 (repurchase by owner) and 619 (restrictions on purchases) of the Tax Sale Law⁴ after *Fieg*, disallow repurchase of property at any sale by its owner and, therefore, the owner should, likewise, be precluded from recovering the excess proceeds from the sale. In 1998, Section 618 of the Tax Sale Law, subsection (a), was amended to provide “[t]he owner shall have no right to purchase his own property at a judicial sale, private sale or from the bureau’s repository for unsold property under the provisions of this act.” Previously, Section 618 merely read that “[t]he owner shall have no right to purchase his own property at either a judicial sale or a private sale conducted under the provisions of this act.” Gates argues, and we agree, that Section 618’s substantive restriction on repurchase by an owner from a tax sale was already in effect when Section 205 was last amended, and when *Fieg* was decided in 1995. We also agree with Gates’ interpretation that Section 619 is inapplicable here, since it primarily addresses judicial sales of real estate subject to uncorrected housing code violations.⁵ Thus, we hold that the trial court did not err in applying the proceeds distribution scheme in Section 205(d) to the instant sale.

As to the issue of whether Gates is qualified to bid on the subject property, Section 613 of the Tax Sale Law⁶ provides in pertinent part:

³ See also Section 630 of the Tax Sale Law, 72 P.S. § 5860.630 (distribution of proceeds from sales of property from the repository for unsold properties must follow Section 205).

⁴ 72 P.S. §§ 5860.618, 5860.619.

⁵ Judicial sales of property are governed by Article VI, subsection (b) of the Tax Sale Law, which encompass Sections 610 through 612-2, 72 P.S. §§ 5860.610 - 612-2. The instant case is a private sale, which is governed by Article VI, subsection (c) of the Tax Sale Law.

⁶ 72 P.S. § 5860.613.

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 a 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.*

(Emphasis added). Pursuant to this statute, Gates was permitted to file the Petition to Disapprove Sale in his own capacity, as well as on behalf of Spencer, the owner of record. There is no question, however, that Section 618 precludes an owner from repurchasing his own property at a private tax sale. Pursuant to Section 618, therefore, neither Spencer, nor Gates if he were representing Spencer, could bid on the property at the private sale. Section 618 does not, however, preclude Gates from purchasing Spencer's property on his own or on behalf of Kyle Morgan (Morgan), Spencer's grandson and potential heir.

Rudella argues that Section 618(c) provides that an owner cannot repurchase his own property, and that Section 619(e) includes "beneficiary" within its definition of purchaser. He claims, therefore, that if Gates is permitted to bid on the property and to sell it to Morgan, a potential beneficiary of Spencer, the tax sale could be a sham which could result in the owner's retention of the property. We disagree.

Section 618(c) defines "owner," for purposes of that section only, as "any individual, partner, shareholder, trust, partnership, limited partnership, corporation or any other business association or any trust, partnership, limited partnership, corporation or any other business association that has any individual as part of the business association who had any ownership interest or rights in the property." There is nothing in the record that qualifies either Gates or Morgan as

an owner under Section 618(c).⁷ Gates has no interest in any of the owner's business associations, or any ownership interests or rights in the property in question. (Hearing Notes of Testimony, November 16, 2007, (N.T.) at 32). He would not be acting at the sale as an agent for the owner or any of his business associations. (N.T. at 12). Further, Gates stipulated at the hearing, and the court so ordered, that if Gates were to purchase the property, he is not permitted to sell it to the owner of record or any other legal entity in which the owner has or acquires an interest. (N.T. at 26; Trial Ct. Order at 8). Finally, while Morgan is an heir to Spencer, he has no interest in any of Spencer's business associations, or any ownership interests or rights in the property in question. (N.T. at 32-33, 42, 48-50).

As Gates and Morgan have no interest in any of Spencer's business associations, or any ownership interests or rights in the subject property, Gates is permitted to purchase the property in his own capacity, as well as on behalf of Morgan. As a precaution, if Gates succeeds in purchasing the property, by order of the trial court, he is precluded from selling it back to the owner, or any business entity wherein the owner has an interest. This measure would prevent the owner from using Gates to effectuate a sham upon the court as Rudella contends.

We hold that the provisions of Section 205(d) are applicable as the distribution scheme for the instant sale, and Gates is a qualified bidder, as he is not precluded thereunder from purchasing the instant property.

Accordingly, the order of the trial court is affirmed.


JOHNNY J. BUTLER, Judge

⁷ Since we found that Section 619 is inapplicable to the instant matter, we find that its definition of "purchaser" in Section 619(e) which includes "beneficiary" is also inapplicable.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

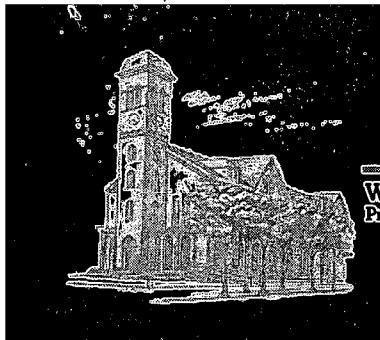
Andrew P. Gates :
:
:
v. :
:
:
Clearfield County Tax :
Claim Bureau :
Appeal of: Michael A. Rudella : No. 541 C.D. 2008

ORDER

AND NOW, this 23rd day of October, 2008, the order of the Court of
Common Pleas of Clearfield County is hereby affirmed.

JOHNNY J. BUTLER

JOHNNY J. BUTLER, Judge



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

May 2, 2008

COPY

Commonwealth Court of Pennsylvania
Irvis Office Building
6th Floor, Room 624
Commonwealth Ave. & Walnut St.
Harrisburg, PA 17120

RE: Andrew P. Gates

vs

Clearfield County Tax Claim Bureau
Michael A. Rudella
No. 07-1343-CD
Commonwealth Court No. 541 CD 2008

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office.

Sincerely,

William A. Shaw
Prothonotary

FILED

WAS
MAY 02 2008

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(c)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the Court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

Andrew P. Gates
VS.

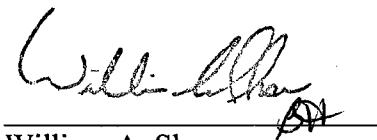
Clearfield County Tax Claim Bureau
Michael A. Rudella
07-1343-CD

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1 to**
17, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is

May 2, 2008.



William A. Shaw
Prothonotary/Clerk of Courts

(seal)

March 28, 2008

RE: Gates v. Clearfield Cnty Tax Claim Bur et al
No.: 541 CD 2008
Agency Docket Number: 07-1343-CD
Filed Date: March 27, 2008

07-1343-CD

Notice of Docketing Appeal

A Notice of Appeal from an order of your court has been docketed in the Commonwealth Court of Pennsylvania. The Commonwealth Court docket number must be on all correspondence and documents filed with the court.

Under Chapter 19 of the Pennsylvania Rules of Appellate Procedure, the Notice of Appeal has the effect of directing the Court to transmit the certified record in the matter to the Prothonotary of the Commonwealth Court.

The complete record, including the opinion of the trial judge, should be forwarded to the Commonwealth Court within sixty (60) days of the date of filing of the Notice of Appeal. Do not transmit a partial record.

Pa.R.A.P. 1921 to 1933 provides the standards for preparation, certification and transmission of the record.

The address to which the Court is to transmit the record is set forth on Page 2 of this notice.

Notice to Counsel

A copy of this notice is being sent to all parties or their counsel indicated on the proof of service accompanying the Notice of Appeal. The appearance of all counsel has been entered on the record in the Commonwealth Court. Counsel has thirty (30) days from the date of filing of the Notice of Appeal to file a praecipe to withdraw their appearance pursuant to Pa. R.A.P. 907 (b).

Appellant or Appellant's attorney should review the record of the trial court, in order to insure that it is complete, prior to certification to this Court. (Note: A copy of the Zoning Ordinance must accompany records in Zoning Appeal cases).

The addresses to which you are to transmit documents to this Court are set forth on Page 2 of this Notice.

If you have special needs, please contact this court in writing as soon as possible.

Attorney Name	Party Name	Party Type
F. Cortez Bell, III, Esq.	Michael A. Rudella	Appellant
Kim C. Kesner, Esq.	Clearfield County Tax Claim Bureau	Appellee
Laurance B. Seaman, Esq.	Andrew P. Gates	Appellee

FILED
MAR 12 2008
MAR 31 2008
NO CC
GR

William A. Shaw
Prothonotary/Clerk of Courts

1014

Address all written communications to:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Room 624
Irvis Office Building
Harrisburg, PA 17120
(717) 255-1650

Filings may be made in person at the following address (except on Saturdays, Sundays and holidays observed by Pennsylvania Courts) between 9:00 a.m. and 4:00 p.m.

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Room 624
Sixth Floor
Irvis Office Building
Harrisburg, PA 17120
(717) 255-1650

Pleadings and similar papers (but not paperbooks or certified records) may also be filed in person only at:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Filing Office
Suite 990
The Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 560-5742

The hours of the Philadelphia Filing Office are 9:00 a.m. to 4:00 p.m.

Under Pa.R.A.P. 3702, writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1343-CD

Andrew P. Gates

Vs.

Clearfield County Tax Claim Bureau

Michael A. Rudella

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
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03	09/17/07	Motion to Rescind Court Order and Motion for Declaratory Judgment	13
04	09/19/07	Order, Re: Order issued August 21, 2007, rescinded and vacated; rule granted; rule returnable for answer and hearing	01
05	10/09/07	Order, Re: private sale shall not take place	01
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10	12/13/07	Order, Re: briefing schedule continued	01
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13	03/27/08	Appeal to Commonwealth Court	12
14	03/31/08	Notice of Docketing Appeal and Notice to Counsel	02
15	04/01/08	Order, Re: concise statement to be filed	01
16	04/21/08	Statement of Matters Complained of on Appeal	03
17	05/02/08	Letters, Re: Notification of mailing appeal mailed to Laurance B. Seaman, Esq.; Clearfield County Tax Claim Bureau; and F. Cortez Bell, III, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	04

ate: 5/2/2008

Clearfield County Court of Common Pleas

User: BHUDSON

me: 10:28 AM

ROA Report

age 1 of 2

Case: 2007-01343-CD

Current Judge: Fredric Joseph Ammerman

Andrew P. Gatesvs.Clearfield County Tax Claim Bureau

Civil Other-COUNT

ate	Judge	
21/2007	New Case Filed. Filing: Petition to Disapprove Private Sale Paid by: Gates, Andrew P. (plaintiff) Receipt number: 1920325 Dated: 08/21/2007 Amount: \$85.00 (Check) 6CC Atty Seaman. Order AND NOW, this 21st day of August 2007, upon consideration of the foregoing Petition, IT IS ORDERED AND DECREED that the proposed private sale by the Clearfield County Tax Claim Bureau of 162.8 acres coal rights assessed to Robert Spencer and identified by Clearfield County Assessment Map. No. 108-C14-02 for the sum of \$200.00 is disapproved. Respondent shall conduct an auction-style bid of said 162.8 acres coal rights between petitioner and the party who made the private bid of \$200.00, with a starting price below which the same shall not be sold in the amount of \$5,270.74. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 6CC Atty Seaman (will serve)	No Judge No Judge Fredric Joseph Ammerman
17/2007	Motion to Rescind Court Order and Motion for Declaratory Judgment, filed by s/ F. Cortez Bell II Esq. 7CC Atty.	Fredric Joseph Ammerman
19/2007	Order, this 19th day of Sept., 2007, it is Ordered that the Order of Court issued in this matter on August 21, 2007 is rescinded and vacated. Furthur Ordered that a Rule is granted on the Petitioner, Andrew P. Gates, to appear and show cause why the Motion for Declaratory Judgment should not be granted. Rule Returnable for Answer by the Petitioner Andrew P. Gates and hearing on said Motions to be held on the 16th day of Nov., 2007, at 11:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 8CC to Atty.	Fredric Joseph Ammerman
09/2007	Order, this 9th day of Oct., 2007, it is Ordered that private sale scheduled for August 29, 2007 shall not take place, nor shall any other private sale be held at least until after a hearing on the Petition to Disapprove Private Sale to be held on the 16th day of Nov., 2007 commencing at 11:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 7 CC to Atty. Gates (will serve)	Fredric Joseph Ammerman
019/2007	Affidavit of Service filed. Mailed on the 10th day of October 2007 by certified maile a certified copy of Order dated October 9, 2007 to Burnside Township, Robert G. Spencer-c/o Shad B. Spencer, Harmony School District, Clearfield County Tax Claim Bureau and Clearfield County Commissioners-c/o Kim C. Kesner Esq., filed by s/ Laurance B. Seaman Esq. No CC.	Fredric Joseph Ammerman
1/15/2007	Answer to Petition to Disapprove Private Sale, filed by s/F. Cortez Bell, III, Esq. 10 CC Attorney Bell Answer to Motion to Rescind Court Order and Motion for Declaratory Judgment, filed by s/Laurance B. Seaman, Esq. Five CC Attorney Seaman	Fredric Joseph Ammerman Fredric Joseph Ammerman
1/30/2007	Order, this 16th day of Nov., 2007, following the taking of testimony, it is Ordered that counsel for the petitioner and respondents shall supply the Court with an appropriate brief within no more than 30 days from this date. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Seaman, 1CC Atty. Bell; 1CC Def.	Fredric Joseph Ammerman

ate: 5/2/2008

Clearfield County Court of Common Pleas

User: BHUDSON

me: 10:28 AM

ROA Report

age 2 of 2

Case: 2007-01343-CD

Current Judge: Fredric Joseph Ammerman

Andrew P. Gatesvs.Clearfield County Tax Claim Bureau

Civil Other-COUNT

ate

Judge

7/13/2007	Order, NOW, this 13th day of December 2007, the Court being in receipt of a letter from F. Cortez Bell III, Esquire, Counsel for Michael A. Rudella, one of the Petitioners in the above captioned matter, seeking a continuance of the briefing schedule set forth by the Court in its Order dated November 16, 2007, and it appearing that the other counsel involved are in agreement therewith, it is the ORDER of this Court that said request be and is hereby granted and the briefs of all parties shall be due to the Court on or before January 25, 2008. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 5CC Atty Bell.	Fredric Joseph Ammerman
7/2008	Transcript of Proceedings, filed. Held on Nov. 16, 2007 before Fredric J. Ammerman, Pres. Judge.	Fredric Joseph Ammerman
28/2008	Opinion and Order, Order: this 28th day of Feb., 2008, following evidentiary hearing and consistent with the foregoing Opinion, it is Ordered: (see original). By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Seaman, F. Bell; 1CC Def. - Tax Claim; 1CC D. Mikesell; 1CC Law Library	Fredric Joseph Ammerman
27/2008	Filing: Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Rudella, Michael A.) Receipt number: 1923304 Dated: 3/27/2008 Amount: \$50.00 (Check) Filed by s/ F. Cortez Bell, III, Esquire. 7CC to Atty. Bell, 1CC Commonwealth Court w/check for \$60.00	Fredric Joseph Ammerman
31/2008	From Commonwealth Court of Pennsylvania: Notice of Docketing Appeal and Notice to Counsel, filed. no CC	Fredric Joseph Ammerman
1/2008	Order, this 31st day of march, 2008, this Court having been notified of Appeal, it is Ordered that Michael A. Rudella, Appellant, file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to: Atty. Seaman; Clfd. Co. Tax Claim Bureau; and Atty. F. Cortez Bell	Fredric Joseph Ammerman
21/2008	Statement of Matters Complained of on Appeal, filed by s/ F. Cortez Bell, Esquire. 6CC Atty. Bell	Fredric Joseph Ammerman
2/2008	May 2, 2008, Mailed Appeal to Commonwealth Court. May 2, 2008, Letters, Re: Notification of mailing appeal mailed to Laurance B. Seaman, Esq.; Clearfield County Tax Claim Bureau; and F. Cortez Bell, III, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	Fredric Joseph Ammerman

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAY 02 2008

Attest.

William A. Bane
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

Andrew P. Gates

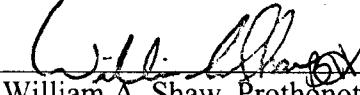
Vs. Case No. 2007-01343-CD

Clearfield County Tax Claim Bureau
Michael A. Rudella

CERTIFICATE OF CONTENTS

NOW, this 2nd day of May, 2008, the undersigned, Prothonotary or Deputy Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania, the said Court of record, does hereby certify that attached is the original record of the case currently on Appeal.

An additional copy of this Certificate is enclosed with the original hereof and the Clerk or Prothonotary of the Commonwealth Court is hereby directed to acknowledge receipt of the Appeal Record by executing such copy at the place indicated by forthwith returning the same to this Court.

By: 
William A. Shaw, Prothonotary

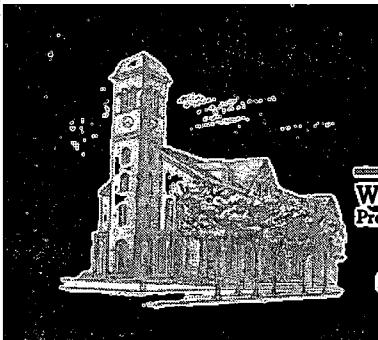
Record, Etc. Received:

Date: _____

(Signature & Title)

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
5 MAY 2008 07 57

FILED
MAY 07 2008
10:12 AM
William A. Shaw
Prothonotary/Clerk of Courts
(69)



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

COPY

Fredric J. Ammerman, P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Laurance B. Seaman, Esq.
PO Box 846
2 North Front Street
Clearfield, PA 16830

Clearfield County Tax Claim Bureau
231 East Market Street
Clearfield, PA 16830

F. Cortez Bell, III, Esq.
PO Box 670
Clearfield, PA 16830

Andrew P. Gates
Vs.
Clearfield County Tax Claim Bureau
Michael A. Rudella

Court No. 07-1343-CD; Commonwealth Court No. 541 CD 2008

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Commonwealth Court of Pennsylvania on May 2, 2008.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1343-CD
Andrew P. Gates
vs.
Clearfield County Tax Claim Bureau
Michael A. Rudella

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
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Date: 5/2/2008

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:46 AM

ROA Report

Page 1 of 2

Case: 2007-01343-CD

Current Judge: Fredric Joseph Ammerman

Andrew P. Gatesvs.Clearfield County Tax Claim Bureau

Civil Other-COUNT

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10/9/2007	Order, this 9th day of Oct., 2007, it is Ordered that private sale scheduled for August 29, 2007 shall not take place, nor shall any other private sale be held at least until after a hearing on the Petition to Disapprove Private Sale to be held on the 16th day of Nov., 2007 commencing at 11:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 7 CC to Atty. Gates (will serve)	Fredric Joseph Ammerman
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Date: 5/2/2008

Time: 09:46 AM

Page 2 of 2

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2007-01343-CD

Current Judge: Fredric Joseph Ammerman

Andrew P. Gatesvs.Clearfield County Tax Claim Bureau

Civil Other-COUNT

Date	Judge
12/13/2007	Order, NOW, this 13th day of December 2007, the Court being in receipt of Fredric Joseph Ammerman a letter from F. Cortez Bell III, Esquire, Counsel for Michael A. Rudella, one of the Petitioners in the above captioned matter, seeking a continuance of the briefing schedule set forth by the Court in its Order dated November 16, 2007, and it appearing that the other counsel involved are in agreement therewith, it is the ORDER of this Court that said request be and is hereby granted and the briefs of all parties shall be due to the Court on or before January 25, 2008. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 5CC Atty Bell.
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2/28/2008	Opinion and Order, Order: this 28th day of Feb., 2008, following evidentiary Fredric Joseph Ammerman hearing and consistent with the foregoing Opinion, it is Ordered: (see original). By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty: Seaman, F. Bell; 1CC Def. - Tax Claim; 1CC D. Mikesell; 1CC Law Library
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3/31/2008	From Commonwealth Court of Pennsylvania: Notice of Docketing Appeal and Notice to Counsel, filed. no CC Fredric Joseph Ammerman
4/1/2008	Order, this 31st day of march, 2008, this Court having been notified of Appeal, it is Ordered that Michael A. Rudella, Appellant, file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to: Atty. Seaman; Clfd. Co. Tax Claim Bureau; and Atty. F. Cortez Bell Fredric Joseph Ammerman
4/21/2008	Statement of Matters Complained of on Appeal, filed by s/ F. Cortez Bell, Fredric Joseph Ammerman Esquire. 6CC Atty. Bell

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAY 02 2008

Attest.

William L. Bell
Prothonotary/
Clerk of Courts



07-1343-CD

Supreme Court of Pennsylvania

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

Western District
June 1, 2009

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Andrew P. Gates
v.
Clearfield County Tax Claim Bureau

Petition of: Michael A. Rudella
Commonwealth Docket Number - 541 CD 2008

Trial Court/Agency Dkt. Number: 07-1343-CD
No. 555 WAL 2008

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: November 24, 2008

Disposition: Order Denying Petition for Allowance of Appeal
Date: May 14, 2009

Reargument/Reconsideration Disposition:
Reargument/Reconsideration
Disposition Date:

/kao

FILED
M 10:42 AM
JUN 03 2009
S (610)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

ANDREW P. GATES	:	No. 555 WAL 2008
	:	
v.	:	
	:	
CLEARFIELD COUNTY TAX CLAIM	:	Petition for Allowance of Appeal from the
BUREAU	:	Order of the Commonwealth Court
	:	
PETITION OF: MICHAEL A. RUDELLA	:	
	:	

ORDER

PER CURIAM

AND NOW, this 14th day of May 2009, the Petition for Allowance of Appeal is denied.

A True Copy John A. Vaskov
As of: May 14, 2009
Attest: *John A. Vaskov*
Deputy Prothonotary
Supreme Court of Pennsylvania



07-1343-CD

Commonwealth Court of Pennsylvania

Kristen W. Brown
 Prothonotary
 Michael Krimmel, Esq.
 Chief Clerk of Commonwealth Court

June 8, 2009

Irvis Office Building, Room 624
 Harrisburg, PA 17120
 717-255-1650

TO:

RE: Gates v. Clearfield Cnty Tax Claim Bur et al
 No.541 CD 2008

Trial Court/Agency Dkt. Number: 07-1343-CD
 Trial Court/Agency Name: Clearfield County Court of Common Pleas

Annexed hereto pursuant to Pennsylvania Rules of Appellate Procedure 2571 and 2572
 is the entire record for the above matter.

Contents of Original Record:

Original Record Item	Filed Date	Description
trial court record	May 5, 2008	1
Date of Remand of Record:	6/8/2009 9:45:31AM	

Enclosed is an additional copy of the certificate. Please acknowledge receipt by signing,
 dating, and returning the enclosed copy to the Prothonotary Office or the Chief Clerk's office.

Commonwealth Court Filing Office

Signature

Date

Printed Name

FILED
 JUN 09 2009
 William A. Shaw
 Prothonotary/Clerk of Courts